

Specializing Justice: Femicide, NGOs and Access to Justice in Latin America
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With the goal of improving access to justice and human rights performance, NGOs in Mexico and Guatemala now provide victims of gender violence accompaniment through legal proceedings and sometimes pro bono litigation. Current research suggests that NGO-led support for victims of crime and violence are crucial and necessary to attend to cases that would otherwise be left unresolved or abandoned by public prosecutors who lack the resources, will, and/or capacity to competently manage their caseload. But why did NGOs began expanding towards services beyond litigation? In this paper, we address this question by analyzing the expansion of various services provided to victims of femicide and their relatives by local NGOs in Guatemala and Mexico. Through comparisons of cases of femicide (killings of women), we show when and why NGOs began to dedicate to victim services beyond litigation in Mexico and Guatemala.

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Introduction

Latin Americans consistently report that increasing security is a significant priority for improving governance and for enhancing citizen engagement and satisfaction with democracy (Latinobarómetro, 2017). This is not surprising given that this region has consistently ranked with the highest number of violent deaths since the 1990s (PAHO, 1991; WHO, 2002). Probably among the worst forms of violence experienced by Latin Americans is that directed against females, whose killings linger as unsolved cases in the archives of the judiciaries. Among the 25 countries with the highest numbers of killings of women, 14 are in Latin America (Small Arms Survey, 2016). Each day it is estimated that in this region around 12 women die as a consequence of misogyny (González, November 24, 2017).

It has been almost 25 years since femicide was first reported in Ciudad Juárez, Mexico. Femicides are killings of women motivated by misogyny in a context of impunity, as opposed to femicide, the legal term used to refer to misogynistic killings of women.² In this article we refer to this form of gender violence as femicide, in order to emphasize the systemic impunity observed in these killings. The violence and lack of justice observed in these cases has triggered important responses at both the international and domestic level. At the regional level, the most relevant instrument is the 1994 Convention of Belém do Pará (the Inter-American Convention on the Prevention, Punishment, and Elimination of Violence Against Women).³ In addition, governments around the region have engaged in massive institutional and legal reforms to improve access to justice for victims of gender violence. For example, in Mexico and Guatemala, important legislation was enacted to secure the right of women to live a life without violence. International governmental organizations have also channeled considerable resources to support reform efforts. Despite some advances, violence against women continues and the problem of impunity remains. Recent estimates by the United Nations report that about nine in ten cases of women killed by gender violence remain unsolved in Latin America (Vera, April 7, 2017).

¹ Authors are named in alphabetical order.

² Although in comparative criminal law femicide and femicide are interchangeably used, among scholars these are very distinct concepts. The word “femicide” was coined by Diana E. H. Russell (2001) to define the misogynous killing of a woman. In contrast, the concept of “femicide” was coined by Mexican scholar Lagarde with the objective of revealing the systemic and structural aspects behind the killing of a woman, as well as the impunity with which such gender violence occurs (Lagarde y de los Ríos, 2008). Femicide, as a crime, demands for individual responsibility, but femicide in addition is also understood as a state crime (González Velázquez, 2014) because the state is complicit in perpetuating these murders through its lack of will and/or capacity to adequately prevent, investigate or prosecute them.

³ Adopted in June 9, 1994.

In addition, since 2007 countries around the region began to implement legislation to further tackle the problem of gender violence. For instance, in Mexico the General Law for Women's Access to a Life Free of Violence was enacted in 2007 (*Ley General de Acceso de las Mujeres a Una Vida Libre de Violencia*). In Guatemala, in 2008, the Law against Femicide and Other Forms of Violence Against Women was also enacted (*Ley contra el Femicidio y otras formas de Violencia contra la Mujer*). In addition, countries have reformed their penal codes to introduce the murder of women under the name of femicide, or as an aggravating factor in homicide case. Femicide and feminicide are currently both used in the penal codes in countries around the region to indistinctly refer to the killing of women.

