

NOTE

SALVATION FOR THE WOMEN OF EL SALVADOR:  
RECOGNIZING A VIOLATION OF INTERNATIONAL  
HUMAN RIGHTS FOR THE SAKE OF ENDING  
FEMICIDE

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### I. INTRODUCTION

On February 12, 2018, Graciela Eugenia Ramírez Chávez went out to buy a pair of shoes for what should have been the happiest day of her life: her wedding day.<sup>1</sup> After previously escaping an abusive relationship and “tak[ing] justice into her own hands” upon the advice of police when she reported the abuse, Graciela was ready to start her life over with someone new.<sup>2</sup> However, on February 13, 2018, Graciela’s life came to a tragic end when her body was discovered in a garden in a suburb of San Salvador, El Salvador.<sup>3</sup> Graciela suffered fifty-six stab wounds at the hands of her fiancée, José Héctor Otero Turcios.<sup>4</sup> Turcios was arrested and charged with the crime of femicide for Graciela’s brutal murder.<sup>5</sup> Concerned neighbors had previously called the police numerous times to report Graciela’s abuse in the months leading up to her death, as well as on the very day of Graciela’s murder, merely a half

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1. Jo Griffin, ‘Police never turned up’: El Salvador’s devastating epidemic of femicide, *GUARDIAN* (June 6, 2018), <https://www.theguardian.com/global-development/2018/jun/06/el-salvador-devastating-epidemic-femicide> [https://perma.cc/5TP2-KU5K]. See also Gabriela Cáceres, *Fiancee of a young woman killed in Zacamil: “I was no longer going to marry her, our relationship ended last Sunday,”* LA PRENSA GRAFICA (translated to English) (Feb. 14, 2018), <https://www.laprensagrafica.com/elsalvador/Prometido-de-joven-asesinada-en-Zacamil-Yo-ya-no-me-iba-a-casar-con-ella-nuestra-relacion-termino-el-domingo-pasado-20180213-0119.html> [https://perma.cc/T55R-VUML].

2. Griffin, *supra* note 1.

3. *Id.*

4. *Id.* See also Salvadoran Prosecutor Blames Police for Ignoring Case that Ended in Femicide, *EL NUEVO DIARIO* (May 9, 2018, 2:59 pm), <https://www.elnuevodiario.com.ni/internacionales/centroamerica/463579-joven-salvadorena-asesinada-su-novio/> [https://perma.cc/JF5H-NP8V] (describing how the crime José was charged with was femicide).

5. *Id.*

hour before she was killed.<sup>6</sup> However, the police never came to her rescue throughout the relationship or on the day of her death.<sup>7</sup>

Graciela's fate and story of femicide is all too common in El Salvador, which is considered one of the most dangerous countries in the world for women and girls.<sup>8</sup> Specifically, as of 2018, El Salvador's femicide rate is the third-highest in the world.<sup>9</sup> "Femicide" is the murdering of women based on their gender, frequently by a current or former intimate partner,<sup>10</sup> and falls within the broader category of domestic violence ("DV").<sup>11</sup> Not only does El Salvador have one of the highest rates for femicide in

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6. Griffin, *supra* note 1. See also *The Salvadoran prosecutor says the police neglected a case that ended in femicide*, EFE (May 9, 2018), <https://www.efe.com/efe/america/sociedad/el-fiscal-salvadoreno-dice-que-la-policia-desatendio-un-caso-acabo-en-feminicidio/20000013-3610843> [<https://perma.cc/9PND-WG4S>].

7. Griffin, *supra* note 1.

8. See Louise Donovan, *Men Kill Women Because They Can': Inside El Salvador's Devastating Femicide Crisis*, ELLE (April 1, 2019), <https://www.elle.com/uk/life-and-culture/a25626891/el-salvador-femicide-crisis/> [<https://perma.cc/JCZ6-KEVD>]. See also Molly O'Toole, *El Salvador's Gangs Are Targeting Young Girls*, ATLANTIC (March 4, 2018), <https://www.theatlantic.com/international/archive/2018/03/el-salvador-women-gangs-ms-13-trump-violence/554804/> [<https://perma.cc/QEV6-GDC3>] (describing how El Salvador's "rate of violent death for women is the third-highest in the world").

9. Donovan, *supra* note 8.

10. *Understanding and Addressing Violence Against Women: Sexual Violence*, WORLD HEALTH ORG., 1, 1 (2012), [https://apps.who.int/iris/bitstream/handle/10665/77434/WHO\\_RHR\\_12.37\\_eng.pdf;jsessionid=50095582E94E52E4147F0940E99B079A?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/77434/WHO_RHR_12.37_eng.pdf;jsessionid=50095582E94E52E4147F0940E99B079A?sequence=1) [<https://perma.cc/5Q4V-DED6>]. It is worth noting that El Salvador has two different crimes: femicide and feminicide. Both terms focus on the killing of a woman based on her gender, but feminicide specifically focuses on violence that "is carried out in a context of virtually total impunity. See Karen Musalo, *El Salvador, A Peace Worse than War: Violence, Gender and a Failed Legal Response*, 30 YALE J.L. & FEMINISM 3 (Dec. 12, 2018). Similar to Musalo, for the sake of this note, unless specifically noted, I will focus on the category of femicide as it is broader than feminicide. Moreover, femicide is the common phrase used on an international law level. *Id.*

11. *Femicide, The Advocates for Human Rights*, STOP VIOLENCE AGAINST WOMEN, <http://www.stopvaw.org/femicide> [<https://perma.cc/7H4J-YC4X>] (last visited April 2019) (connecting femicide to domestic violence, saying that it falls within it and goes beyond it as femicide can occur outside of intimate and intrafamilial violence as well); *UN Women Statement: Confronting Femicide - the Reality of Intimate Partner Violence*, U.N. WOMEN (Nov. 13, 2019), <https://www.unwomen.org/en/news/stories/2019/11/statement-un-women-confronting-femicide-reality-of-intimate-partner-violence> [<https://perma.cc/ZM4G-7C5T>].

both Latin America and in the world,<sup>12</sup> but femicide in El Salvador tends to be exceptionally brutal, often involving extreme forms of violence such as torture and decapitation.<sup>13</sup> El Salvador has enacted legislation in an attempt to address the problem of femicide, and has even declared a national alert for gender-based violence, but statistics of this hate crime continue to rise.<sup>14</sup> This rise in the prevalence of femicide, despite recently enacted laws, has caused commentators to question whether El Salvador alone should continue to handle this crisis, or if international law should play a larger role to more effectively protect the human rights of El Salvadoran women.<sup>15</sup>

Part II of this note will discuss the societal dynamics of El Salvador, the state laws established by El Salvador in an effort to eradicate femicide, how these laws are enforced, and the international laws El Salvador has ratified that directly target DV,

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12. See U.N. Women, *Un 67% de las mujeres ha sufrido algún tipo de violencia en El Salvador* [67% of women have suffered some type of violence in El Salvador], U.N. NEWS (Apr. 17, 2018), <https://news.un.org/es/story/2018/04/1431372> [<https://perma.cc/AL4T-ZYZQ>] (“The violent death rate of women in El Salvador is 13.49 per one hundred thousand women, one of the highest in the world, according to data from the National Civil Police”). See also Donovan, *supra* note 8 (“... [El Salvador] has the highest rate of femicide in Latin America, and the third highest in the world”).

13. G.A. Human Rights Council, Rep. of the Special Rapporteur on Violence Against Women, its Causes and Consequences – Follow-up Mission to El Salvador, U.N. Doc. A/HRC/17/26/Add.2 at 8 (Feb. 14, 2011) (describing how femicides in El Salvador tend to be particularly cruel, “sometimes involving mutilation, torture and decapitation, and often accompanied by kidnapping and sexual violence”).

14. See *El Salvador OKs initiative to fight violence against women*, ASSOCIATED PRESS (May 3, 2018), <https://www.apnews.com/d4fecdd2aa5044a48f3f2e3ce998b309> [<https://perma.cc/7LW4-WDSE>] (discussing El Salvador’s government declaring a national crisis for gender-based violence); see also Donovan, *supra* note 8. For the history of increasing rates of femicide, see U.N. Committee on the Elimination of All Forms of Discrimination Against Women, Concluding Observations on the Eighth and Ninth Periodic Reports of El Salvador, U.N. Doc. CEDAW/C/SLV/CO/8-9 (2017) [hereinafter *Concluding Observations 2017*] (stating that the Committee remains concerned at increasing levels of femicide despite new legislation created by El Salvador). See also G.A. Human Rights Council, Rep. of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on Her Mission to El Salvador, U.N. Doc. A/HRC/38/44/Add.2 (2018) [hereinafter *Extrajudicial Summary*] (noting that femicide rates continue to rise in El Salvador in 2018); see also Donovan, *supra* note 8 (stating that in 2019 femicide continues to be an escalating problem). It has been said that El Salvador has had a 13% increase in cases of violence against women between 2017 and 2018. See Jessica Murray, *Teenage Girls most at Risk amid Rising Sexual Violence in El Salvador – report*, GUARDIAN (Apr. 17, 2019), <https://www.theguardian.com/global-development/2019/apr/17/teenage-girls-el-salvador-rising-sexual-violence-report> [<https://perma.cc/DF8N-934Y>].

15. See *infra* Part II.

including femicide. Part III of this Note will explore the arguments in favor of El Salvador itself taking steps to prevent and punish femicide, as well as examine the arguments in favor of international law playing a larger role in attempting to end femicide in El Salvador. Part IV of this Note suggests that international law should play an active role in ending the femicide epidemic in El Salvador and analyzes the problem of femicide in El Salvador under the predominant “due diligence” standard of international law, ultimately finding that El Salvador has violated the human rights of El Salvadoran women. Part IV will also discuss how such a finding would enhance El Salvador’s enforcement of international human rights laws. Finally, the Conclusion summarizes how the utilization of international law will ultimately lead to salvation for the women of El Salvador and will serve as a leading example for other countries who face similar issues with femicide, particularly within Latin America.

## *II. THE LANDSCAPE OF EL SALVADOR WITH REGARD TO THE FEMICIDE EPIDEMIC*

### *A. The Societal Dynamics of El Salvador: Machismo Culture as a Driving Force for Femicide*

El Salvador’s culture is known to be strongly influenced by patriarchal beliefs and is commonly known as “machismo” culture.<sup>16</sup> This societal dynamic permeates all aspects of life, from the daily interactions of private citizens to the State institutions and how they function.<sup>17</sup> As a result, machismo culture has strongly shaped and influenced the problem of femicide in El Salvador.<sup>18</sup> Specifically, machismo culture has had a strong influence over gang presence and impunity of femicide offenders.<sup>19</sup>

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16. See *infra* Part I(A)(i) and discussion of machismo culture.

17. See *infra* note 21.

18. See VICTORIA COLBERT, MURDER AND MACHISMO: BEHIND THE MOTIVATIONS OF SALVADORAN WOMEN ASYLUM SEEKERS, 55 (May 30, 2019) (connecting the increase in femicide as well as the particular brutality of femicide in El Salvador with machismo culture, suggesting that this increase is causing the murder of women to become a part of the norms associated with machismo culture).

19. See *Id.* at 63 (discussing how machismo culture strengthens the prevalence of gangs in El Salvador and influences how violent these gangs are towards women). Colbert further suggests that machismo culture directly influences State institutions and allows for further perpetration of femicide when those committing femicide are not stopped. *Id.* at

Gang presence and impunity, both intertwined with and strongly influenced by machismo culture, contribute to increased rates of femicide and decreased reporting of cases of femicide.<sup>20</sup>

“Machismo” can be defined as “male behavior that is strong and forceful” and involves patriarchal notions about the roles of men and women in society.<sup>21</sup> Violence against women is often directly connected to machismo culture because this culture creates an unequal dynamic between men and women that fosters a sense of impunity for perpetrators of violence.<sup>22</sup> Moreover, machismo culture has been so strongly linked to DV and femicide that men of machismo culture are considered not “macho” enough if they are not abusing their female significant others.<sup>23</sup> Machismo culture influences every aspect of El Salvadoran society, from the court system to the executive branch, and creates a community in which women are so accustomed to mistreatment that they are not even aware that they have rights with respect thereto.<sup>24</sup> Specifically, in courts outside of specialized courts, which were

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67 (“As impunity of homicidal crimes against women persists, so does the rise in femicides. Many attest, and I agree, that attitudes, views, and influences of machismo culture play a role in legal systems intended to protect all human life including women’s, yet because of gender biases they don’t”).

20. *Id.* at 67.

21. *Machismo*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/machismo> [<https://perma.cc/4ESF-L6FW>]. See also Meredith Kimelblatt, *Reducing Harmful Effects of Machismo Culture on Latin American Domestic Violence Laws: Amending the Convention of Belém Do Pará to Resemble The Istanbul Convention*, GEO. WASH. INT’L L. REV., 405, 406-07 (2016) (defining machismo as “a social construct that has a significant impact on how cultural ideas are formed and how individuals behave throughout Latin America and involves “idealizations of aggression and dominance”).

22. See Ley Especial Integral para una Vida Libre de Violencia para las Mujeres [Special Comprehensive Law for a Life Free of Violence for Women], 2011 (Decree No. 520) (El. Sal.) [hereinafter Special Comprehensive Law].

23. See COLBERT, *supra* note 18, at 31.

24. See Molly O’Toole, *El Salvador’s Gangs Are Targeting Young Girls*, ATLANTIC, (Mar. 4, 2018), <https://www.theatlantic.com/international/archive/2018/03/el-salvador-women-gangs-ms-13-trump-violence/554804/> [<https://perma.cc/3RNZ-723B>] (describing how machismo is so engrained in El Salvadoran culture as a whole, that women are unaware that they have rights, including the right to leave an abusive partner and file DV charges). See also G.A. Human Rights Council, Rep. of the Special Rapporteur on Violence Against Women, its Causes and Consequences – Follow-up Mission to El Salvador, U.N. Doc. A/HRC/17/26/Add.2 (2011) [hereinafter Causes and Consequences] (discussing how patriarchal beliefs as seen through machismo culture shape the roles of women in both the public and private sphere, in particular their right to “be free of all forms of violence”).

established to deal with femicide, machismo culture can cause both judges and juries to foster victim-blaming mentalities that minimize the legitimacy and seriousness of DV and femicide.<sup>25</sup> Furthermore, it has been suggested that despite the fact that Latin America has some of the highest rates of DV in the world, Latin American women are less likely to report DV than women from other regions due to the prevalence of machismo culture in these societies.<sup>26</sup> It has been further suggested that machismo culture also delays States in implementing both domestic and international laws on a national scale and fosters an overall lack of compliance with these laws.<sup>27</sup> Machismo culture also has a compelling influence on El Salvadoran society because of its strong presence in gangs.<sup>28</sup>

Gang presence is especially pervasive in El Salvador.<sup>29</sup> This prevalence of gangs leads to an equally pervasive sense of machismo culture in El Salvador, as machismo culture has an even more intense presence within gangs.<sup>30</sup> This notion is particularly impactful when considering the political, cultural, and physical

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25. See Anna-Cat Brigida, *Inside a Court Room Specialized in Justice for Gender Violence*, VICE (Sept. 11, 2018), [https://www.vice.com/en\\_us/article/qvadzq/violence-against-women-court-femicide-el-salvador](https://www.vice.com/en_us/article/qvadzq/violence-against-women-court-femicide-el-salvador) [<https://perma.cc/GP84-JTPM>] (“In regular courts, those biases can result in judges and juries blaming a victim for her behavior or way of dressing, saying that a woman in a relationship can’t be raped by her own partner, or ruling that domestic violence problems should be resolved within the home”). See also Musalo, *supra* note 10, at 52 (describing how “stereotypes and gender bias translated into the failure of government officials,” including judges, to fulfill their obligations under El Salvadoran legislation regarding femicide); see also Anastasia Moloney, *Judge at New El Salvador Women’s Courts Ready to Tackle Gender Violence*, REUTERS (Aug. 24, 2017), <https://www.reuters.com/article/us-el-salvador-women-rights/judge-at-new-el-salvador-womens-courts-ready-to-tackle-gender-violence-idUSKCN1B42EV> [<https://perma.cc/HU6J-Q82J>] (“Baires said women have been blamed in courtrooms for the violence inflicted on them because they went out at night or their husbands were angry that ‘lunch wasn’t prepared on time’”).

26. Kimelblatt, *supra* note 21, at 414-15.

27. *Id.* at 407-08.

28. See Musalo, *supra* note 10, at 10.

29. See Louise Macaraniag, *10 Facts about Gangs in El Salvador*, BORGAN PROJECT (June 25, 2019), <https://borgenproject.org/10-facts-about-gangs-in-el-salvador/> [<https://perma.cc/VK3E-ASTE>] (“As of 2018, El Salvador ranked 5 among countries with the highest homicide rates in the world. An estimated 60 percent of homicides are related to gang activity, and many are committed against women in addition to sexual and physical abuse”); Molony, *supra* note 25 (describing how influential gangs are in El Salvador, particularly with regard to femicide, including preventing victims and their families from coming forward for fear of reprisals from gangs who control city neighborhoods”).