Although the principal goals of international, regional, and domestic legal norms and institutions are to prevent, eradicate, and sanction violence against women, states in the region are persistently struggling or failing to achieve these aims. It appears that states would be even less responsive to this violence without the assistance and presence of NGOs. Current research suggests that NGO-led support for victims of crime and violence is crucial and necessary to attend to cases that would otherwise be left unresolved or abandoned by public prosecutors who lack the will and/or capacity to competently manage their caseload (Brinks, 2008; Gallagher, 2017; Michel, 2018). For instance, several NGOs in Mexico and Guatemala now provide victims of gender violence with accompaniment through legal proceedings and sometimes pro bono litigation. Using private prosecution rights, victims' advocates can participate in the investigation and prosecution of a criminal case. Although in theory they do so in a complementary role next to a public prosecutor, in practice they tend to take over investigations that the state is failing to conduct by itself (see: Michel 2018). Thus, NGOs have been increasingly filling various vacuums of responsibility that should rest with the state, such as investigating and prosecuting criminal cases.

Given the crucial roles that NGOs are increasingly filling in the justice system process, it is imperative that we understand how these grassroots and international efforts have evolved in their work on the ground to prevent, eradicate, and sanction violence against women. While previous scholarship has examined the general impact of NGOs on litigation, we add to this literature by analyzing the expansion of NGO services for victims including and beyond litigation. We examine why NGOs have expanded these services for victims and their families, analyzing four feminicide cases within Mexico and Guatemala. In doing so, we move beyond the focus on litigation to analyze broader impacts on victims, including the provision of service and access to justice. These two countries have experienced high insecurity and violence against women, and in both countries grassroots efforts emerged to help bridge governmental promises with the citizens' need to eliminate violence against women and bring murderers to justice.

A closer look at the work of these NGOs over time reveals the various ways in which these grassroots efforts are promoting the eradication, sanctioning, and prevention of violence against women in ways that complement what the state does, or what the state should be doing. Through comparisons of feminicide cases in Mexico and Guatemala, this article

shows the different paths cases followed as NGOs dedicated to women's rights evolved in their provision of victims' services. We show progress over time with NGOs in earlier years having a relatively limited impact at the investigation and litigation stage, to one that is now more developed with a more profound legal impact on individual cases and broader range of services for victims' families. Although there is variation in NGOs effectiveness on the ground, we demonstrate that the specialization of NGOs on women's rights has had important contributions. Through their everyday activities, these NGOs are making women's rights institutions and norms a reality in various ways. For legal cases, NGOs have generally enabled significant improvements in processing criminal cases with a gender perspective. For victims and their families, NGOs have filled some vacuums where the state is failing to provide services (such as providing protection or shelter).

However, serious limitations and issues remain with NGO involvement, including that NGOs have resource limitations that require the strategic and narrow selection of cases they litigate, leaving most vulnerable victims and families without assistance

Our article has the following contributions. Theoretically, we propose that NGOs relationship with laws and institutions is dynamic and their evolution in victim services responds mainly to three factors : a) type of state failures, b) demands or needs from society, and c) available resources. Empirically, our cases illuminate how NGOs can improve the "life" of rights in contexts of violence or insecurity, where rights seem to not matter much due to state inaction.

First, the cases show that legal mobilization changes over time, adjusting to the context. These NGOs started with traditional social movements strategies, such as picketing and mobilizing street protest framing claims as demands for women's rights. But they have evolved to do much more. These NGOs draw on newly created norms and institutions to frame their work (for example, using both domestic and international laws focused on women's rights), and over time they have specialized in offering various services. Sometimes they use newly created state institutions that provide services for women, but in addition they also supplement those state institutions. For instance, NGOs tend to work with the whole network of governmental agencies that support victims, but sometimes they also fill in gaps, like providing shelter to victims and their relatives, when the state fails to provide protection to them). Second, our cases also suggest that there is an interactive effect between state reform and grassroots demands. When NGO involvement is coupled with progressive state reform, NGOs press the state to enforce new laws and improve accountability. Our findings about the sources of improvements and weaknesses reveal that long term success of efforts to fight impunity and improve governance are constrained by the limitations of piecing together justice in contexts of violence. Thus, efforts aimed at enhancing access to security and justice for vulnerable groups must concomitantly address critical issues of governance and state capacity. Finally, the impact of these NGOs must be assessed taking into account that these organizations are bounded by the context. The plight of these NGOs to fight violence against women at its core is struggle to provoke deep structural changes. Our paired comparison also demonstrates that even with these grassroots efforts to specialize in justice, there are many areas in which the state continues to fail victims, including excessive bureaucracy, inept justice system operators, and corruption; all of which are magnified because state responses are not gender neutral. There