30. See Musalo, *supra* note 10, at 10.

power gangs have in El Salvador and the gangs' predominantly male membership.<sup>31</sup> El Salvadoran women are frequently considered property by gang members and are punished when their behavior is contrary to what gang members desire, expect, or accept.<sup>32</sup> Moreover, although gangs are violent towards both men and women, machismo culture specifically targets women because it cultivates the acceptance and encouragement of violence against women, which is evidenced through the particular brutality of female murders committed by gangs.<sup>33</sup> As a result, there is a direct relationship between gang activity and gender-based violence against women.<sup>34</sup>

Additionally, gangs are extremely influential in the political landscape of El Salvador, such that impunity is most common in crimes of violence committed by gangs.<sup>35</sup> Impunity can be defined

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31. *Id.*

32. *See id.* (describing how women become victims of violence at the hands of gangs when they are accused of cheating on a gang member, if a woman refuses to be romantically involved with a gang member, or if a woman is used as a tool of revenge against a rival gang member). *See also* O'Toole, *supra* note 24 (explaining that while a majority of gang violence is directed towards men, the gang's targeting of women directly relates to the increasing rates of femicide). O'Toole also explains that gang members commit violent acts against women as a means of revenge against rival gang members most commonly when women are related to members of the rival gang. *Id.* This places women "in the eye of the hurricane" of gang violence. *Id.* *See also* Ciara Nugent, *Violence Against Women in El Salvador Is Driving Them to Suicide — Or to the U.S. Border*, TIME (May 14, 2019), <https://time.com/5582894/gender-violence-women-el-salvador/> [<https://perma.cc/ZV94-Z6U3>] (explaining that gang members see women as "sexual objects"); *see also* Extrajudicial Summary, *supra* note 14 ("Women's bodies are a territory for revenge and control" for gangs).

33. Colbert, *supra* note 18, at 63 ("Although both men and women are targeted and intimidated by gangs through means of force, threats, bullying, and coercion, there's an added layer of misogyny towards women and girls, regardless if they are affiliated. Evidence of misogyny or machismo exuded by gangs is evident on the markings of women's bodies . . .").

34. *See* Concluding Observations 2017, *supra* note 14; Colbert, *supra* notes 18 and 19 and accompanying text discussing violence against women and gang activity; *see also* Nick Paton Walsh, Barbara Arvintidis & Julia Gavarrete, *Gangs in El Salvador are using women's bodies for 'revenge and control'*, CNN (June 6, 2014), <https://www.cnn.com/2018/06/14/americas/el-salvador-gangs-women-intl/index.html> [<https://perma.cc/RQK2-8QXD>] (discussing the correlation between violence against women and gang activity in El Salvador); Colbert, *supra* note 18, at 63 (describing how machismo culture is strengthened through gangs and causes further violence against women).

35. Musalo, *supra* note 10, at 10. *See also* Colbert, *supra* note 18 at 67 (" . . . impunity operates as its own form of political violence and enables gang and intra-familial violence to persist").

as an “exemption or freedom from punishment, harm, or loss.”<sup>36</sup> Such a high frequency of impunity for DV causes victims to fail to report abuse because they do not believe that they will receive justice, or they fear gang retaliation that may result from reporting.<sup>37</sup> Impunity has a correlation with machismo culture even outside of gang activity, where the rate of impunity, in general, in El Salvador is one of the highest in the world.<sup>38</sup> More specifically, the rate of impunity for femicide in El Salvador has been notably high throughout history.<sup>39</sup> Impunity can be found in all aspects of a femicide crime, from authorities failing to fully investigate crimes of femicide to the prosecution failing to punish perpetrators of this gender-based violence.<sup>40</sup> This strong sense of impunity leads to an overall lack of faith in the justice system for El Salvadoran women, which causes further under-reporting of femicide cases.<sup>41</sup> Impunity also creates an environment that fosters further incidents of femicide because when perpetrators of femicide are not punished, these perpetrators, as well as other likeminded perpetrators, learn that they can commit femicide with minimal risk of punishment.<sup>42</sup> It has been suggested that this pervasive impunity within El Salvadoran State institutions is directly correlated with machismo culture because it fosters detrimental, patriarchal mentalities within the individuals that

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36. *Impunity*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/impunity> [<https://perma.cc/45Q3-N2L2>] (last visited April 30, 2020).

37. Concluding Observations 2017, *supra* note 14 (explaining how less than 10% of violence against women caused by gangs results in sentencing).

38. See *Femicide in Latin America*, UN WOMEN, (Apr. 4, 2013), <https://www.unwomen.org/en/news/stories/2013/4/femicide-in-latin-america> [<https://perma.cc/XT6Z-DBDT>]. See also *El Salvador, Events of 2019*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2020/country-chapters/el-salvador> [<https://perma.cc/88DL-94R8>] (last visited Feb. 25, 2019) (describing how impunity for crimes that violate human rights, including sexual assault, “remains the norm”); see also Brigida, *supra* note 25 (explaining how impunity rates in El Salvador is one of the worst in the world).

39. See UN WOMEN, *supra* note 38 (explaining that impunity for femicide occurs in 77% of femicide crimes).

40. See Causes and Consequences, *supra* note 24, at 1 (detailing how impunity is shown in El Salvador in femicide cases).

41. See *id.*

42. Marina Prieto-Carrón, Marilyn Thomson & Mandy Macdonald, *No More Killings! Women Respond to Femicides in Central America*, 15 *GENDER & DEV.* 25, 31 (Mar. 2007) (“The murders continue because national justice and public order systems ignore them. Impunity facilitates further murders and, in a cultural climate where violence is commonplace, men kill women because they can”).

compose these institutions, thereby preventing these State officials from properly addressing femicide.<sup>43</sup> As a result, this impunity, when combined with machismo culture, cultivates a “generalized state of violence” within El Salvador, and women are the target of this violence.<sup>44</sup>

### *B. El Salvador’s State Laws*

El Salvador has four main laws that specifically focus on DV, one of which directly addresses femicide. First, El Salvador’s Penal Code (the “Penal Code”).<sup>45</sup> Second, El Salvador’s Law Against Intra-Familial Violence (the “Intra-Familial Law”).<sup>46</sup> Third, El Salvador’s Law of Equality, Equity, and Eradication of Discrimination Against Women (the “Law of Equality”).<sup>47</sup> Lastly, El Salvador’s Special Comprehensive Law for a Violence-Free Life for Women (the “Special Comprehensive Law”), which specifically targets femicide.<sup>48</sup>

#### 1. El Salvador’s Penal Code

El Salvador’s Penal Code was first passed in 1904 and in subsequent years has been modified through additional legislation.<sup>49</sup> The Penal Code establishes the country’s criminal

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43. See *supra* note 17 and accompanying text discussing machismo culture and impunity.

44. *Id.* (noting that “impunity for crimes, socio- economic disparities and the *machista* culture fostered a generalized state of violence”).

45. Código Penal [C. Penal][Penal Code] art. 200 (El. Sal.).

46. Ley Contra la Violencia Intrafamiliar [Law Against Intra-familial Violence] [hereinafter The Intra-Familial Law], 1996 (Decree No. 902) (El. Sal.).

47. Ley de Igualdad, Equidad y Erradicación de la Discriminación contra las Mujeres [Law of Equality, Equity, and Eradication of Discrimination against Women] [hereinafter the “Law of Equality”], 2011 (Decree No. 645) (El. Sal.).

48. Ley Especial Integral para una Vida Libre de Violencia para las Mujeres [Special Comprehensive Law for a Violence-Free Life for Women] [hereinafter “Special Comprehensive Law”], 2011 (Decree No. 520) (El. Sal.).

49. See *El Salvador Penal and Procedural Codes*, COUNTRY DATA, [http://www.country-data.com/cgi-bin/query/r-](http://www.country-data.com/cgi-bin/query/r-4329.html#targetText=Changes%20in%20the%20Penal%20Code,%2C%20and%20infr)

4329.html#targetText=Changes%20in%20the%20Penal%20Code,%2C%20and%20infr actions%20(contravenciones) [https://perma.cc/ZNM4-M9F6] (last visited Apr. 30, 2020). See also *El Salvador: The April 1998 Criminal Procedures Code; its effectiveness in addressing violence against women (1998-February 2000)*, REFworld, <https://www.refworld.org/docid/3ae6ad7a28.html> [https://perma.cc/8L4Z-2DKM] (last visited Feb. 25, 2019)(describing how amendments to the Penal Code were enacted to address violence against women).

laws and provides sentences for different crimes.<sup>50</sup> In relevant part, Article 200 of the Penal Code criminalizes DV and provides a sentence of one to three years in prison.<sup>51</sup> Specifically, Article 200 bases both the definition and prosecution of DV on the information laid out in El Salvador's Intra-Familial Law, which will be discussed more fully below.<sup>52</sup> Additionally, Articles 128 to 132 criminalize various forms of homicide and provide various sentences for such crimes.<sup>53</sup> Femicide is not specifically addressed in the Penal Code, but because femicide is considered to be directly linked to DV and is a form of homicide, these articles are relevant to this discussion.<sup>54</sup>

## 2. El Salvador's Intra-Familial Law

El Salvador's Law Against Intra-Familial Violence was passed in 1996 with the purpose of "establish[ing] appropriate mechanisms to prevent, punish and eradicate domestic violence," particularly within familial relations, including spouses and other forms of intimate relationships.<sup>55</sup> Although the Intra-Familial Law does not specifically address femicide, femicide is considered within the broader category of DV.<sup>56</sup> As a result, femicide is relevant to this law

The Intra-Familial Law defines intrafamilial violence as "any action or omission, direct or indirect, that causes harm, physical, sexual, psychological suffering or death to the members of the family."<sup>57</sup> Additionally, the Intra-Familial Law makes clear that it is the State's responsibility to prevent and punish DV and provides steps that the State must take to accomplish prevention and punishment.<sup>58</sup> These steps include, in pertinent part,

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50. See generally, *El Salvador Penal and Procedural Codes*, *supra* note 49 (discussing the nature and extent of El Salvador's penal code). See generally, *Codigo Penal*, *supra* note 45.

51. See *Codigo Penal*, *supra* note 45, art. 200.

52. *Id.* For the exact definition of intrafamilial violence, which qualifies as DV within the Penal Code, as well as the necessary steps for prosecution of this crime, see *supra* note 47 and 48 and accompanying text.

53. *Codigo Penal* *supra* note 45, art. 128-132.

54. See *Femicide, The Advocates for Human Rights*, *supra* note 11.

55. The Intra-Familial Law, *supra* note 46, at 7.

56. See *Femicide, The Advocates for Human Rights*, *supra* note 11 and accompanying text.

57. The Intra-Familial Law, *supra* note 46, at 8.

58. See *id.* at 9-10.

disseminating information about the Intra-Familial Law into society, encouraging the study of effects of DV on victims, and establishing legal mechanisms to assist victims of DV.<sup>59</sup> Specifically, the Intra-Familial Law dictates that the State must create a specialized unit within El Salvador's National Civic Police ("ES Police") to deal with cases of DV.<sup>60</sup> Personnel within this specialized unit and the institution as a whole should be trained on the dynamics of DV, particularly the disparity of power between the perpetrator and victim, and judicial officials should be sensitive to these dynamics when dealing with cases of DV.<sup>61</sup> Lastly, the Intra-Familial Law creates procedures for protective orders relating to DV.<sup>62</sup>

### 3. El Salvador's Law of Equality

The purpose of the Law of Equality, Equity, and Eradication of Discrimination Against Women is to develop and promote equality of the sexes throughout all aspects of society and within all State institutions.<sup>63</sup> The Law of Equality was passed in 2011 and only applies to State institutions, not private individuals.<sup>64</sup> Additionally, the Law of Equality specifically targets discrimination against women.<sup>65</sup> To accomplish its goals, the Law of Equality directs State institutions to eliminate societal discrimination, including within people's personal lives,<sup>66</sup> by promoting equality in education and politics, among other public arenas.<sup>67</sup> Although this law does not specifically discuss femicide *per se*, because femicide is the killing of women based on gender, femicide is inherently a discriminatory act that can be considered relevant to the Law of Equality.<sup>68</sup>

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59. *Id.*

60. *See id.*

61. *Id.*

62. *See id.* at 11-13.

63. The Law of Equality, *supra* note 47.

64. *See id.* art. 2, provisions a-c (describing how the law only governs state institutions). Some see this limitation as a gap. *See, e.g.,* Musalo, *supra* note 10.

65. Law of Equality, *supra* note 47, at 7.

66. *Id.* at 9.

67. *Id.* at 16-24.

68. *See* Prieto-Carrón et al., *supra* note 42, at 35 ("[F]emicide in Central America . . . is an expression of gender discrimination and unequal power relations between men and women, operating in both the private and public spheres").

#### 4. El Salvador's Special Comprehensive Law

The Special Comprehensive Law for a Violence-Free Life for Women was enacted in 2012 and was the first law that particularly addressed femicide in El Salvador, reaching further and more specifically targeting the issue than the Intra-Familial Law.<sup>69</sup> The purpose of the Special Comprehensive Law is to establish and guarantee women the right of a life free of violence through the “detection, prevention, care, protection, reparation, and punishment of violence against women.”<sup>70</sup> The Special Comprehensive Law creates responsibilities for the State of El Salvador, including working with the media to eliminate stereotypes, having the Ministry of Public Health and Societal Assistance record data of DV cases, creating specialized care units that focus on victims of DV within all branches of State institutions (including the ES Police and the judiciary) and collecting data regarding details of femicide cases, including information regarding the victim and the circumstance under which the crime occurred.<sup>71</sup>

Most importantly, the Special Comprehensive Law criminalizes both general and aggravated femicide.<sup>72</sup> General femicide is defined as killing a woman based on her gender because of “hatred or contempt,”<sup>73</sup> and prescribes a sentence of twenty to thirty-five years.<sup>74</sup> Aggravated femicide is defined as killing a woman based on her gender accompanied by aggravating circumstances, such as if the act was performed by a public official or employee of the State, if the act of femicide was performed by two or more people, or if the victim is under eighteen years of age.<sup>75</sup> Aggravated femicide is punishable by thirty to fifty years in

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69. Causes and Consequences, *supra* note 24, at 12.

70. Special Comprehensive Law, *supra* note 48, art. 1.

71. *Id.* at Ch. IV.

72. *Id.* arts. 45-46.

73. The Special Comprehensive Law enumerates circumstances under which death can be considered a result of hatred or contempt, including (1) where there have been situations of previous violence by the perpetrator regardless of whether or not such violence was reported, (2) if the perpetrator created an unequal power dynamic in the relationship with the victim, giving him the most power, or (3) prior to the victim's death, the perpetrator took away her “sexual freedom” through acts like sexual mutilation. *Id.* art. 45.

74. *Id.*

75. *Id.* art. 46.

prison.<sup>76</sup> Lastly, Article 47 of the Special Comprehensive Law addresses impunity by stating that any person who impedes an investigation or denies a victim access to justice while exercising a public function will be punished by two to four years in prison.<sup>77</sup>

Although the Special Comprehensive Law is seen as a step in the right direction with respect to addressing femicide, some commentators argue it is not without weakness.<sup>78</sup> Specifically, the Special Rapporteur for the United Nations (the “UN”) has noted that the Special Comprehensive Law is only triggered when femicide is committed by a male partner that is intimately involved with the victim, and thereby excludes femicides committed by gang members that are not the romantic partner of the victim.<sup>79</sup> While the Special Comprehensive Law does not define what constitutes a romantic partner relationship, the United States’ Violence Against Women Act (“VAWA”) defines an “intimate partner” as a current or former spouse, parent of a child shared with the victim, an individual who currently or has previously lived with the victim, a current or former dating partner, or “any other person who is similarly situated to a spouse.”<sup>80</sup> When applying this limited definition of intimate or romantic partners, many femicides, particularly the sizeable number committed by gang members, fall outside the scope of the Special Comprehensive Law.<sup>81</sup> Moreover, because the Special Comprehensive Law only targets femicides committed by male partners, the law effectively excludes femicides committed within lesbian relationships.<sup>82</sup> Although it has been said that, on a global level, femicide occurs far less frequently in

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76. *Id.*

77. *Id.* art. 47.

78. See Extrajudicial Summary, *supra* note 14.

79. *Id.* at 13.

80. Violence Against Women Act, 18 U.S.C. § 2266(7) (2020) [hereinafter VAWA].

81. See *id.*

82. Human Rights Situation for Lesbian, Bisexual and Trans women in El Salvador, 122th Session of the Human Rights Comm. Review of El Salvador, Espacio de Mujeres Lesbianas Salvadoreñas por la Diversidad (ESMULES) (Feb 9, 2018) at 3. See also Extrajudicial Summary, *supra* note 14 at 13; International Human Rights Law Clinic, Univ. of Cal. Berkeley School of Law, *Sexual Diversity in El Salvador: A Report on the Human Rights Situation of the LGBT Community* 48 (2012) (available at [https://www.law.berkeley.edu/files/IHRLC/LGBT\\_Report\\_English\\_Final\\_120705.pdf](https://www.law.berkeley.edu/files/IHRLC/LGBT_Report_English_Final_120705.pdf) [<https://perma.cc/7DMW-4GA7>]) (recommending that The Special Comprehensive Law be applied to LGBT acts of violence).

same-sex couples than heterosexual relationships, this omission is yet another significant gap in the Special Comprehensive Law.<sup>83</sup>

### *C. El Salvador's Enforcement Powers*

El Salvador's judicial branch is charged with upholding the laws that prevent and punish DV and femicide, and it is the central way in which victims of femicide and their families can receive justice.<sup>84</sup> This is particularly true for the recently created specialized courts, which are tasked with specifically dealing with cases of femicide.<sup>85</sup> Additionally, both the ES Police and the El Salvadoran Prosecutor's Office are tasked with upholding these DV and femicide laws through investigation and prevention of femicide, as well as punishment of perpetrators of femicide.<sup>86</sup> Specialized units have been created within both of these institutions to more effectively accomplish the prevention and punishment of femicide.<sup>87</sup> Ultimately, these units within the ES Police and the Prosecutor's Office, as well as the specialized courts within the judicial branch, are the main methods by which new domestic legislation concerning femicide is enforced.<sup>88</sup>

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83. Human Rights Situation for Lesbian, Bisexual and Trans women in El Salvador, 122th Session of the Human Rights Comm. Review of El Salvador, *supra* note 82, at 4 (describing how not classifying femicide in lesbian relationships and not collecting data to discover whether or not these types of femicide are occurring, lesbian women in El Salvador are effectively "invisibl[e]" and "suffer a double discrimination standard for being lesbian and women [all caps omitted]").

84. See Brigida, *supra* note 25 (describing the judicial process as a way for victims of femicide to obtain justice). See also Anna-Cat Brigida, *El Salvador's female victims of violence rarely see justice. That's about to change*, SPLINTER (Oct. 12, 2016), <https://splinternews.com/el-salvador-s-female-victims-of-violence-rarely-see-jus-1793862769> [<https://perma.cc/B3HK-MBVD>] [hereinafter Female Victims of Violence] (quoting Xochitl Bendeck, director of the Life Free of Violence program at the Salvadoran Institute for the Development of Women, who says that the judicial system can bring justice to femicide victims if impunity is addressed).

85. Brigida, *supra* note 25 (explaining how the specialized courts have jurisdiction over the crime of femicide); Moloney, *supra* note 25 (describing how specialized courts handle cases of "domestic and sexual violence" and are also known as "special women's courts").

86. See generally, *supra* Part II(B) for a discussion of the role of the ES police and Prosecutor's Office regarding the enforcement of these laws.

87. See *infra* Part II(C)(ii) and discussion.

88. See *supra* note 71.

### 1. The Judicial Branch

Prior to the creation of the specialized courts, all DV cases were under the jurisdiction of the Peace Court, a branch of El Salvador's courts dedicated to misdemeanors and civil suits, as DV crimes were initially considered misdemeanors.<sup>89</sup> Moreover, before the specialized courts were established, femicide cases were under the jurisdiction of the Courts of First Instance, which are El Salvador's trial courts.<sup>90</sup> However, only five percent of femicide complaints filed in trial courts resulted in conviction.<sup>91</sup> Thus, the majority of femicide perpetrators went unpunished, leaving these perpetrators free to continue committing this heinous crime.<sup>92</sup>

As discussed more fully above, this lack of punishment for femicide perpetrators led to a lack of confidence in El Salvador's judicial system overall, which was one of many factors causing significant underreporting of both DV and femicide cases.<sup>93</sup> Furthermore, even when a DV report was filed, law enforcement personnel, lawyers, and judges would frequently treat DV as a "private matter" and would urge reconciliation amongst the

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89. See generally, *The Judiciary*, COUNTRY STUDIES, <http://countrystudies.us/el-salvador/70.htm#targetText=Each%20chamber%20is%20composed%20of,seven%20such%20courts%20in%201986> [<https://perma.cc/AV67-8HQ3>]. See also Causes and Consequences, *supra* note 24 at 16 (describing how domestic violence cases were frequently treated as "administrative rather than criminal offences" or would be classified as misdemeanors").

90. See generally, *The Judiciary*, *supra* note 89; see also *Judiciary of El Salvador*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Judiciary\\_of\\_El\\_Salvador](https://en.wikipedia.org/wiki/Judiciary_of_El_Salvador) [<https://perma.cc/8R47-D7Q6>] (last visited Feb. 26, 2020) (describing courts of first instance as the first level of the judicial branch to hear civil and criminal cases).

91. Laura Aguirre, *In the region's most violent country, killings of women pushed aside*, UNIVISION NEWS (Mar. 7, 2017), <https://www.univision.com/univision-news/latin-america/in-the-regions-most-violent-country-killings-of-women-pushed-aside> [<https://perma.cc/5J6K-A3H2>]. See also Musalo, *supra* note 10, at 23 (describing how between 2013 and 2015, 80% of cases involving the "violent killing of women" were dismissed for lacking sufficient evidence).

92. See Moloney, *supra* note 25. See also *El Salvador Creates Special Court to Protect Women's Rights*, TELESUR (Feb. 23, 2016), <https://www.telesurenglish.net/news/El-Salvador-Creates-Special-Court-to-Protect-Womens-Rights-20160223-0007.html> [<https://perma.cc/94PN-CEVW>] (explaining that the creation of the specialized courts is an attempt to finally provide El Salvadoran women with a fair trial for femicide, as these women have dealt with injustice and impunity regarding these crimes in the past, which led to a "continuum of multiple violent acts").

93. See Causes and Consequences, *supra* note 24, at 7.

parties privately instead of by formally pressing charges.<sup>94</sup> This treatment of DV also caused insufficient investigation and prosecution, which fostered increased and repeated incidences of DV.<sup>95</sup> As a result, this cycle and proliferation of DV led to escalations of violence, which ultimately lead to femicide.<sup>96</sup>

The specialized courts were established by the Decree for the Creation of Special Courts for a Life Free of Violence and Discrimination Against Women in 2016<sup>97</sup> in response to pervasive injustice regarding femicide cases in order to specifically and promptly address cases in which the rights of women were violated.<sup>98</sup> Cases that reach the specialized courts are referred from the Peace Courts and are based on crimes laid out in the Special Comprehensive Law.<sup>99</sup> Specifically, the specialized courts have jurisdiction over eleven crimes including, in pertinent part, femicide and aggravated femicide.<sup>100</sup> The judges presiding over these courts are trained to handle gender-based violence by evading the influence of machismo culture and looking at the facts through a “gender lens,” or by considering how vulnerable a

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94. *See id.* at 16.

95. *Id.*

96. *See id.* (suggesting that specialized units be created in order to “combat the pattern of impunity in gender-based violent murders and conduct effective criminal investigations” in response to increasing levels of femicide and DV; this suggests that without these units, femicide and DV were able to proliferate faster).

97. *See* Decree for the Creation of Special Courts for a Life Free of Violence and Discrimination against Women, Decree 286, D.O. No. 60D.O. No. 60, Vol. 411, Apr. 4, 2016 (El Sal.). This decree “establishes the creation of specialized courts that deal with cases of domestic violence and violence against women and requires all legal staff of these courts to acquire the necessary knowledge on women’s right to a life free of violence and discrimination and on human rights.” *Id.* (citations omitted). Social Institutions & Gender Index, OECD DEVELOPMENT CENTRE, at 5, <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/SV.pdf> [<https://perma.cc/3S3R-7SGF>] (last visited Nov. 15, 2019).

98. *See* Social Institutions & Gender Index, *supra* note 97, at 1.

99. *Id.* at 2.

100. *See* Claudia Calero, *Special Comprehensive Law for a Life Free of Violence for the Women*, ISDEMU (May 24, 2017) (listing all 11 laws the specialized courts have jurisdiction over), [https://www.salud.gob.sv/archivos/pdf/telesalud\\_2017\\_presentaciones/presentacion24052017/LEY-ESPECIAL-INTEGRAL-PARA-UNA-VIDA-LIBRE-DE-VIOLENCIA-PARA-LAS-MUJERES.pdf](https://www.salud.gob.sv/archivos/pdf/telesalud_2017_presentaciones/presentacion24052017/LEY-ESPECIAL-INTEGRAL-PARA-UNA-VIDA-LIBRE-DE-VIOLENCIA-PARA-LAS-MUJERES.pdf) [<https://perma.cc/H8WU-3BC5>]. Additionally, it is worth noting that these courts do not have jurisdiction over intrafamilial violence and sexual violence because these two forms of violence are the most common in El Salvador and giving these courts jurisdiction over such a broad set of crimes would effectively “collapse the system.” *See* Musalo, *supra* note 10, at 14.

woman in an abusive relationship can be and accounting for this vulnerability when presiding over a femicide case, in order to avoid the pattern of victim-blaming that plagued regular courts in the past.<sup>101</sup> Lastly, in reaching decisions, the specialized courts combine punishment and rehabilitation through incarceration and fines as well as masculinity classes that focus on combatting patriarchal mentalities that lead to repeat offenses.<sup>102</sup>

## 2. State Actors as Enforcers of El Salvador's Laws

In an effort to more directly address cases of femicide, El Salvador's Attorney General created the National Directorate of Women, Children, Adolescents, LGBTI and Vulnerable Groups.<sup>103</sup> This new unit of El Salvador's Prosecutor's Office is divided into four departments, one of which focuses on cases of femicide, in order to create a standardized approach to the investigation and prosecution of this crime.<sup>104</sup> This department is led by four female

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101. See Brigida, *supra* note 25 (discussing how in regular courts judges and juries tended to blame the victim for her abuse, believed that a woman cannot be raped by her partner, or believed that DV should be handled privately and outside of the court room). See also Moloney, *supra* note 25 (quoting Judge Baires, a judge presiding over femicide cases in El Salvador at a specialized court, who explained how traditional courts blamed women for the abuse they suffered 'because they went out at night or their husbands were angry that 'lunch wasn't prepared on time'''); see also *El Salvador Creates Special Court*, *supra* note 92 (describing how judges who preside over femicide cases in specialized courts are specifically trained to handle such cases).

102. Anna-Cat Brigida, *Male Aggressors in El Salvador get Prison, and Masculinity Classes*, AL JAZEERA (Mar. 30, 2019), <https://www.aljazeera.com/indepth/features/male-aggressors-el-salvador-prison-masculinity-class-190330001520333.html> [<https://perma.cc/SC4N-TSHW>] (explaining that rehabilitation includes more traditional practices like fines and more create approaches that target "patriarchal behavior," like masculinity classes). For an example of a traditional form of punishment from the specialized court, see Brigida, *supra* note 25 (describing how a DV perpetrator was required to pay a \$600 fine and serve four years in prison, based on two-months pay at a minimum-wage job, for being found guilty of "expressions of violence in the form of verbal and psychological abuse").

103. Alvaro Castaneda, *Attorney General inaugurates "National Directorate for Women, Children, Adolescents, LGBTI and Vulnerable Groups"*, OFFICE OF THE ATT'Y GEN. OF THE REPUBLIC (May 15, 2018), <http://www.fiscalia.gob.sv/fiscal-general-inaugura-direccion-nacional-de-la-mujer-ninez-adolescencia-lgbti-y-grupos-vulnerables/> [<https://perma.cc/4642-P8H2>]; Beatriz Calderón, *What is the new National Directorate for Women presented today by the Prosecutor and has no budget?*, LA PRENSA GRAFICA (May 15, 2018 at 9:03 HS), <https://www.laprensagrafica.com/elsalvador/Que-es-la-nueva-Direccion-Nacional-de-la-Mujer-presentada-hoy-por-la-Fiscalia-y-que-no-tiene-presupuesto-20180515-0026.html> [<https://perma.cc/XWW8-AC27>].

104. Castaneda, *supra* note 103.

prosecutors who have specialized experience in dealing with femicide cases.<sup>105</sup> According to data collected by the Automated Management and Information System of the Fiscal Process, this new unit has aided the Prosecutor's Office in increasing the number of capture orders issued and convictions maintained for femicide cases.<sup>106</sup> Aside from the Prosecutor's Office, the ES Police is the alternative principal State institution charged with enforcing El Salvador's laws addressing femicide in order to ultimately end this epidemic within the country.<sup>107</sup>

The ES Police is the central police force for El Salvador and operates on a national level.<sup>108</sup> As previously discussed, the ES Police has been known to insufficiently investigate reported cases of femicide.<sup>109</sup> Additionally, the ES Police has also been known to encourage victims to settle conflicts of DV in the privacy of their own home, rather than filing police reports.<sup>110</sup> However, as discussed above, recent legislation has created standards and procedures for the ES Police to follow for DV and femicide cases.<sup>111</sup> The Intra-Familial Law establishes procedures that the ES Police must follow upon receiving notice of a DV case, including providing medical attention to the victim, advising the victim of her rights, detaining the aggressor if the violence is verified, and, at the discretion of the police, issuing a temporary protective order where a case has not constituted DV but aggression is perceptible by the police.<sup>112</sup> Additionally, the Special Comprehensive Law

105. Calderón, *supra* note 103. For the announcement of the creation of the new unit, see Castaneda, *supra* note 103.

106. Castaneda, *supra* note 103.

107. See Special Comprehensive Law, *supra* note 22, ch. VI (describing how a specialized unit will be created within the ES Police to combat femicide, showcasing how the ES Police is a central State institution to address femicide).

108. For a general description of the ES Police, see *El Salvador: The organizational structure of the National Civil Police (Policía Nacional Civil, PNC)*, REFworld (June 22, 2012) <https://www.refworld.org/docid/5035ffc42.html> [<https://perma.cc/89XE-UARQ>]; see also *National Civil Police of El Salvador*, WIKIPEDIA, [https://en.wikipedia.org/wiki/National\\_Civil\\_Police\\_of\\_El\\_Salvador](https://en.wikipedia.org/wiki/National_Civil_Police_of_El_Salvador) [<https://perma.cc/Z8U4-Z62Y>] (last visited Feb. 26, 2020).

109. See U.N. Committee on the Elimination of All Forms of Discrimination Against Women, Concluding Observations on the Eighth and Ninth Periodic Reports of El Salvador, 5, U.N. Doc. CEDAW/C/SLV/CO/7 (2008) [hereinafter *Concluding Observations 2008*].

110. *Id.*

111. See *supra* Part II(b) discussing the Intra-familial Law and the Special Comprehensive Law. See also *infra* notes 112 and 113.

112. See The Intra-Familial Law, *supra* note 46, at 14-15.

guarantees that women who are facing violence will receive “timely and adequate” help from the ES Police<sup>113</sup> and that any individual, including members of the ES Police, who, while performing a public function, impedes an investigation will be punished.<sup>114</sup> Lastly, the ES Police have opened gender units that focus on cases involving violence against women, including femicide.<sup>115</sup>

These positive changes, however, have not had the ultimate success intended, because the numerous protocols in recent legislation have not been fully implemented by the ES Police.<sup>116</sup> Furthermore, because the public outreach that was meant to inform the public regarding these gender units has been limited, many women are even unaware of the existence of these units.<sup>117</sup>

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113. Special Comprehensive Law, *supra* note 38, at 38.

114. *Id.* at 34, art. 47.

115. See Angelika Albaladejo, *How Violence Affects Women in El Salvador*, LATIN AMERICA WORKING GROUP, <https://www.lawg.org/how-violence-affects-women-in-el-salvador/> [<https://perma.cc/62VA-ARQH>] (discussing how these units are “trained with a gender-focused curriculum and collaborate with local women to create ‘fear maps’ pinpointing high-risk areas and the types of violence specific to the community”). See also *El Salvador: 76 Femicides so Far in 2019*, TELESUR (April 4, 2019), <https://www.telesurenglish.net/news/El-Salvador-76-Femicides-so-Far-in-2019-20190404-0010.html> [<https://perma.cc/KV6Z-JEJU>] (describing how crimes against women have been investigated by “Specialized Care Officer[s] for Women” within the ES Police).

116. See Albaladejo, *supra* note 115; see also *El Salvador’s Compliance with the International Covenant on Civil and Political Rights: Gender-based Violence, Gang Violence, Trafficking, and Police Corruption*, ADVOCATES FOR HUMAN RIGHTS 5 (2018) [https://www.theadvocatesforhumanrights.org/uploads/el\\_salvador\\_gender-based\\_violence\\_march\\_2018.pdf](https://www.theadvocatesforhumanrights.org/uploads/el_salvador_gender-based_violence_march_2018.pdf) [<https://perma.cc/S43P-K78Y>] (describing how although the gender unit within the ES Police is a positive step, the ES Police have still failed to fully investigate DV and femicide cases). See also *El Salvador: “We are still not equal”*, HORIZONS (Jan. 19, 2018), <https://www.horizons.ca/blog/2018/1/17/el-salvador-we-are-still-not-equal> [<https://perma.cc/L225-75F8>] (discussing how despite gender units, the ES Police still does not know how to properly prevent retaliation from reporting abuse); see also Catalina Lobo-Guerrero, *In El Salvador, ‘Girls Are a Problem’*, N.Y. TIMES (Sept. 2, 2017), <https://www.nytimes.com/2017/09/02/opinion/sunday/el-salvador-girls-homicides.html> [<https://perma.cc/388M-Q44V>] (“While the police have created dozens of “unimujer” units that focus on women who are victims of violence and their children, they cannot keep them safe from retaliation by their attackers”).

117. See Albaladejo, *supra* note 115. Moreover, even if women are aware of these units, women are reluctant to go to them as they are frequently “monitored” by gangs, who will think they are acting as informants for the police, leaving these women at risk of retaliation. Immigration and Refugee Board of Canada, *El Salvador: Information Gathering Mission Report - Part 2* 10, (Sept. 2016), <https://www.justice.gov/eoir/page/file/905681/download> [<https://perma.cc/YRL5-4DVN>] (“these units are monitored by gangs and women are afraid to go there to report

This lack of both implementation and public awareness has curtailed the potential benefits that the new protocols could have for the issue of femicide in El Salvador.

#### *D. El Salvador's International Law Obligations*

El Salvador has ratified a number of international laws that specifically target femicide and DV.<sup>118</sup> Moreover, through the Special Rapporteur on Violence Against Women and the Committee for the Convention on the Elimination of All Forms of Discrimination Against Women, the UN has released reports covering the progress El Salvador has made regarding femicide.<sup>119</sup> These reports also examine the remaining challenges in El Salvador relating to femicide and provide recommendations for resolution of these issues.<sup>120</sup>

##### 1. The PPEV Convention<sup>121</sup>

The Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women, also known as the Convention of Belém do Pará (the “PPEV Convention”), is an international human rights mechanism created within the Organization of American States (the “OAS”) that classifies violence against women, including femicide, as a violation of their human rights.<sup>122</sup>

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domestic violence because gang members will perceive them as police informants providing information about gangs . . . violence complaints has decreased as women fear to be considered as ‘informants’ and therefore, prefer not to file complaints”).

118. *See infra* Part II(D)(1)-(3) discussing the international laws El Salvador has ratified that relate to femicide.

119. *See infra* Part II(D)(4) discussing the Special Rapporteur report.