is a widespread lack of gender consciousness among state officials that is further exacerbated by an entrenched culture of misogyny.

This article is organized as follows, first we briefly review the literature on the impact of NGOs and legal mobilization in improving access to justice and human rights. In a second section we describe the problem of gender violence and femicide in Latin America, and further explain our case selection and methods. In the last section we move to an analysis of femicide cases in Mexico, followed by the cases in Guatemala.

NGOs, legal mobilization, and women's rights

In a region like Latin America, the failure of states to protect and enforce rights is putting democratic institutions at danger, therefore it is of pressing importance that we understand how societal actors are able to mobilize rights and the impact that such mobilization can potentially have. Legal mobilization is defined here as “any type of process by which individual or collective actors invoke legal norms, discourse, or symbols to influence policy or behavior” (Vanhala, 2017). Thus, the legal mobilization of women's rights can range from framing claims as issues of rights (“right talk”) (Merry, 2013), to litigation of relevant cases in courts, with the goal of provoking substantive change in state behavior regarding women's rights. There is wide consensus within the literature on what factors enable grassroots organizations to mobilize: resources (resource mobilization), context (political opportunity), and framing processes (Kitschelt 1993; McAdam, Tarrow, and Tilly 1997). Resources are understood to go beyond an individual's personal resources, and sum up to become a “support structure”, consisting of a network of rights advocacy organizations, lawyers, financial aid (Garro 1999; Daniels and Martin 2009), and, in some countries, governmental rights enforcement agencies (Gloppen 2005; Epp 1998; Oxhorn 2003; Andrews and Edwards 2004). Such networks have been found to have a crucial role in legal mobilization because they can create issues (that, is they have an agenda-setting power), they can empower and legitimate claims, and if they are transnational in nature, they can pressure governments from abroad and from below to influence policy change and state behavior (Keck and Sikkink 1998; Risse and Sikkink 1999). In cases of femicide, for instance, mobilizing claims to domestic and international courts has proven to be a main strategy to push for justice and state accountability (Michel, 2018)

Legal mobilization in contexts of violence and insecurity such as Mexico and Guatemala may be more difficult to happen. But even in such contexts research has found that that legal mobilization is still pursued as a strategy by societal actors, albeit there are limitations on the available resources, the type of framings used, and the stability in the opportunity structure for NGOs to engage in legal mobilization (Lemaitre and Samdvik 2015). This resonates with the experiences of Mexico and Guatemala, where legal mobilization comes with high risks for both relatives of victims as well as human rights activists. NGOs still pursue legal mobilization in “hostile” environments because it helps NGOs highlight state failings (Vanhala 2012). Thus the relationship between societal actors and law is not fixed, and it can change over time.

In terms of impact the literature has stressed that one immediate goal of legal mobilization is changing state behavior or policy. In contexts where political leaders are vulnerable to external pressure, legal mobilization has motivated state actors to improve justice system responses to avoid reputational costs. One of the strategies used by NGOs to change state behavior has been through “shaming” (Murdie and Davis 2012). For instance, after several years of international human rights reports that shamed the Chilean government of Augusto Pinochet and accused his government of committing grave abuses, the Chilean government gradually responded with important policy changes, like closing the National Intelligence Agency (Dirección de Inteligencia Nacional) (see: Ropp & Sikkink, 1999: 186). Shaming strategies have been found to work even in changing the behavior of corporations or businesses (Spar & La Mure 2003).