120. *Id.*

121. El Salvador signed and ratified the Convention of in August and November of 1995, respectively. *See Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women, Signatories and Ratification*, DEP’T OF INT’L L., OAS, <https://www.oas.org/juridico/english/sigs/a-61.html> [<https://perma.cc/C73Y-MNGQ>] (last visited Apr. 30, 2020). Additionally, El Salvador has recognized the jurisdiction of the Inter-American Court of Human Rights. *See Basic Documents Pertaining to Human Rights in the Inter-American System*, Org. of Amer. States Inter-American Court of Human Rights (Feb. 2012), at 63-64.

122. Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women “Convention of Belém do Pará,” ORG. OF AMER. STATES (June 9, 1994) <https://www.oas.org/juridico/english/treaties/a-61.html> [<https://perma.cc/K85Y-U3AC>] (defining “violence against women” as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere”).

The human rights that are considered to be violated by femicide include the right to life, the right to equal protection under the law, and the right not to be subjected to torture, among others.<sup>123</sup> Additionally, among other things, Article 4 of the PPEV Convention provides that women have fundamental rights to life and equal protection under the law.<sup>124</sup> Furthermore, the PPEV Convention specifically focuses on violence against women that transpires in an intimate relationship or is committed or accepted by the State.<sup>125</sup>

States that have ratified this convention, including El Salvador, are given duties that they are legally bound to fulfill.<sup>126</sup> These duties include, in pertinent part, condemning all forms of violence against women “without delay” through applying “due diligence” to prevent and punish such violence.<sup>127</sup> If a State fails to fulfill these duties, any individual or non-governmental organization (“NGO”) that is legally recognized in one or more of the member States of the convention can file a complaint for violation of these duties.<sup>128</sup> Moreover, States are required to take certain measures to ensure that violence against women is adequately addressed, prevented, and punished, including gathering statistics on cases of violence in order to evaluate the effectiveness of these measures.<sup>129</sup>

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123. *Id.* art. 4.

124. *Id.* (“The right to have her life respected” and “The right to equal protection before the law and of the law”).

125. *Id.* (“Violence against women shall be understood to include physical, sexual and psychological violence: that occurs within the family or domestic unit or within any other interpersonal relationship . . . that is perpetrated or condoned by the state or its agents regardless of where it occurs”).

126. *See generally, id.* ch. III; *see also* Centre for Women Peace and Security, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention)*, LSE, <https://blogs.lse.ac.uk/vaw/regional/the-americas/convention-belem-do-para/> [<https://perma.cc/D2UT-L5DH>] (last visited Apr. 30, 2020) (explaining that the PPEV Convention is a legally binding treaty).

127. The Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women “Convención of Belém do Pará” Org. of Amer. States (June 9, 1994) [hereinafter the PPEV Convention], <https://www.oas.org/juridico/english/treaties/a-61.html> [<https://perma.cc/2KFP-C4Q8>] (“The States Parties condemn all forms of violence against women and agree to pursue, *by all appropriate means and without delay*” and “apply *due diligence* to prevent, investigate, and impose penalties for violence against women”) (emphasis added).

128. *Id.* art. 12.

129. *Id.* art. 8.

2. CEDAW<sup>130</sup>

The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) was created out of a concern that, despite other resolutions and declarations adopted by the UN to end discrimination against women, such discrimination still persisted.<sup>131</sup> This Convention creates obligations with which States must comply, including condemning discrimination in all its forms and taking many significant measures to accomplish this goal.<sup>132</sup> Additionally, CEDAW requires parties to submit a report every four years to the Secretary General of the UN that discloses steps taken towards accomplishing the goals laid out in CEDAW.<sup>133</sup> Pursuant to this obligation under CEDAW, El Salvador has submitted such reports, and CEDAW has released observations discussing them.<sup>134</sup> The most recent observation is discussed below.

Pursuant to CEDAW, observations were released regarding the progress El Salvador made towards eliminating discrimination against women between 2008 and 2017.<sup>135</sup> To start the report, the Committee on the Elimination of Discrimination Against Women (the “Committee”) first comments on some of the positive actions El Salvador has taken towards eliminating discrimination against

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130. El Salvador ratified CEDAW on August 19, 1981 with a reservation on Article 29, which allows for a dispute between states to be settled by negotiation through arbitration or the International Court of Justice [ICJ]. See United Nations Treaty Collection, Chapter IV, Human Rights, Convention on the Elimination of All Forms of Discrimination against Women, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en) [<https://perma.cc/Z8SK-BQVW>] (last visited Apr. 20, 2020). See also Int'l Just. Resource Ctr., *Committee on the Elimination of Discrimination Against Women*, <https://ijrcenter.org/un-treaty-bodies/committee-on-the-elimination-of-discrimination-against-women/#targetText=Article%2029%20of%20CEDAW%20provides,should%20that%20fail%2C%20by%20arbitration> [<https://perma.cc/2GF2-S3K2>] (discussing how this reservation functions as El Salvador “opting out” of states being able to deal with them through arbitration or take them to the ICJ).

131. See generally, G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination against Women [CEDAW] (Dec. 18, 1979).

132. *Id.* art. 2.

133. See *id.* art. 18 (“States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect”).

134. See Concluding Observations 2008, *supra* note 109; see also Concluding Observations 2017, *supra* note 14.

135. See generally, Concluding Observations 2017, *supra* note 14.

women, including progressive laws, conventions and national plans passed.<sup>136</sup> However, the Committee also discusses its concerns regarding the continuing discrimination against women in El Salvador and provides recommendations for how to remedy these concerns.<sup>137</sup> The concerns that the Committee discusses that are relevant to the issue of DV, and particularly femicide, include: patriarchal mentalities that prevail in the judicial system despite the creation of specialized courts, delays and underfunding in the implementation of the Special Comprehensive Law, the increased rate of femicide despite new legislation, a lack of information for how DV and femicide cases are adjudicated, low prosecution and conviction rates for these cases, and inconsistent and limited application of protocols created for femicide cases.<sup>138</sup> In order to address these concerns, the Committee recommends, in pertinent part, that El Salvador allocate adequate resources to the laws that address DV and femicide, collect adequate data on DV cases, and strengthen judges, lawyers, and law enforcement's awareness of protocols and laws that pertain to DV and femicide.<sup>139</sup>

### 3. DEVAW

It has been suggested that the Declaration on the Elimination of Violence Against Women (“DEVAW”) strengthens and reinforces CEDAW by specifically targeting violence against women, which is discussed as a form of discrimination in CEDAW.<sup>140</sup> DEVAW was enacted as a result of an “urgent need” to create a universal set of

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136. *See id.* at 1-2.

137. *See id.* at 3-6.

138. *Id.* at 6; *see also* Concluding Observations 2008, *supra* note 109, at 5 (listing some of the same concerns as the ones listed in 2017, including issues with data collection and “monitor[ing] the implementation of existing legislation criminalizing violence against women”).

139. *See* Concluding Observations 2017, *supra* note 14, at 6.

140. *See* Declaration on the Elimination of Violence Against Women, WIKIPEDIA, [https://en.wikipedia.org/wiki/Declaration\\_on\\_the\\_Elimination\\_of\\_Violence\\_Against\\_Women#targetText=The%20Declaration%20on%20the%20Elimination%20of%20Violence%20Against%20Women%20was,104%20of%2020%20December%201993](https://en.wikipedia.org/wiki/Declaration_on_the_Elimination_of_Violence_Against_Women#targetText=The%20Declaration%20on%20the%20Elimination%20of%20Violence%20Against%20Women%20was,104%20of%2020%20December%201993) [https://perma.cc/WF32-EBNY] (last visited May 1, 2020). *See also* U.N. Special Rapporteur on Violence against Women, Its Causes and Consequences, *15 Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences*, Office of the High Commissioner for Human Rights 4, <https://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf> [https://perma.cc/LD6W-ZQTP] (last visited Feb. 27, 2020) (describing DEVAW as a “more comprehensive framework for [violence against women]” than CEDAW).

fundamental rights for women.<sup>141</sup> DEVAW describes violence against women as a violation of women's fundamental rights and includes "any act of gender-based violence" committed by, among others, the family, a community, or the State.<sup>142</sup> Specifically, DEVAW explains that femicide violates fundamental rights to which women are entitled, including the right to life, the right to equal protection under the law, and the right not to be tortured or degraded.<sup>143</sup> In order to ensure these fundamental rights are respected and upheld, DEVAW creates duties for States to maintain in order to protect and effectively guarantee these fundamental rights to women.<sup>144</sup> Most relevant here are the duties to "exercise due diligence to prevent, investigate and . . . punish" violence against women, to provide access to justice for women, and to promote the collection of data for violence against women in order to research its causes and consequences, as well as the effectiveness of measures taken by the State.<sup>145</sup>

#### 4. The 2011 Report

The role of the Special Rapporteur on Violence Against Women (the "Special Rapporteur") was created with DEVAW in mind and was meant to more directly target violence against women by assigning an independent expert, who is appointed by the UN Human Rights Council, to personally evaluate the status of DV in various countries.<sup>146</sup> Specifically, the Special Rapporteur is

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141. See G.A. Res. 48/104, Declaration on the Elimination of Violence against Women, 1 [Hereinafter "DEVAW"] (Dec. 20, 1993) ("Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings").

142. See *id.* at 2 (defining "violence against women" as "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," including "'Physical, sexual and psychological violence occurring in the family," non-spousal violence, violence within a community and violence "perpetrated or condoned by the State . . .").

143. See *id.*

144. See, generally, *id.* art. 4.

145. *Id.* at 3.

146. See U.N. Commission on Human Rights Res. 1994/45, *Question of Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations and the Elimination of Violence against Women*, Office of the High Commissioner for Human Rights, 56th meeting (Mar 4, 1994) (describing the creation and nature of the special rapporteur on violence against women). See also *FAQs: United Nations Special Rapporteurs*, ACLU, <https://www.aclu.org/other/faqs-united-nations-special-rapporteurs>

tasked with reviewing different countries, while considering the standards set out in DEVAW, and reporting their findings to the Commission on Human Rights.<sup>147</sup> Below is a brief synopsis of the UN General Assembly, Human Rights Council, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences – Follow-up Mission to El Salvador (2011) (“The 2011 Report”).<sup>148</sup>

In the 2011 Report, the Special Rapporteur notes the failure of public officials to prosecute and punish perpetrators of violence against women and suggests that this failure creates a sense of impunity, causing El Salvadoran citizens to lack faith in their justice system and fostering an even greater potential for violence.<sup>149</sup> Furthermore, the 2011 Report discusses the criticisms that the Special Comprehensive Law received during its drafting process, including many that came from civil organizations who were troubled by the lack of consultation throughout the drafting of the Special Comprehensive Law.<sup>150</sup> These organizations believed that this lack of consultation led to unclear and insufficiently specific protective measures in the Special Comprehensive Law.<sup>151</sup> Moreover, in the 2011 Report, the Special Rapporteur stresses the urgent need for the effective implementation of El Salvador’s laws that combat femicide.<sup>152</sup> Lastly, the 2011 Report expresses concern that there is no unified system for collecting data on gender-based violence.<sup>153</sup>

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[<https://perma.cc/AY5Y-FB2J>] (last visited May 1, 2020) (describing the role of the special rapporteur).

147. See U.N. Commission on Human Rights Res. 1994/45, at 3.

148. See generally, Causes and Consequences, *supra* note 24. It is worth noting that 2011 was the most recent report done by the special rapporteur on El Salvador. See El Salvador, Global Database on Violence Against Women, UN Women (last visited April 16, 2020), <https://evaw-global-database.unwomen.org/en/countries/americas/el-salvador> [<https://perma.cc/7DGV-KMQW>] (linking the 2011 report, suggesting that this is the most recent one).

149. Causes and Consequences, *supra* note 24, at 2. The special rapporteur suggested that El Salvador create a specialized unit within the prosecutor’s office for handling cases of gender-based violence. *Id.* Since this report, El Salvador has created such a unit. *Id.* See also Castaneda, *supra* note 103.

150. See Causes and Consequences, *supra* note 24, at 12.

151. *Id.*

152. *Id.* at 15. This recommendation was made in 2011 and was considered urgent eight years ago. *Id.*

153. *Id.* at 19. Although the National Plan discusses a unified system for data collection, data collection is still inconsistent in El Salvador. See *supra* Part 1(B)(v) discussing National Plan. See also *supra* Part 1(D)(ii)(b) discussing CEDAW 2017.

III. COMMENTATORS SPECULATE: CAN EL SALVADOR FACE  
FEMICIDE ON ITS OWN, OR SHOULD INTERNATIONAL LAW  
INFLUENCE THE RESOLUTION OF THIS CRISIS?

There are differing opinions regarding who should predominantly address the issue of femicide in El Salvador.<sup>154</sup> Some commentators argue that El Salvador has taken progressive steps and measures to address femicide within its borders, and El Salvador should continue to address this epidemic as rates of femicide continue to rise.<sup>155</sup> Proponents of this opinion frequently suggest additional steps El Salvador can take to tackle this rise in statistics.<sup>156</sup> Conversely, others opine that, while El Salvador should make changes in an effort to eradicate femicide, international law is a more useful tool that should be utilized to effect a more permanent change.<sup>157</sup> Those who maintain such an opinion do so under the notion that a government such as El Salvador, with a strong machismo culture and impunity, must be held responsible for the enforcement of State laws, and that when these laws are not enforced effectively, international pressure can be impactful to create an incentive for compliance.<sup>158</sup> The following Sections discuss these arguments in further detail.

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154. See *infra* Part III(A) and (B).

155. See *infra* Part III(A).

156. See *infra* Part III(A).

157. See *Voces, Challenges for Women's Rights in Latin America*, DIALOGUE (Dec. 21, 2015), <https://www.thedialogue.org/blogs/2015/12/protect-womens-rights-hold-latin-american-governments-accountable/> [<https://perma.cc/5EJ8-R6LU>] (describing how “[i]nternational pressure is . . . a crucial catalyst for change”). See also *Femicide and International Women's Rights*, GLOBAL AMERICANS, <https://theglobalamericans.org/reports/femicide-international-womens-rights/> [<https://perma.cc/7AYE-NQ2W>] (describing how while new legislation has been created in El Salvador, international bodies like the UN, specifically UN Women, can be helpful in providing support to governments and society in order to enforce international human rights commitments ratified by countries like El Salvador, including the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women).

158. See *Voces*, *supra* note 157 (citing machismo and a lack of political will as reasons for why laws regarding femicide are not properly enforced); see also *Femicide and International Women's Rights*, *supra* note 157 (describing impunity and machismo as reasons for the progression of domestic legislation regarding violence against women to move slowly). It should be noted that those on the other side of the debate also blame lack of political will as a reason for ineffectiveness of laws targeting femicide. See *e.g.*, Musalo, *supra* note 10, at 28.

*A. Commentators Suggest That El Salvador Should Continue to Handle the Femicide Crisis*

Some commentators suggest that El Salvador should make changes to address the rising rate of femicide, and do not espouse the position that international law should be utilized as a tool to achieve these changes.<sup>159</sup> These commentators view the efforts of El Salvador in combatting the femicide epidemic in a positive light and consider these changes to be progressive steps towards the ultimate goal of ending femicide.<sup>160</sup> Moreover, in their discussion regarding the rise in femicide, these commentators suggest changes El Salvador should make in order to continue fighting the pervasiveness of femicide.<sup>161</sup>

Many commentators admire the efforts El Salvador has made to target femicide.<sup>162</sup> Specifically, scholars as well as reporters praise the enactment of progressive laws and the implementation of specialized courts.<sup>163</sup> These commentators, however, also criticize El Salvador's lack of enforcement of its domestic laws, including the Penal Code, the Intra-familial Law, the Law of Equality, and the Special Comprehensive Law (the "ES Femicide

159. See Musalo, *supra* note 10, at 28-29 (reiterating and endorsing suggestions made by El Salvadorans for what El Salvador must do in response to rising statistics); Albaladejo, *supra* note 115 (making suggestions El Salvador should act on in the effort to end femicide).

160. See Nugent, *supra* note 32 (describing how El Salvador is the only country in the world that has a law that specifically targets femicide, which shows "a striking recognition by the government of the psychological damage suffered by victims and the need to hold perpetrators accountable"). See also Albaladejo, *supra* note 115 (explaining that "some important mechanisms for addressing violence against women have been created in recent years").

161. See Musalo, *supra* note 10, at 28-29 (describing changes El Salvador can make to more effectively eradicate femicide). Musalo also reiterates and supports other suggestions, including the creation of social services for victims, "better access to education, paths to economic self-sufficiency, and increased reproductive health services and choice." *Id.*

162. See Nugent, *supra* note 32 (describing how El Salvador is the only country in the world that has a law that specifically targets femicide, which shows "a striking recognition by the government of the psychological damage suffered by victims and the need to hold perpetrators accountable"). See also Albaladejo, *supra* note 115 (explaining that "some important mechanisms for addressing violence against women have been created in recent years").

163. See Albaladejo, *supra* note 115 and accompanying quotation; Musalo, *supra* note 10, at 16 describing The Comprehensive Law and The Law of Equality as "expansive and ambitious"). See also *Female Victims of Violence*, *supra* note 84 (praising the specialized courts as being a necessary way for the women of El Salvador to achieve justice).

Laws”), as well as its halfhearted implementation of specialized units, their protocols, and their procedures.<sup>164</sup> Furthermore, certain scholars criticize the laws and policies themselves as having significant gaps that prevent El Salvador from effectively fighting the femicide epidemic.<sup>165</sup>

In response to the rise in the rate of femicide and the concerns outlined above, these commentators also make recommendations for El Salvador to pursue in order to more effectively tackle femicide.<sup>166</sup> These suggestions include, among others, gathering funds to effectively implement and enforce the ES Femicide Laws, establishing a data collection system, and creating a system to punish public officials when they do not abide by the ES Femicide Laws.<sup>167</sup> Additionally, these commentators also recognize the pervasiveness of impunity in El Salvador, and recommend that El Salvador more aggressively target this problem by more effectively implementing already existing legislation, further developing State institutions meant to enforce these laws, and collaborating with El Salvadoran societal groups in order to combat patriarchal mentalities that persist in all aspects of society and, as a result, support impunity.<sup>168</sup> Moreover, commentators who generally favor State action over international law involvement argue that international law and its judicial bodies have no place in deciding on the human rights violations of a certain State, and such matters

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164. See Musalo, *supra* note 10, at 28 (criticizing El Salvador for failing to create a shelter program as required by The Special Comprehensive Law, to ensure that state agencies create internal practices to ensure equality, and to punish government employee for neglecting to comply with provisions of the laws targeting femicide). See also Albaladejo, *supra* note 115 accessed on (explaining that progress for new laws and policies has been slow because “violence is perceived as a social problem outside of the government’s realm of responsibility,” many women are unaware of the existence of special units within law enforcement, the laws generally have not been completely implemented and do not effectively address impunity, among other reasons).

165. See Musalo, *supra* note 10, at 28 (criticizing the specialized courts for not having jurisdiction over intra-familial and sexual violence and for requiring cases to first be initiated in the Peace Court before they can be heard in the specialized courts).

166. See *id.* at 28-29 (reiterating and endorsing suggestions made by El Salvadorans for what El Salvador must do in response to rising statistics). See also Albaladejo, *supra* note 115 (making suggestions El Salvador should act on in the effort to end femicide).

167. See Musalo, *supra* note 10, at 28-29 (describing changes El Salvador can make to more effectively eradicate femicide). Musalo also reiterates and supports other suggestions, including the creation of social services for victims, “better access to education, paths to economic self-sufficiency, and increased reproductive health services and choice.” *Id.*

168. See *id.* at 28. See also Albaladejo, *supra* note 115.

should be left to the State to decide how best to handle such a violation.<sup>169</sup> Ultimately, these opinions acknowledge that the changes that El Salvador has made are a step in the right direction and advocate for El Salvador to continue to prevent and punish femicide itself, without mentioning any involvement by international law.<sup>170</sup>

*B. Commentators Suggest that International Law Should Play an Impactful Role in the Case of El Salvador and its Femicide Crisis*

While some commentators argue that El Salvador should continue to fight its battle against femicide on its own, others contend that international law can and should have a large, beneficial impact on this effort.<sup>171</sup> Specifically, commentators espouse the belief that international law can cause a positive change in El Salvador's femicide epidemic. Moreover, the international law concept of the "due diligence standard" is pertinent to this belief.<sup>172</sup> Lastly, the noteworthy case of *Lenahan (Gonzales) Et Al. v. United States*, which applied the due diligence standard to femicide, is a principal example for how the due diligence standard functions regarding femicide within an international law framework.<sup>173</sup>

1. The Arguments Commentators Make when Advocating for International Law Playing a Larger Role in El Salvador

Similar to commentators who advocate that El Salvador should take the principle role in ending femicide, those who believe international law should play a role in eradicating femicide also acknowledge the enactment of the Special Comprehensive

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169. See Caroline Bettinger-Lopez, *Human Rights at Home: Domestic Violence as a Human Rights Violation*, 40 COLUM. HUM. RTS. L. REV. 19, 65-66 (2008) (describing how in response to the Lenahan case, many critics opposed the notion that the Inter-American Commission on Human Rights has a right to decide whether or not the United States committed a human rights violation and advocated for the United States to maintain control of such decisions).

170. See, e.g., Musalo, *supra* note 10 at 28 and Albaladejo, *supra* note 115.

171. See *infra* Part(B)(1).

172. See *infra* Part(B)(1).

173. *Lenahan (Gonzales) Et Al. v. United States*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, (2011).

Law, which was enacted to address this epidemic.<sup>174</sup> Additionally, these commentators also recognize similar weaknesses in the application of the ES Femicide Laws as those who advocate for El Salvador to continue addressing femicide on its own.<sup>175</sup> These commentators also suggest that the lack of enforcement in countries like El Salvador is caused by a lack of political will that leaves these progressive femicide laws without positive impact, thereby allowing femicide rates to rise.<sup>176</sup> Moreover, these commentators suggest that insufficient budgeting causes inadequate implementation of laws and insufficient data collection meant to evaluate the status of femicide in countries like El Salvador.<sup>177</sup>

These commentators, however, differ from those discussed above who advocate for El Salvador alone to continue to address femicide because, when acknowledging the weaknesses in these laws, they stress that femicide and gender-based violence are

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174. See *Voces*, *supra* note 157 (mentioning that many Latin American Countries, including El Salvador, have adopted “well-intentioned” laws, such as The Special Comprehensive Law, which specifically criminalizes femicide). See also Angenette Van Lieu-Mufios, *Human Rights Approaches to Women’s Health Issues: Dignity and the Right to Health in Guatemala and El Salvador*, 9 N.E. U. L.J. 347, 370 (2017) (acknowledging El Salvador’s ratification of important international legislation, including CEDAW); see also Natalia Gherardi, *Violence against Women in Latin America*, 24 SUR - INT’L J. HUM. RTS. 129, 130 (2016) (describing how Latin America is one of the most advanced regions for “creating national regulatory frameworks to address violence against women”).

175. See *Voces*, *supra* note 157 (discussing how El Salvador as well as other Latin American countries have to allocate more funds to laws addressing femicide as those are frequently lacking in budgets, and must further enforce these laws as they are often underenforced). See also *Femicide and International Women’s Rights*, *supra* note 157 (citing impunity, machismo and “codes of silence and intimidation” hinder the effective implementation of these laws).

176. *Voces*, *supra* note 157. See also Nugent, *supra* note 32 (citing a lack of resources as a reason for an overall lack of effectiveness of femicide laws, questioning “how much are laws worth on their own”).

177. See *Voces*, *supra* note 157 (explaining that a lack of national funding explains why these laws do not work properly in Latin America where similar laws are enacted in other places and are effective, and that “the difference in the success of legal mechanisms is a matter of priorities”). *Voces* also explains that lack of prioritization and support for these new laws “greatly diminish[ed] the potential and effectiveness of the[se] legal structures.” *Id.* See also Van Lieu-Mufios, *supra* note 174, at 350-51 (blaming oppression of women in society and by the State as a reason for domestic laws not functioning properly in El Salvador and arguing that soft law and the ratification of international laws on its own is not enough to foster change; instead, these laws must actually be enforced). See Gherardi, *supra* note 174, at 130 discussing how the creation of legislation has not been accompanied by the creation of adequate systems for data collection meant to monitor the progression of violence and the effectiveness of laws that attempt to address this violence).

human rights violations and, therefore, international law and its legal mechanisms can be powerful tools in the case of femicide in El Salvador.<sup>178</sup> Scholars argue that international law provides an adequate legal framework that concretely establishes ways in which violence against women can be addressed and eradicated.<sup>179</sup> It has been argued that one of the most impactful ways this framework can function is by holding governments like El Salvador's directly accountable for not properly enforcing and upholding their laws as well as the international human rights laws they have ratified and by which they are bound.<sup>180</sup>

According to these commentators, the international legal system is able to add much needed pressure on governments like El Salvador's.<sup>181</sup> This pressure can be applied through international organizations, who can urge governments to comply with their laws and the international laws they have ratified by utilizing common international measures of enforcement, such as

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178. See *Voces*, *supra* note 157 ("Femicide and gender-based violence are human rights violations"). See also Christine Chinkin, *Women and Rights*, OXFAM FOCUS ON GENDER 25 (Caroline Sweetman ed.) (2019) (describing violence against women as a human right's issue). Additionally, analyzing El Salvador under an international law human rights violation framework has been suggested for other El Salvadoran laws that arguably discriminate against women, such as reproductive rights laws. See generally Van Lieu-Mufios, *supra* note 174 (arguing that El Salvador violates multiple international human rights laws and suggests that El Salvadoran women must advocate for "greater change and adherence to [international] fundamental rights that are outlined in the UN's and Organization of the America's treaties).

179. See Van Lieu-Mufios, *supra* note 174, at 351 (advocating for using international human rights law as a "rubric for understanding and attempting to remedy the violations women continue to experience"). See also Gherardi, *supra* note 174, at 130 (describing international treaties like CEDAW and the PPEV Convention as creating a "framework for the creation of a solid regulatory basis for the prevention, punishment and eradication of violence against women"). Some scholars advocate for international standards to be integrated into the domestic level of States in laws that target DV and femicide. See Bettinger-Lopez, *supra* note 169, at 67-75.

180. See *Voces*, *supra* note 157. *Voces* goes on to suggest that governments like El Salvador's that "ignore, or gloss over, [gender-based violence and femicide]" and fail to enforce their laws regarding these crimes "sends a dangerous message about the region's marginalization of women and girls." *Id.* See also Van Lieu-Mufios, *supra* note 174, at 350 (suggesting that, in the case of reproductive rights for women, El Salvador needs to implement domestic change that incorporates international human rights law and needs to repair the human rights violations of its citizens).

181. See *Voces*, *supra* note 157 (describing international law and the pressure it can place as a "crucial catalyst for change"). See also Van Lieu-Mufios, *supra* note 174, at 377 (suggesting that the international law human rights system is a framework that can help put pressure on States to promote the human rights of women, particularly through "direct action and social mobilization").

the “mobilization of shame,” where other members of the organization shame the non-complying State for preventing the attainment of the goals of the organization.<sup>182</sup> Moreover, through their rulings, the UN Human Rights Committee and other international judicial bodies can demand changes that, while not binding on States who are parties to the case, are highly influential in the international legal landscape.<sup>183</sup> This persuasive nature creates an additional obligation by which the State should abide, which creates further pressure to comply with regional and international laws.<sup>184</sup> One of the most significant aspects of the international judicial system and femicide is the “due diligence standard,” which will be discussed below.<sup>185</sup>

## 2. A Centerpiece to Commentator’s Arguments who Advocate for International Law Playing a Role in the El Salvadoran Femicide Crisis: The International Law Due Diligence Standard and the Case of Jessica Lenahan (Gonzalez)

The due diligence standard is a legal framework that is used to evaluate a State’s actions and omissions in order to assess how well that State has complied with international obligations, specifically international human rights laws.<sup>186</sup> This standard has

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182. See *Voces*, *supra* note 157. See also Frederic L. Kirgis, *Enforcing International Law*, Volume: 1 Issue: 1, AM. SOC’Y INT’L L. (Jan. 22, 1996), <https://www.asil.org/insights/volume/1/issue/1/enforcing-international-law> [<https://perma.cc/QK44-E5GL>] (discussing how organizations, particularly those that are involved in human rights, can monitor the compliance of States who are members of the organization and can shame these States when they do not comply with the obligations provided for by the organization and, as a result, do not further the goals of the organization).

183. See *Voces*, *supra* note 157 (discussing a case heard by the UN Human Rights Committee in which the court held that Peru was guilty for violating a women’s human rights and demanded that Peru compensate her, which it did); Bettinger-Lopez, *supra* note 169, at 64 (“While the decisions of foreign and international tribunals are not legally binding, they have powerful persuasive authority”); Van Lieu-Mufios, *supra* note 174, at 373 discussing the Inter-American Commission for Human Rights and the Inter-American Courts for Human Rights and how they uphold the fundamental right to life).

184. See *Voces*, *supra* note 157. See also Bettinger-Lopez, *supra* note 169.

185. See *infra* Part II(B)(2).

186. See Camilo Bernal Sarmiento, Miguel Lorente Acosta, Françoise Roth & Margarita Zambrano, *Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)* 19, [https://eurogender.eige.europa.eu/system/files/eventsfiles/latin\\_american\\_protocol\\_for\\_investigation\\_of\\_femicide.pdf](https://eurogender.eige.europa.eu/system/files/eventsfiles/latin_american_protocol_for_investigation_of_femicide.pdf) [<https://perma.cc/2JBW-US6N>] (last visited May 1, 2020) (“The due diligence standard is a frame of reference to analyze the acts or omissions of the relevant state entities and evaluate

been integrated into many notable international laws, including DEVAW and the PPEV Convention.<sup>187</sup> Furthermore, the due diligence standard has become customary law based on international practices and *opinio juris*, an element of customary law that makes an international practice legally binding on all nations.<sup>188</sup> As a result, the due diligence standard is considered to be binding on all States regardless of whether or not they have ratified international treaties containing this standard.<sup>189</sup>

The due diligence standard has certain noteworthy characteristics. First, the due diligence standard focuses on three duties that States are obligated to uphold: the duty to prevent,<sup>190</sup>

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states' compliance with international obligations"). See also Jonathan Bonnitcha, *The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights*, OXFORD ACAD. (Nov. 13, 2017), <https://academic.oup.com/ejil/article/28/3/899/4616670> [<https://perma.cc/B79W-MUZG>] ("The concept of due diligence plays an important role in international human rights law in defining the extent of a state's obligations to prevent and respond to infringements of human rights by private actors within its territory or jurisdiction").

187. See Sarmiento et al., *supra* note 186, at 19. See also *supra* Part I(D)(i) and (iii) and discussion.

188. *Opinio Juris (International Law)*, LEGAL INFORMATION INSTITUTE, CORNELL L. SCH., [https://www.law.cornell.edu/wex/opinio\\_juris\\_\(international\\_law\)](https://www.law.cornell.edu/wex/opinio_juris_(international_law)) [<https://perma.cc/EZ7Q-48FK>] (last visited Nov. 17, 2019) ("In customary international law, *opinio juris* is the second element necessary to establish a legally binding custom. *Opinio juris* denotes a subjective obligation, a sense on behalf of a state that it is bound to the law in question. The International Court of Justice reflects this standard in ICJ Statute, Article 38(1)(b) by reflecting that the custom to be applied must be "accepted as law"). *Opinio Juris*, OXFORD REFERENCE <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100251755> [<https://perma.cc/4QHZ-6KUS>] (last visited Feb. 28, 2020) ("*Opinio juris* requires that custom should be regarded as state practice amounting to a legal obligation, which distinguishes it from mere usage").

189. See Sarmiento et al., *supra* note 186, at 23 ("[The due diligence standard] obliges states to adopt holistic and sustainable measures to prevent, protect, punish, and provide remedies for acts of violence against women. It implies a responsibility both in terms of systematically addressing the violence, addressing its causes and consequences, and also in terms of the individual level, which demands that states establish effective prevention, protection, punishment, and reparation measures for each case of violence"). See also *Lenahan (Gonzales)*, *supra* note 173, at 38 (describing the due diligence standard as a principle that is "well-established in international legal systems"); see also Lee Hasselbacher, *State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection*, 8 NW. J. INT'L HUM. RTS. 190, 198-200 (2010) (discussing how the due diligence standard has emerged as customary international law).

190. See Sarmiento et al., *supra* note 186, at 23. See also Gherardi, *supra* note 174, at 131-32 (describing prevention as not just creating legal reforms, but also "attacking the structural causes that give rise to [violence against women]," modifying social and cultural

the duty to investigate and punish, and the duty to guarantee reparations for femicide and DV.<sup>191</sup> More specifically, access to justice is central to this standard; it demands that States have sufficient justice systems for women to receive proper recourse from violence they have endured.<sup>192</sup> Second, this standard further focuses on whether or not a State has met its requirement in upholding fundamental guarantees, such as the right to life and the right to equal protection under the law, particularly for acts perpetrated by private individuals.<sup>193</sup>

Under a traditional view of international human rights law, acts committed by private individuals cannot be attributed to the State unless there is a pattern of discrimination that effectively denies an individual her equal protection under the law.<sup>194</sup> The due diligence standard, however, provides that acts committed by private individuals can be attributed to the State if there is a lack of due diligence by the State to prevent or respond to the violation of human rights.<sup>195</sup> This inaction includes a State's failure to

practices, and "shap[ing] state responses, including the actions of the judiciary and the police, among other state actors").

191. See Sarmiento et al., *supra* note 186, at 23-26. See also *Lenahan (Gonzales)*, *supra* note 173, at 40 (describing these four duties in detail). These duties apply to "the organization of the entire state structure," from legislation to law enforcement and the judiciary. *Id.* at 38.

192. See Sarmiento et al., *supra* note 186, at 19. See also Rep. of the Special Rapporteur on violence against women, its causes and consequences, Human Rights Council for its Thirty-fifth session, at 10, U.N. Doc. A/HRC/35/30 (June 2, 2017) ("This due diligence obligation also includes adequate implementation of such laws and robust criminal justice responses involving the cooperation of all state actors who should adhere to the State Party's due diligence obligation").

193. See Sarmiento et al., *supra* note 186, at 22. See also *Lenahan (Gonzales)*, *supra* note 173, at 34 ("Various international human rights bodies have moreover considered State failures in the realm of domestic violence not only discriminatory, but also violations to the right to life of women"). Upholding the fundamental right to life is a "key component" to a State utilizing due diligence. *Id.* at 40.

194. See Dorothy Q. Thomas & Michele E. Beasley, Esq., *Domestic Violence as a Human Rights Issue*, 15 *HUM. RTS. Q.* 36 (1993) (describing how non-prosecution of a private citizen only becomes a human rights issue if the state's reason for failing to prosecute is based on "discrimination along prohibited lines").

195. See Sarmiento et al., *supra* note 186, at 22. See also *Velázquez Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (July 29, 1998) ("An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) 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 Convention").

provide equal protection under the law to victims of DV and femicide through its own institutions, among other forms of inaction.<sup>196</sup> As a result, commentators argue that international law, through the due diligence standard, can help eradicate DV and femicide by making States responsible for the violation of their citizens' human rights, even if these acts are committed by private citizens, as they usually are in femicide and DV cases.<sup>197</sup> Specifically, it has been argued that a State can be held responsible when it violates the due diligence standard because these violations function as a form of discrimination against women and denies their equal protection under the law on the part of the State.<sup>198</sup> This includes when a State, through its police force, fails to properly investigate a crime of femicide, among other violations.<sup>199</sup> As a result, it has been further argued that using the due diligence standard to examine the action and inaction of States can make it more clear whether a State is violating international human rights, thereby clarifying what needs to change to ensure that States comply with international human rights laws.<sup>200</sup>

Commentators cite to *Lenahan*, which will be discussed below, as a prime example for how the due diligence standard can hold a State accountable for the human rights violations of its

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196. See *Lenahan (Gonzales)*, *supra* note 173, at 2 (describing that the United States did not meet its due diligence, focusing on the fact that “. . . a State's failure to protect women from domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional”). See also *Lenahan*, *infra* note 198.

197. See Gherardi, *supra* note 174, at 129 (explaining how the rise in femicide creates a need for individuals to evaluate whether States have fulfilled their due diligence under international law).

198. *Id.* at 131. See also *Lenahan (Gonzales)*, *supra* note 173, at 34 (“. . . the international and regional systems have pronounced on the strong link between discrimination, violence and due diligence, emphasizing that a State's failure to act with due diligence to protect women from violence constitutes a form of discrimination, and denies women their right to equality before the law. These principles have also been applied to hold States responsible for failures to protect women from domestic violence acts perpetrated by private actors”).

199. See *Lenahan (Gonzales)*, *supra* note 173, at 39 (“States must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girl-children, and that the failure to do so “violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms”).

200. See Gherardi, *supra* note 174, at 134 (explaining that by viewing a State through a “holistic understanding of the duty of due diligence” it becomes clear that issues such as lack of information and adequate public policy must be addressed in order to end discrimination against women caused by the violation of the due diligence standard, which allows femicide rates to grow).

citizens and can place additional pressure on the State to comply with international human rights laws.<sup>201</sup> *Lenahan* has been regarded as revolutionary for the fight against DV and femicide.<sup>202</sup> Commentators believe that this case of accountability can lead to many more, including in cases against other nations for violations of due diligence regarding cases of femicide, such as El Salvador.<sup>203</sup> The *Lenahan* decision, rendered by the Inter-American Commission for Human Rights (the “Inter-American Commission”) against the United States, will briefly be discussed below.

In *Lenahan*, Jessica Lenahan, a US citizen, suffered from an abusive relationship with her ex-husband, who over the course of their relationship became abusive towards her and their three daughters.<sup>204</sup> After divorcing her ex-husband and moving into a separate house, Lenahan filed for and received multiple restraining orders from her ex-husband after he broke into her home and exhibited other aggressive behavior, including attempting to commit suicide in front of their daughters and stalking Lenahan outside of her house.<sup>205</sup> Despite the restraining orders, Lenahan’s

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201. See generally *Lenahan (Gonzales)*, *supra* note 173 (holding that the United States is responsible for Lenahan’s human rights being violated). See also *Jessica Lenahan Wins Landmark Case Before Inter-American Commission on Human Rights*, UNIV. OF MIAMI SCH. OF L., <https://www.law.miami.edu/academics/clinics/human-rights-clinic-gonzalez-usa> [<https://perma.cc/NH75-F87P>] (last visited Oct. 20, 2019) [hereinafter *Lenahan Wins*] (describing how the Inter-American Commission for Human Rights [the Commission] held that the U.S. was “responsible for human rights violations suffered by Lenahan and recommended changes to U.S. domestic violence law and policy”); see also Bettinger-Lopez, *supra* note 169, at 38 (describing the *Lenahan* case as one that can “spur important normative developments, generate international and domestic political pressure, and change public opinion”). Bettinger-Lopez also comments on how because of how interconnected our world is today, the international community is frequently inspired by the decisions of international judicial bodies and demands that governments take account of their actions as a result of the holdings of these bodies. *Id.* at 64.

202. See *Lenahan Wins*, *supra* note 201 (describing the *Lenahan* case as a “landmark case” because it frames DV as a human rights violation and demands that courts like the one in this case, as well as policymakers, ask “whether fundamental rights are being respected, protected, and fulfilled”); Bettinger-Lopez, *supra* note 169, at 77 (explaining that the *Lenahan* case can “have an important political dimension, becoming the flashpoint for legislative and policy changes at the local, state, national, and international levels”).

203. Bettinger-Lopez, *supra* note 169, at 63 (arguing that the *Lenahan* case can lead to “normative development” for the due diligence standard regarding DV and femicide, and cites to an amicus brief filed by States from Latin America, the Caribbean and Canada that suggested the IACHR’s decision would be instructive in showing victims of DV that they have a right to international redress through this Commission).

204. *Lenahan (Gonzales)*, *supra* note 173, at 17.

205. *Id.*

ex-husband abducted their three daughters and their friend.<sup>206</sup> Lenahan contacted the police repeatedly over a ten hour period, but they refused to enforce the restraining orders and felt that the children were safe because they were with their father.<sup>207</sup> At the end of this ten hour period, Lenahan's ex-husband went to the police station, began shooting at the station, and was then shot and killed by police in response.<sup>208</sup> After killing the ex-husband, the police approached his car to find their three daughters and their friend shot to death in the back seat.<sup>209</sup>

Lenahan filed suit against the City of Castle Rock, Colorado and several police officers for violating her rights under the Due Process Clause of the Fourteenth Amendment.<sup>210</sup> Lenahan's case reached the US Supreme Court, which rejected all of her claims and held that her due process rights were not violated by the City or the police.<sup>211</sup> Lenahan then filed a complaint against the United States with the Inter-American Commission, as the US Supreme Court's ruling effectively left her without a remedy.<sup>212</sup>

Lenahan argued that the failings of the Castle Rock Police Department represented a larger failure on the part of the United States to use due diligence with regard to DV, despite state and federal legislation dictating otherwise.<sup>213</sup> The Inter-American Commission agreed with Lenahan and described the due diligence standard as applying broadly to cases of DV, covering the investigation of cases, the prosecution of perpetrators, and the measures of prevention taken by the State.<sup>214</sup> Specifically, the Inter-American Commission held that the United States recognized a duty to protect Lenahan and her three daughters, but failed to

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206. *Id.* at 6.

207. *Id.*

208. *Id.* at 8.

209. *Id.*

210. *Id.* at 9.

211. *Id.*

212. *Lenahan Wins*, *supra* note 201. See also *Jessica Gonzales v. United States of America*, COLUM. L. SCH. HUM. RTS. INST., <https://www.law.columbia.edu/human-rights-institute/inter-american-human-rights-system/jessica-gonzales-v-us> [<https://perma.cc/P9TF-6X8P>] (last visited Feb. 28, 2020) (describing how Lenahan "exhausted her domestic remedies" by taking the case to the United States' Supreme Court and receiving an unfavorable judgement).

213. *Lenahan (Gonzales)*, *supra* note 173, at 10.

214. *Id.* at 41.

meet this duty with due diligence.<sup>215</sup> This failure to protect Lenahan and her three daughters was evidenced by the police not enforcing restraining orders that could have prevented the death of Lenahan's daughters, failing to fully investigate the exact logistics of the deaths of Lenahan's daughters beyond merely stating that Lenahan's ex-husband committed their murders, and communicating these exact logistics to Lenahan.<sup>216</sup> While the Inter-American Commission acknowledges the United States' effort to create legislation to combat DV, it criticizes that these measures have not been properly or fully implemented in *Lenahan*.<sup>217</sup> To quote the Inter-American Commission, laws and restraining orders "are only effective . . . if they are diligently enforced."<sup>218</sup> Moreover, the Inter-American Commission further clarifies that the existence of judicial systems and procedures does not in itself demonstrate due diligence and that these protocols must be available for and effective to the victim of violence.<sup>219</sup> The Inter-American Commission stresses that State inaction to cases of DV creates a pervasive sense of impunity because society sees the State not taking action to punish those who commit crimes of violence against women.<sup>220</sup>

As a result of this holding, the Inter-American Commission ordered the United States to take various measures to combat DV.<sup>221</sup> These measures included conducting an investigation into the systematic failures that occurred in *Lenahan*, creating new legislation and policies to target these failures as well as stereotypes of DV victims, crafting new protocol for the police to follow in DV cases, and providing financial reparations for Lenahan.<sup>222</sup> The Inter-American Commission is tasked with monitoring the United States' compliance to these demands.<sup>223</sup> Ultimately, the holding by the Inter-American Commission provided Lenahan with a remedy that did not overturn the decision of the US Supreme Court, but went above the United

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215. *Id.* at 49.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.* at 52.

220. *Id.* at 51.

221. *Id.* at 59-60.

222. *Id.* at 59-60.

223. *Id.* at 61.

States' judicial system, as the Inter-American Commission is a judicial body of the international law community.<sup>224</sup> Moreover, this holding sparked proactive change with regard to DV in the United States, causing municipalities within the United States to create declarations labeling DV as a violation of human rights and the United States' Department of Justice to more strictly oversee the investigations of civil cases of DV, ensuring that there are no discriminatory practices.<sup>225</sup>

*IV. PROPOSAL: INTERNATIONAL LAW – A USEFUL TOOL THAT IS NECESSARY TO END FEMICIDE IN EL SALVADOR*

International law should be directly involved in the femicide epidemic in El Salvador. In order to fully advocate for this position, it will be useful to analyze El Salvador's handling of femicide under the due diligence standard because this is likely what an international judicial body would use to evaluate and make a determination for this issue.<sup>226</sup> If it was found that El Salvador did not meet its required due diligence, recommendations can be made regarding international enforcement measures that can be taken in order to further El Salvador's compliance with the ES Femicide Laws as well as international human rights laws. This stronger sense of compliance will lead to a more effective elimination of femicide in El Salvador, and may even help eradicate femicide in other countries, particularly those in Latin America.

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224. Kristina Puga, *'Home Truth' shows a mother's fight for justice after her husband killed their 3 daughters*, NBC NEWS (Oct. 3, 2018), <https://www.nbcnews.com/news/latino/home-truth-shows-mother-s-fight-justice-after-her-husband-n915981> [<https://perma.cc/3LEY-2S2K>] (describing how after the United States' Supreme Court denied Lenahan of a remedy, she filed a claim with the Inter-American Commission and received justice through that international judicial body, outside the United States' judicial system). *Lenahan Wins*, *supra* note 201.

225. Puga, *supra* note 224. Rachel Vogelstein, *Violence Against Women in the Inter-American Human Rights System: A Case Study of Jessica Gonzales v. United States*, COUNCIL ON FOREIGN REL. (May 23, 2018), <https://www.cfr.org/event/violence-against-women-inter-american-human-rights-system-case-study-jessica-gonzales-v> [<https://perma.cc/4DS6-WRJE>] (describing how Lenahan's lawyers worked with the Department of Justice after the favorable judgment by the Inter-American Commission).

226. *See, e.g., Lenahan (Gonzales)*, *supra* note 173 (utilizing the due diligence standard).

*A. It is Imperative that International Law Play an Integral Role in the Femicide Epidemic in El Salvador*

It is essential that international law play a stronger role in El Salvador's management and eradication of femicide. Fundamental change is necessary because, with El Salvador's long history of femicide, it is doubtful that El Salvador, on its own, will succeed in adequately addressing its femicide crisis. This Section considers the nature of El Salvador's government, particularly its high levels of impunity, the lack of effectiveness of the ES Femicide Laws and regulation thereof in El Salvador, and the international tools that can create a significant difference in combatting femicide.

As El Salvador's government is known for impunity and has been described as being corrupt on all levels,<sup>227</sup> the pervasiveness of this corruption prevents El Salvador from effectively preventing, punishing, or eliminating femicide by itself.<sup>228</sup> While El Salvador has taken steps and important legislation has been passed in an attempt to address femicide, the ES Femicide Laws have not been properly enforced because of a lack of funding and organization, which exemplifies an overall lack of desire and capability on the part of the State and all of its institutions to ultimately do what is necessary to eradicate femicide.<sup>229</sup>

As previously suggested, a law is only as powerful as its enforcement.<sup>230</sup> Half-hearted attempts by the El Salvadoran government to fight femicide have left women fighting for their lives on their own, and unfortunately many have not succeeded.<sup>231</sup>

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227. See Jessie Serody, *5 Crucial Facts about Human Rights in El Salvador*, BORGEM PROJECT <https://borgenproject.org/human-rights-in-el-salvador/> [https://perma.cc/KSW6-DBUM] (last visited Oct. 19, 2019). See also Griffin, *supra* note 1 (describing how impunity in El Salvador is within the State and all of its institutions, including the police, and is directly linked to the femicide epidemic).

228. See *supra* note 39 and accompanying text regarding the presence of impunity in the handling of femicides in El Salvador.

229. See Voces, *supra* note 157.

230. Lenahan (Gonzales), *supra* note 173, at 49. See also Voces, *supra* note 157 (furthering the idea of laws only being as valuable as they are enforced by saying "Many Latin American countries have nominally adopted well-intentioned laws protecting women's rights, but a lack of political will has rendered the laws essentially toothless"). Marina Prieto-Carrón et al., *supra* note 42, at 31 ("The state and its institutions, by lacking the political will to confront femicide, have in effect stimulated its reproduction").

231. See Voces, *supra* note 157 (describing how femicide rates have increased despite the existence of legislation meant to combat the problem). *Femicide and International Women's Rights*, *supra* note 157 (explaining that despite new laws to address violence against women, "progress has been slow").

Year after year, CEDAW observations repeat the same concerns and recommendations regarding violence against women in El Salvador.<sup>232</sup> This further suggests a pattern of inaction and non-enforcement on the part of El Salvador, even after CEDAW has pointed out these issues to the El Salvadoran government.<sup>233</sup> The State has watched as rates of femicide have risen,<sup>234</sup> and the women who thought these new laws and policies would bring about positive change are left waiting for true change to occur and for justice to finally prevail. As a result, it can be argued that the creation of new legislation that gave women hope, and then let them down, has left El Salvadoran women feeling even more vulnerable and less likely to report abuse than before.<sup>235</sup> This notion becomes even more alarming considering the fact that as women have become more disheartened by the lack of legal enforcement from all State institutions, perpetrators of femicide have become even more empowered to commit crimes, knowing they can remain under the cool shade of impunity. A situation as grim and inherently violent as the one at issue requires international law to accomplish what El Salvador, on its own, simply cannot — end femicide for good within its borders.

One of the most powerful tools that international law has at its disposal are the various judicial bodies that are able to hear cases in which the State can be held directly responsible for human

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232. See generally Concluding Observations 2008, *supra* note 109; see also Concluding Observations 2017, *supra* note 14.

233. See generally Concluding Observations 2008, *supra* note 109; see also Concluding Observations 2017, *supra* note 14.

234. See Extrajudicial Summary, *supra* note 14.

235. See *El Salvador: Submission to the Human Rights Committee for the 114<sup>th</sup> Session*, ADVOCATES FOR HUM. RTS (July 24, 2015), [https://www.theadvocatesforhumanrights.org/uploads/el\\_salvador\\_loipr\\_submission\\_final\\_the\\_advocates\\_for\\_human\\_rights\\_2015.pdf](https://www.theadvocatesforhumanrights.org/uploads/el_salvador_loipr_submission_final_the_advocates_for_human_rights_2015.pdf) [<https://perma.cc/WVX2-QRV9>] ("Human rights reports document that domestic violence, sexual assault and other crimes of violence against women in El Salvador are underreported due to a number of factors: . . . (5) a belief among victims that the laws will not be enforced"). See also *El Salvador 2013 Human Rights Report*, JUSTICE, <https://www.justice.gov/sites/default/files/eoir/legacy/2014/04/09/El%20Salvador.pdf> [<https://perma.cc/7LPG-W94D>] (last visited May 1, 2020) (describing how victims believing laws will not be enforced leads to underreporting of DV and sexual violence, which are intertwined with femicide). See also Colbert, *supra* note 18, at 69 (suggesting that it is possible that "women survivors lack confidence in [the ES laws] based on historical patterns of neglect").

rights violations.<sup>236</sup> When a case is adjudicated through one of these judicial bodies, a decision is rendered, such as a decision holding a State directly liable for human rights transgressions, which is considered highly persuasive to States.<sup>237</sup> This decision creates a high level of inducement for States to obey their own laws, the international laws they are found to be contravening, and the overall ruling of the international judicial body regarding their human rights violations.<sup>238</sup> These rulings add additional, much needed pressure on governments like El Salvador's, which currently pass laws only to neglect their application and enforcement afterwards.<sup>239</sup>

El Salvador is bound by many international treaties that guarantee the fundamental right to life and equal protection under the law.<sup>240</sup> It is an established principle that DV, particularly femicide, is a violation of a DV or femicide victim's right to life, and a lack of State protection and due diligence is a violation of the right to equal protection under the law.<sup>241</sup> As a result, there can be no

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236. International Judicial Bodies Vital to Peaceful Settlement of Disputes, Delegates Affirm, as Sixth Committee Continues Rule of Law Debate, 68th G.A., 6th Committee, 7th Meeting, UN (Oct. 10, 2013), <https://www.un.org/press/en/2013/gal3457.doc.htm> [<https://perma.cc/B6LE-NQW7>]

(explaining that international judicial bodies are powerful tools for the development and protection of human rights through the rules of law enumerated in their cases).

237. Bettinger-Lopez, *supra* note 169.

238. *See Id.*

239. *See Voces, supra* note 157 (describing international judicial bodies as a form of international pressure that is necessary for change in governments who refuse to change on their own). *See also* Bettinger-Lopez, *supra* note 169, at 55 (citing the Lenahan case as an example for how a decision rendered by an international judicial body, like the Commission, can "generate international and domestic political pressure").

240. *See supra* Part I(D)(i)-(iii) and discussion of CEDAW, the PPEV Convention, and DEVAW, all of which contain these fundamental guarantees. It is worth noting that El Salvador is also bound by The American Declaration of the Rights and Duties of Man, which the Commission decided the United States was in contravention of in the *Lenahan* case; this creates an additional international law El Salvador is obligated to uphold and, as a result, can be found in contravention of. *See Lenahan (Gonzales), supra* note 173, at 36 (describing how "the American Declaration is recognized as constituting a source of legal obligation for OAS member states, including those States that are not parties to the American Convention on Human Rights"). *See also Organization of American States (OAS), NTI* (April 29, 2019), [https://www.nti.org/learn/treaties-and-regimes/organization-american-states-oas/#targetText=Membership&targetText=21%20original%20OAS%20members%20\(1948,States%2C%20Uruguay%2C%20and%20Venezuela](https://www.nti.org/learn/treaties-and-regimes/organization-american-states-oas/#targetText=Membership&targetText=21%20original%20OAS%20members%20(1948,States%2C%20Uruguay%2C%20and%20Venezuela) [<https://perma.cc/3SEQ-PSCU>] (citing El Salvador as one of the 21 original member States of OAS).

241. *See Lenahan (Gonzales), supra* note 173, at 49-50 (describing that the United States' failure to protect the victims of femicide in this case "constituted a violation of their

doubt that El Salvador is in contravention of the international treaties it has ratified that contain these fundamental principles.<sup>242</sup> However, it remains imperative to evaluate El Salvador through the lens of the due diligence standard to specifically analyze whether or not El Salvador is in contravention of these treaties by violating the due diligence standard.<sup>243</sup>

### *B. The Due Diligence Analysis of El Salvador and Femicide*

As previously noted, the due diligence standard upholds three duties that strike at the core of what propels femicide: the duty to prevent, the duty to investigate and punish, and the duty to provide reparations.<sup>244</sup> These duties focus on what States can do to target femicide by addressing the factors that cause its proliferation.<sup>245</sup> This Section will break down the case of El Salvador in accordance to these three duties.

#### 1. A Brief Synopsis of the Due Diligence Standard: The Three Duties

##### a. The Duty to Prevent

The duty to prevent focuses on legal, societal, and administrative practices that preserve and uphold human rights, and requires a State to consider any violation of human rights to be an illegal act, where the perpetrator must be punished and the victim must be compensated.<sup>246</sup> Additionally, the State is expected

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right to life” and “constituted a form of discrimination in violation of” the right to equal protection under the law). *See also supra* Part I(D)(i) and (iii) and accompanying text describing how both the PPEV Convention and DEVAW classify femicide and DV as violations of women’s fundamental right to life and equal protection under the law.

242. *See* PPEV Convention, *supra* note 127; *see also* DEVAW, *supra* note 141.

243. *See* Sarmiento et al., *supra* note 186 and accompanying discussion (describing how a State can be held responsible for human rights violations through the due diligence standard).

244. Sarmiento et al., *supra* note 186, at 23-26. INTIMATE PARTNER VIOLENCE, RISK AND SECURITY 191 (Fitz-Gibbon, Sandra Walklate, Jude McCulloch, & JaneMaree Maher eds., 2018).

245. *See* Sarmiento et al., *supra* note 186.

246. *See Id.* at 23. *See also* Human Rights Foundation, *The Due Diligence Obligation to Prevent Violence Against Women: The Case of Pakistan* 5 (Dec. 22, 2011) available at: <https://www.ohchr.org/Documents/Issues/Women/WRGS/GirlsAndDisability/OtherEntities/HumanRightsFoundation.pdf> [<https://perma.cc/XAA9-M624>] [hereinafter *Due Diligence Obligation*] (describing the duty to prevent within the due diligence standard).

to create a judicial system that can adequately handle cases of DV, including femicide, by ensuring that the case is properly investigated and taken to trial, and that a fair judgment is rendered.<sup>247</sup> Lastly, States must create and implement procedures that prevent risk factors for femicide and foster the strength of institutions meant to counter these risks, including the duty to eradicate negative gender stereotypes and impunity.<sup>248</sup> Gender stereotypes and impunity are considered to be driving forces behind femicide, especially when they are embodied in State action and reflected by the acts of police officers, prosecutors, judges, and juries.<sup>249</sup>

#### b. The Duty to Investigate and Punish

The goal of the duty to investigate is to prevent repeated incidences of DV and femicide and to provide justice in individual cases thereof.<sup>250</sup> Additionally, the duty to investigate is particularly important in cases in which a private individual is the perpetrator, like in most femicide cases.<sup>251</sup> In such cases, if crimes are not genuinely investigated, perpetrators are considered to be indirectly aided by the State officials who failed to fully investigate the crimes.<sup>252</sup> Lastly, the duty to investigate requires that the investigation of femicide be “impartial, serious, and exhaustive.”<sup>253</sup> Ultimately, these requirements are all aimed at accomplishing one thing: punishing the perpetrator in order to prevent repetition of femicide.<sup>254</sup>

#### c. The duty to guarantee just and effective reparations

The duty to guarantee just and effective reparations is focused on a State’s obligation to guarantee victims of DV or femicide reparations for the pain and suffering that they have endured.<sup>255</sup>

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247. See Sarmiento et al., *supra* note 186, at 23.

248. *Id.*

249. *Id.*

250. Sarmiento et al., *supra* note 186, at 25. Due Diligence Obligation, *supra* note 246, at 6 (describing the duty to investigate within the due diligence standard).

251. Sarmiento et al., *supra* note 186, at 25.

252. *Id.*

253. *Id.*

254. *Id.*

255. Sarmiento et al., *supra* note 186, at 26. Due Diligence Obligation, *supra* note 246 (describing the duty to compensate within the due diligence standard).

These reparations can include monetary compensation, symbolic compensation, and mechanisms meant to guarantee non-repetition.<sup>256</sup> Furthermore, these reparations should be given with a “gender perspective,” or “bearing in mind the different impact that violence has on men and women,” and should strive to not only compensate the victim, but to also change the violent situation in which the victim was previously placed.<sup>257</sup>

## 2. An Evaluation of El Salvador Under the Due Diligence Standard

### a. General Problems within El Salvador and its Government

When considering overarching societal and governmental issues within El Salvador, including machismo culture and impunity, it is clear that El Salvador has not met, and will not be able to meet, its required due diligence with respect to its femicide epidemic. Machismo culture in El Salvador has been a consistent concern, particularly for the CEDAW Committee.<sup>258</sup> Specifically, the 2008 and 2017 CEDAW observation reports express concern about machismo culture that flourishes in El Salvador’s society and has continued to go unaddressed by El Salvador, as it has failed to create a strategy to combat this gender stereotype, despite the Committee’s suggestion to do so.<sup>259</sup> Moreover, the 2017 CEDAW observation report was particularly troubled by machismo, patriarchal mentalities infiltrating the specialized court and specialized unit within the ES Police, despite the intention of these units to actively avoid such stereotypes.<sup>260</sup> The State has effectively allowed machismo culture to infiltrate these specialized units that were specifically meant to act as judicial safe havens for female victims of gender-based violence.<sup>261</sup> Due to the fact that such

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256. Sarmiento et al., *supra* note 186, at 26.

257. *Id.*

258. See Concluding Observations 2008, *supra* note 109; see also Concluding Observations 2017, *supra* note 14 (describing concerns the Committee has regarding society in El Salvador, which did not improve between the 2008 observation report to the 2017 observation report). It has also been said that El Salvador’s society fosters a “deeply entrenched institutional resistance to gender equality.” Musalo, *supra* note 10, at 3.

259. See Concluding Observations 2008, *supra* note 109, at 4; see also Concluding Observations 2017, *supra* note 14, at 5.

260. Concluding Observations 2017, *supra* note 14, at 3.

261. This is particularly true when considering the fact that the duty to prevent specifically includes avoiding gender stereotypes in investigations of femicide cases by the

prevention is a requirement under the duty to prevent, El Salvador has not performed its required due diligence under this prong. As El Salvador is required to prevent the proliferation of machismo culture, its inaction regarding machismo culture, especially within the specialized courts and specialized units within the ES Police, is an inherent failure by the State to prevent the significant risk factor of gender stereotypes for femicide.

Aside from the pervasive gender stereotypes that are detrimental to women, El Salvador has an additional area of concern that is particularly targeted by the due diligence standard: impunity.<sup>262</sup> As discussed above, domestic laws in El Salvador do not function in the manner intended due to a strong sense of impunity caused by government officials not performing their jobs as required by the ES Femicide Laws.<sup>263</sup> Although impunity was not specifically mentioned in the 2017 CEDAW observation report, it was addressed in the 2008 CEDAW observation report.<sup>264</sup> Moreover, numerous commentators point to impunity as a driving factor for the rise in femicide rates in El Salvador due to its prevalence in the State and its various institutions.<sup>265</sup> Additionally, El Salvador has been known to hide reports that reflect negatively on its government by preventing these reports from being published, including reports discussing the lack of convictions in femicide cases.<sup>266</sup> Lastly, it has been argued that impunity causes a complete lack of trust by El Salvadoran women in El Salvador's judicial system, which is even more aggravated by ongoing machismo influence in specialized units of the court and the ES

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police and the trying of femicide cases by the judicial system. *See* Sarmiento et al., *supra* note 186, at 26.

262. *See supra* Part II(A) and accompanying text regarding impunity.

263. *See* UN WOMEN, *supra* note 38 (explaining that impunity for femicide occurs in 77% of femicide crimes). *See also* Musalo, *supra* note 10, at 3.

264. Concluding Observations 2008, *supra* note 109, at 5 (describing how weak implementation of domestic law and inadequate investigation of femicide cases creates impunity for perpetrators of this violence).

265. *See supra* Part I(A)(iii) and accompanying discussion of the prevalence of impunity in El Salvador today. *See also* *Information Regarding the Situation of Violence Against Women in El Salvador*, ISDEMU, 46 (2018) [hereinafter *Situation of Violence*] (describing how only 9.5% of women who have experienced violence at some point in their lives have sought help from the state).

266. Musalo, *supra* note 10, at 21.

Police.<sup>267</sup> Considering the pervasiveness of impunity in El Salvador's institutions, despite domestic and international legislation meant to target this phenomenon, El Salvador cannot possibly adequately prevent the risk factors that cause femicide and, as a result, has not met its due diligence obligation.

As noted above, the due diligence standard, and particularly the duty to prevent, evaluates the various State implementations created in the hopes of preventing femicide.<sup>268</sup> This includes the creation of laws and their integration into State institutions.<sup>269</sup> El Salvador has passed progressive domestic laws in an effort to address and eradicate femicide.<sup>270</sup> The 2017 CEDAW observation report, however, expresses concern regarding a lack of communication between institutions tasked with implementing protocols established by the ES Femicide Laws.<sup>271</sup> Furthermore, scholars say that despite legislation creating protocols meant to help victims of DV and femicide, these protocols are seldom communicated to personnel of the institutions meant to implement these changes, leaving the ES Femicide Laws, their provisions, and their protocols ineffective.<sup>272</sup>

Another roadblock in the implementation of domestic law is a lack of funding.<sup>273</sup> Both the 2008 and 2017 CEDAW reports pronounce great concerns regarding inadequate funding for the implementation of the ES Femicide Laws and the State institutions assigned to enforce them.<sup>274</sup> This issue is evidenced by the lack of funding of the Instituto Salvadoreño para el Desarrollo de la Mujer

267. See Brigida, *supra* note 25 (describing the machismo influence within the judicial system the specialized courts were supposed to prevent). See also *supra* note 98 and accompanying text (explaining the purpose of the specialized courts).

268. See *supra* Part IV(B)(1)(a) and accompanying text regarding the duty to prevent.

269. See Sarmiento et. al, *supra* note 186, at 23 (describing the duty to protect as including the adoption of legal frameworks and strengthening institutions tasked with implementing these legal frameworks in order to prevent acts of femicide). Due Diligence Obligation, *supra* note 246, at 5 (describing that one step of the duty to prevent is to modify laws).

270. See *supra* Part I(B).

271. Concluding Observations 2017, *supra* note 14, at 3 (expressing concern that there is an "insufficient articulation between legal instruments and limited coordination between institutions in charge of implementation").

272. Musalo, *supra* note 10, at 61.

273. See Concluding Observations 2008, *supra* note 109, at 3; see also Concluding Observations 2017, *supra* note 14, at 4.

274. See Concluding Observations 2008, *supra* note 109, at 3; see also Concluding Observations 2017, *supra* note 14, at 4.

(the “ISDEMU”), which enforces and implements these laws.<sup>275</sup> Moreover, scholars as well as commentators have pointed to budgetary issues as a causal factor in femicide laws not being properly implemented.<sup>276</sup> These sources acknowledge that a lack of proper implementation at the State level will only lead to even less prevention of femicide, which will in turn lead to an even greater prevalence of femicide and gender-based violence.<sup>277</sup> The implementation of the legal framework and preventative measures at all State institutional levels is required by the due diligence standard, particularly by the duty to prevent, and El Salvador has not performed its required due diligence in this area.

b. Problems within El Salvador’s Judicial Branch, Prosecutor’s Office and the ES Police

Issues within El Salvador’s judicial branch, its Prosecutor’s Office, and the ES Police further illustrate that El Salvador has not met its burden of performing due diligence in the prevention, investigation, and punishment of femicide, as well as providing financial reparation for the victim of the crime. With respect to El Salvador’s judicial system, while the creation of the specialized courts is a positive step in addressing femicide, this creation is not sufficient to satisfy the due diligence standard because, as discussed above, this unit has been infiltrated by machismo mentalities that influence the prosecution of femicide cases.<sup>278</sup>

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275. See Concluding Observations 2008, *supra* note 109, at 3 (“Concerned that the Salvadoran Institute for the Advancement of Women has a lack of . . . financial and human resources that make it difficult for them to effectively promote gender equality and prevent domestic violence and other inequalities”); see also Concluding Observations 2017, *supra* note 14, at 4 (expressing concern for the budgetary needs of the ISDEMU not being met).

276. See *Voces*, *supra* note 157 (“Twelve out of those 20 countries have failed to provide national funding to implement the laws, demonstrating a lack of political will”). See also Musalo, *supra* note 10, at 3 (describing lack of funding as a reason for domestic laws not being properly implemented in El Salvador).

277. Musalo, *supra* note 10, at 28 (describing how recent ES laws have not been implemented successfully, and the rate of femicide continues to rise). See also *El Salvador: Submission to the Committee on the Elimination of Discrimination Against Women*, ADVOCATES OF HUM. RTS. 3 (July 2016), [https://www.theadvocatesforhumanrights.org/uploads/el\\_salvador\\_loi\\_submission\\_july\\_2016.pdf](https://www.theadvocatesforhumanrights.org/uploads/el_salvador_loi_submission_july_2016.pdf) [<https://perma.cc/F9CW-5E7R>] (“many serious problems remain with El Salvador’s violence against women legislation and its implementation, resulting in a systemic failure to protect victim safety and promote offender accountability”).

278. See *supra* note 260 and accompanying text.

This cuts to the very core of the intended purpose of the specialized courts, which is to train judges so they are not influenced by machismo culture in order to guarantee justice for the victims of femicide.<sup>279</sup> Moreover, it has been argued that an additional flaw of the specialized court is to require cases to be heard at the Peace Court before they can be heard at the specialized court.<sup>280</sup> Forcing these cases to begin at the Peace Court leaves a greater margin for error because the Peace Court does not have the particular training that the specialized courts do,<sup>281</sup> which can lead to judgments that are rendered with machismo influence and patriarchal notions that are detrimental to a victim's access to justice.<sup>282</sup> Additionally, another weakness in the specialized courts is that they lack jurisdiction over sexual and intrafamilial violence, which are frequently linked with femicide.<sup>283</sup> The specialized courts' lack of jurisdiction severely limits the positive impact these courts could have in cases regarding sexual and intrafamilial violence that, if not addressed adequately, could lead to femicide.<sup>284</sup> Such significant flaws leave these specialized courts not effective in preventing future femicides by prosecuting the perpetrators of this crime because cases involving sexual and intrafamilial violence go to the Peace Court, instead of the specialized court, even if the case involves femicide.

With respect to El Salvador's Prosecutor's Office, although a specialized unit within the Prosecutor's Office has been created to address femicide, the establishment of this unit, like the specialized courts, is not sufficient for El Salvador to satisfy the due diligence standard. Despite the existence of femicide protocols, these

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279. See Brigida, *supra* note 25 (describing the training judges in the specialized court receive, including resisting machismo culture and looking at DV and femicide cases with a "gender lens" to better guarantee justice for victims). See also Moloney, *supra* note 25 ("Experts say women's courts with female judges who have been specially trained in gender violence and law are likely to be more supportive of victims, which could strengthen prosecution").

280. Musalo, *supra* note 10, at 26.

281. *Id.*

282. *Id.*

283. Musalo, *supra* note 100 and accompanying text regarding intrafamilial and sexual violence.

284. Musalo, *supra* note 10, at 26.

protocols are not followed by a majority of prosecutors.<sup>285</sup> In fact, many prosecutors have not received training for how to properly practice these protocols.<sup>286</sup> This failure to use protocols, as well as the failure to train on these protocols, leaves prosecutors incapable of properly prosecuting cases of femicide. As this is a requirement for the duty to prevent, El Salvador has yet again not met its required due diligence. Moreover, this lack of implementation and training further inhibits El Salvador's investigation and punishment of femicide.

Additionally, data covering the prosecution of femicide reflects a large disparity between cases reported and cases decided.<sup>287</sup> Specifically, on average, only 28.4 percent of femicide cases that have been initiated have resulted in sentencing.<sup>288</sup> Additionally, more than seventy-five percent of femicide cases never make it to court and only seven percent of femicide cases result in the conviction of the perpetrator.<sup>289</sup> These statistics are an alarming display of injustice and are indicative of a clear failure on the part of El Salvador to properly investigate femicide and punish the perpetrators of this crime.

With regard to the ES Police, El Salvador has created a specialized unit within the police force tasked with investigating cases of femicide.<sup>290</sup> However, notwithstanding the existence of this unit, the ES Police have often failed to act in femicide cases, even when abuse has been reported and protective orders have been administered.<sup>291</sup> These women are a part of the general public that the ES Police are assigned to protect, and this is a

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285. Musalo, *supra* note 10, at 23. *See also* Concluding Observations 2017, *supra* note 14, at 5 (describing "Limited application of the Protocol for the Investigation of Femicide").

286. *Id.*

287. *See infra* note 288 and accompanying text.

288. *Situation of Violence*, *supra* note 265, at 78. *See also* Concluding Observations 2017, *supra* note 14, at 5 (describing a lack of prosecution of femicide cases despite rising rates of femicide).

289. Donovan, *supra* note 8; Nugent, *supra* note 32. *See also* Concluding Observations 2017, *supra* note 14. The 2017 CEDAW observation report also discusses a lack of convictions in cases of femicide. *Id.* at 5.

290. *See supra* Part I(C)(ii) and discussion of NCP's specialized unit.

291. *See supra* Introduction and discussion of the case of Graciela Eugenia Chávez Ramírez. *See also* Concluding Observations 2017, *supra* note 14, at 5 (describing "limited enforcement of protection orders"). The 2017 CEDAW observation report also discusses a general insufficiency in the protection of victims of DV and femicide, particularly with regard to victims of gang violence. *Id.*

blatant disregard for the impending danger that a victim of DV or femicide faces. Cases like Graziela Eugenia Chávez Ramírez's showcase that El Salvador has not met its due diligence requirement to prevent femicide because the ES Police had countless opportunities to prevent Graziela's murder and others, but they chose not to.<sup>292</sup> Similar to *Lenahan*, where the United States did not perform its due diligence based on the failure of the police to properly investigate and prevent the murder of Lenahan's three daughters, El Salvador, through the ES Police, has not met its burden to properly investigate or prevent the femicides of countless women. This lack of investigation and prevention leads to a failure to punish, because without properly investigating crimes of femicide, the perpetrator of that crime is more likely to go free.<sup>293</sup> Such a chain reaction epitomizes a failure on the part of El Salvador, through the ES Police, to perform its due diligence to investigate and punish femicide.

The failure of El Salvador's specialized courts, Prosecutor's Office, and ES Police to prevent, investigate, and punish femicide leads to the ultimate failure of the last requirement of due diligence: the duty to guarantee reparations for the victims of femicide and DV. A failure to prevent leads to an increase in cases of femicide, which, because of inadequate investigation, leads to a failure to punish the perpetrators of femicide.<sup>294</sup> This failure to punish perpetrators of femicide denies the victim of all potential reparations because most victims never get their day in court and

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292. *Global Study on Homicide: Gender-Related Killing of Women and Girls*, U. N., OFF. ON DRUGS & CRIME 55 (Nov. 2018) [hereinafter *Global Study on Homicide*] ("The killing of women by their partner is often the culmination of long-term violence and can be prevented").

293. Sarmiento et. al, *supra* note 186, at 26 ("The obligation to investigate has two aims: to prevent the repetition of the acts in the future and to provide justice in individual cases"). Zarizana Abdul Aziz & Janine Moussa, *Due Diligence Framework*, DUE DILIGENCE PROJECT 23, <https://www.peacewomen.org/sites/default/files/Due%20Diligence%20Framework%20Report%20final.pdf> [<https://perma.cc/NU8S-DBE5>] (last visited May 1, 2020) (describing that "holistic and comprehensive laws" that involve prevention and investigation can deter perpetrators from committing offenses as they would be "certain that their actions [would] be punished").

294. The case of Graziela Eugenia Chávez Ramírez's is a prime example of this cycle because El Salvador failed to prevent DV with regards to Graziela's case when cops did not arrive for previous calls, which led to Graziela's murder. *See supra* Introduction and discussion of the case of Graciela Eugenia Chávez Ramírez.

if they do, it is unlikely the court will rule in their favor.<sup>295</sup> As a result, instead of victims receiving reparations that make them whole and help free them of the violent circumstances in which they live, they are left in the same violent circumstances, if not worse, because reporting abuse often leads to retaliation.<sup>296</sup> Due to this domino effect, El Salvador at the most basic level has failed to meet this aspect of the due diligence requirement.

Ultimately, the due diligence standard is highly dependent on State action, and it demands that States take steps towards the prevention, punishment, and eradication of femicide.<sup>297</sup> Although El Salvador has taken action through its creation of the specialized courts and specialized units within the Prosecutor's Office and the ES Police, these institutions are so significantly flawed as to render El Salvador's judicial system inadequate in handling femicide. Consequently, the case of El Salvador and its femicide epidemic is a clear failure to perform its due diligence to prevent, investigate, punish, and provide reparations for the victims of femicide. As a result, El Salvador has denied these victims their fundamental rights to life and equal protection under the law.

#### c. Enforcement Measures to be Taken as a Result of a Finding of Lack of Due Diligence

A decision rendered by the Inter-American Commission and other international judicial bodies can lead to real change in El Salvador and can lead to enforcement of the fundamental rights to life and equal protection under the law for femicide victims and their families. The Inter-American Commission has previously made observations about El Salvador and the femicide epidemic, and it has made recommendations for how the State can make

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295. See *supra* note 257 and accompanying text.

296. Patricia Clarembaux & Aldumena Toral, *In El Salvador, Violence is Driving Girls to Kill Themselves*, PULITZER CTR. (May 15, 2019), <https://pulitzercenter.org/reporting/el-salvador-violence-driving-girls-kill-themselves> [https://perma.cc/8SAA-C3U4] (describing how people often do not report abuse out of fear of retaliation). See also Lobo-Guerrero, *supra* note 116 (describing how the police are incapable of protecting victims after they have reported abuse).

297. Sarmiento et al., *supra* note 186, at 23-26. See also *Lenahan (Gonzales)*, *supra* note 173, at 40 (describing due diligence as requiring States to take action regarding the three duties discussed).

changes.<sup>298</sup> However, because El Salvador has not been brought into the Inter-American Commission for a violation of human rights under the American Declaration of the Rights and Duties of Man, CEDAW, the PPEV Convention, or for a femicide case, these recommendations are merely suggestions that are neither persuasive nor binding on El Salvador.<sup>299</sup>

El Salvador is within the jurisdiction of the Inter-American Commission and can be taken to this judicial body by victims of femicide who's fundamental rights have been violated.<sup>300</sup> In order to file a petition, an individual must exhaust domestic judicial means before seeking adjudication from the Inter-American Commission.<sup>301</sup> Exhausting domestic judicial means requires that an individual first go to their nation's court and receive a "decision of last resort," such as a ruling that is not favorable, before filing a

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298. See Press Release, Org. of Am. States [OAS], Conclusions and Observations on the IACHR's Working Visit to El Salvador (Jan 29, 2018) [https://www.oas.org/en/iachr/media\\_center/PReleases/2018/011A.asp](https://www.oas.org/en/iachr/media_center/PReleases/2018/011A.asp) [<https://perma.cc/YK76-NGXZ>] [hereinafter Press Release OAS] (making recommendations for El Salvador to take regarding femicide, particularly with regard to impunity).

299. See *Inter-American Commission on Human Rights (IACHR)*, REFWORLD, <https://www.refworld.org/publisher/IACHR,CASELAW,SLV,,,0.html> [<https://perma.cc/YCV2-MDXA>] (last visited Oct. 23, 2019) (showing that El Salvador has never been brought to the IACHR for a femicide case).

300. See Inter-American Human Rights System, INT'L JUST. RESOURCE CTR., <https://ijrcenter.org/regional/inter-american-system/> [<https://perma.cc/QM7A-PZEH>] (explaining how the IACHR has jurisdiction over members of the Organization of American States); see also *Member States*, ORG. OF AM. STS., [http://www.oas.org/en/member\\_states/default.asp](http://www.oas.org/en/member_states/default.asp) [<https://perma.cc/K5FM-F3SW>] (last visited May 1, 2020) (showing that El Salvador is a member of the Organization of American States). The United States was brought to the Inter-American Commission for the *Lenahan* case, which suggests that El Salvador can similarly be brought to the Inter-American Commission by victims of femicide and their families. See *International Commission Finds United States Denied Justice to Colorado Domestic Violence Survivor*, ACLU, <https://aclu-co.org/international-commission-finds-united-states-denied-justice-to-colorado-domestic-violence-survivor/> [<https://perma.cc/759Y-V6WX>] (last visited May 1, 2020) ("The commission is expressly authorized to examine allegations of human rights violations by all 35 member-states of the Organization of American States, which includes the United States" with regards to the *Lenahan* case; the same thing can be said for a case involving El Salvador if one were to be brought forward).

301. Inter-American Commission on Hum. Rts., *Petition and Case System Information Brochure*, ORG. OF AM. STATES 9 (2010) <https://www.oas.org/en/iachr/docs/pdf/HowTo.pdf> [<https://perma.cc/SLC9-J289>] [hereinafter *Petition and Case System Information*] ("For the Commission to be able to examine a petition, one must have exhausted domestic judicial remedies in keeping with the legislation in force in the State in question").

petition with the Inter-American Commission.<sup>302</sup> Moreover, if it is not possible to exhaust judicial means, the petitioner can explain this impossibility to the Inter-American Commission and may still receive jurisdiction to file a claim at this Commission under one of the exceptions to the exhaustion of judicial means requirement.<sup>303</sup> These exceptions include domestic laws not providing “due process to protect the rights” of victims that have been violated, situations in which the victim has not been given access to the judicial system or has been stopped from them, or if there is a delay in the rendering of a judgment “with no valid reason.”<sup>304</sup>

This requirement of exhausting judicial means would likely be met in El Salvador because a large majority of femicide cases do not receive convictions, which is a “decision of last resort” against the victim of the femicide.<sup>305</sup> Additionally, cases of femicide in El Salvador would also likely meet the exceptions to the exhaustion of judicial means requirement because many femicide cases never make it to court, as reconciliation outside of court has previously been urged by El Salvador, which can be seen as preventing victims of femicide from pressing charges through judicial means.<sup>306</sup> With that being said, if El Salvador were brought to the Inter-American Commission due to its contravention of one of these international treaties for a femicide case, recommendations by the Inter-American Commission can become highly persuasive judgments that the State will be more likely to follow.<sup>307</sup> This would place pressure on El Salvador to comply with the Inter-American Commission’s demands, which would create further incentive for El Salvador to uphold the laws that they have created and the international treaties they have ratified.

These decisions become even more influential to States because of how connected our world is today.<sup>308</sup> With the international community watching with a magnifying glass, States

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302. *Id.*

303. *Id.*

304. *Id.*

305. *See supra* Part III(B)(ii)(a). *See also* *Petition and Case System Information, supra* note 301, at 9.

306. *See supra* Part III(B)(ii)(a).

307. *See* Bettinger-Lopez, *supra* note 183 (describing the persuasiveness of judgements rendered by international judicial bodies).

308. Bettinger-Lopez, *supra* note 169 and accompanying discussion of interconnectivity.

feel the weight of the world on their shoulders to comply with these international judicial bodies.<sup>309</sup> As a result, States like El Salvador certainly do not want to be known as the country that has violated women's human rights and failed to take action.<sup>310</sup> This notion echoes the common enforcement mechanism of public shaming, which is one of the most popular forms of enforcement in human rights violations.<sup>311</sup> This mechanism involves governmental organizations and NGOs, as well as the media and the public at large, shaming a State that is considered to be violating human rights.<sup>312</sup> Shaming methods include publicly identifying the State as a human rights violator both domestically and internationally, spreading the State's reputation as one that does not comply with international obligations, and excluding or entirely removing the State from international organizations.<sup>313</sup> This multi-dimensional approach to shaming aims at coercing the non-conforming State to comply with international law and to warn other potential non-conforming States about the cost of such non-compliance in order to deter potential future breaches of international law.<sup>314</sup>

If El Salvador continued to violate international human rights laws despite a decision rendered by the Inter-American Commission, public shaming would likely be a powerful tool in

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309. James Cavallaro & Stephanie Erin Brewer, *Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the InterAmerican Court*, 102 AM. J. INT'L L. 768, 792 (2008) ("Experience indicates that advancement of human rights in many Latin American countries is most likely when positive media coverage, public support, and/or international pressure can be brought to bear on a given issue [heard by an international court or judicial body]").

310. Bettinger-Lopez, *supra* note 169, at 64 (describing how embarrassing it is for a State to be considered a violator of human rights).

311. See Louis Henkin, *Human Rights: Ideology and Aspiration, Reality and Prospect*, REALIZING HUMAN RIGHTS: MOVING FROM INSPIRATION TO IMPACT 1, 24–25 (Samantha Powers & Graham Allison eds., 2000) (describing how public shame can be caused by "intergovernmental and governmental policies and actions combine[d] with those of NGOs and the public media, and in many countries also public opinion"). See also *How is International Law Enforced?*, GLOBALIZATION 101, <https://www.globalization101.org/how-is-international-law-enforced/> [<https://perma.cc/RF82-BDKF>] (last visited Oct. 23, 2019).

312. Henkin, *supra* note 311.

313. Prof. Sandeep Gopalan & Dr. Roslyn Fuller, *Enforcing International Law: States, IOs, and Courts as Shaming Reference Groups*, 39 BROOK. J. INT'L L. 73, 75 (2014). Gopalan and Fuller also explain that States may refuse to engage in international relations with the offending State. *Id.*

314. *Id.* at 76.

forcing El Salvador to comply with these laws. Domestic governmental organizations and NGOs within El Salvador have already expressed grave concern for the rise in femicide and have taken initiatives to fight this increase, despite such human rights defenders being harassed for vocalizing their advocacy.<sup>315</sup> Additionally, the international community has already expressed concern about the femicide epidemic in El Salvador, which can be seen through extensive coverage in the media.<sup>316</sup> This activism at the domestic level and coverage at the international level would increase with a ruling by the Inter-American Commission, and the message of this activism and coverage would only become more severe and critical of El Salvador if it chose not to comply with the Inter-American Commission's recommendations. Furthermore, a recognition of a human rights violation at the international level would bolster the efforts of human rights defenders and give them the encouragement needed to carry on their activism. Moreover, this advocacy and coverage would certainly include labeling El Salvador as a human rights violator after a decision from the Inter-American Commission is rendered and not respected. Lastly, such negative coverage could cause other States to cease relations with El Salvador, and could even lead to El Salvador being excluded from international bodies it is a member to, such as the OAS.

#### V. CONCLUSION

Ultimately, a decision from the Inter-American Commission would serve as the perfect international influence to coerce El Salvador to comply with the international laws that it has ratified, as well as international customary law. Such a decision would

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315. See generally *Situation of Violence*, *supra* note 265 (showing an example of how ISDEMU, a governmental organization, has gathered and made public information regarding El Salvador and femicide); see also *Help ORMUSA end femicide in El Salvador*, DONOR DIRECT ACTION (July 3, 2018), <https://donordirectaction.org/2018/07/help-ormusa-end-femicide-in-el-salvador/> [<https://perma.cc/2H38-4W37>] (providing an example for how ORMUSA, as a non-governmental organization, aims to end femicide in El Salvador). See also Press Release OAS, *supra* note 298 (describing how human rights defenders have been endangered and killed for expressing their beliefs).

316. See, e.g., Anastasia Moloney, *High-profile El Salvador femicide case exposes deadly gender violence*, REUTERS (Jan. 21, 2020), <https://www.reuters.com/article/us-el-salvador-women-trial-trfn/high-profile-el-salvador-femicide-case-exposes-deadly-gender-violence-idUSKBN1ZK2VJ> [<https://perma.cc/AL79-Z5JD>]; see also Nugent, *supra* note 32.

articulate exactly what El Salvador has done wrong in handling its femicide epidemic, which would serve as a source of guidance for El Salvador in making necessary changes. If El Salvador heeds the advice of the Inter-American Commission and starts taking sufficient steps to properly address femicide, it would be alternatively praised as an upholder of human rights. Additionally, perhaps other international actors, such as States and international organizations, will donate to help propel El Salvador's efforts.<sup>317</sup> This would be particularly beneficial in the case of El Salvador because funding is a central roadblock in the proper implementation and enforcement of domestic laws.<sup>318</sup> If, however, El Salvador is reluctant to make such changes, its population as well as the international community at large can place necessary pressure on El Salvador to respect and take action in response to the Inter-American Commission's decision. This could be the exact push that El Salvador needs to truly address, and ultimately eradicate, femicide.

Involving international law in El Salvador's femicide epidemic is not only crucial to saving the women of El Salvador, but is crucial for saving women across the globe, and particularly in Latin America. These women also suffer at the hands of a machismo culture that infiltrates all aspects of life, perpetrators of femicide who thrive in impunity, and governments that refuse to do more than enact ineffective, unenforced legislation. These governments let the provisions of these laws, and the women in their populations, fall to the wayside. If one country like El Salvador is held personally responsible for violating human rights, other nations will likely be deterred from committing the same violations.<sup>319</sup> Ultimately, this chain reaction of justice can lead not

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317. See Prieto-Carrón et al., *supra* note 42, at 36 (discussing how donations by international actors can help promote gender equality).

318. See *Voces*, *supra* note 157.

319. See *Voces*, *supra* note 157 (suggesting that one case where Peru acknowledged responsibility for violating a woman's human rights and compensated the victim of the violation would likely lead to other countries taking action and changing their ways). See also *Defending Regional Human Rights Protection Mechanisms: The Inter-American Commission on Human Rights Under Attack*, FREEDOM HOUSE (Nov. 8, 2012), <https://freedomhouse.org/sites/default/files/IACHR%20Policy%20Brief.pdf> <https://perma.cc/R9QP-9HLZ> ("Its resolutions, in conjunction with decisions of the Inter-American Court of human rights, have spurred legal reform and the introduction of human rights protections in many countries. Moreover, its monitoring and reporting functions

only to the salvation of the women of El Salvador, but also to salvation for all women in the international community.

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have served to hold states publicly accountable for human rights abuses, and to promote the protection of human rights around the region”).