More broadly, however, research has also found that legal mobilization can impact access to justice (Vanhala, 2012). Efforts by NGOs have shown to help marginalized sectors overcome important legal tolls (Brinks, 2008). This is particularly relevant to women’s rights. In Latin America women are known to face additional tolls to access the justice system (Walsh & Menjívar, 2016) which makes grassroots efforts to provide support for women even more important. The work of NGOs has proven to open the door of the justice system for the relatives of victims, whose cases would most likely linger (Brinks, 2008; Gallagher, 2017; Michel, 2018).

In addition, legal mobilization has been identified to improve the rule of law. In the process of mobilizing claims as matters of rights, societal actors can also participate in both making and enforcing the law (Halliday and Liu, 2007). When societal actors bring claims to the courts they play a key role in bringing state accountability and buttressing the rule of law (Smulovitz and Peruzzoti).

Given the central role of NGOs in legal mobilization, how has their role developed over time to support international, regional, and domestic legal goals to prevent, eradicate, and sanction violence against women? Under what conditions is legal mobilization effective with regard to providing legal and other services for victims and their families? Ultimately, these are key aims of creating and implementing laws on violence against women, and understanding the evolving role of NGOs in achieving them is one contribution of this article. In this article we therefore build on the existing literature on legal mobilization, but by focusing on how NGOs develop and change their legal mobilization strategies over time we aim to contribute to our understanding of the dynamic relationship between law, society, and the state.

Based on past research we recognize that the impact of women’s rights mobilization must be assessed carefully. In the case of violence against women legal claims aim to help an individual victim, but also provoke a structural change: the misogyny that produced such violence in the first place. Thus, when assessing the impact of NGOs work in this arena it must be recognized that the state is not gender-neutral and that it, itself, is part of the context that allowed the violence. “Simply getting legislation passed or new agencies established may strengthen the capacity of the state to incorporate women’s movement

demands without addressing the foundations of such demands” (Bush, 1992, p. 590). In this article we thus focus on how NGOs respond over time to victims’ needs. In particular, we assess how NGOs address state failings, and how this process helps victims access justice. In the next section we explain in more detail our methodology, and then move to the case studies to assess how NGOs have contributed to access to justice in femicide cases.

Methodology and Case Selection

We focus on two countries that experience high levels of violence against women: Guatemala and Mexico. We analyze femicide cases that reveal how NGO strategies and services to victims have evolved over time and how through their work they contribute to improve the chances of victims’ relatives to access to justice. We selected four femicide cases from the more distant and less distant past in two violent contexts to simply identify trends in the development of NGO involvement in legal mobilization. As opposed to traditional case selection strategies that aim to explain variation on an outcome of interest, our goal here is not to explain the differences between Mexico and Guatemala, or even to explain the differences in response over time. A much broader set of cases would be necessary for this undertaking, and the topic of a book. Rather, our goal is to draw on these legal cases in ways that provide examples of a broad range of NGO involvement in legal mobilization over time. The cases selected reflect the type of violence experienced in each country, which has triggered particular NGO responses, shaped by local demands, needs, resources, and the particular failings of the state. In Mexico, gender violence is intertwined with the violence surrounding the war against and between drug cartels. Mass graves are common, exemplified by how femicide was first identified and captured popular attention in the 1990s. The two cases from Mexico provide examples of how NGOs contribute to public discourse to draw attention to femicide as a human rights issue. In Guatemala, violence against women is pervasive, commonly understood as a “private” matter, only made worse by the lack of punishment and institutionalized misogyny. The two cases from Guatemala provide examples of how NGOs provide private services, including legal and psychological assistance for victims’ families. Our data drawn from archival research and interviews. We show why NGOs have expanded victim services and identify a range of mechanisms through which NGOs impact the advancement of femicide cases at multiple levels: 1) the international level through changing litigation strategies, 2) the transnational level through public discourse and framing, and 3) the domestic level through providing a wide range of services beyond litigation for individual families.

The expansion of victims’ services: case studies from Chihuahua

Chihuahua is well known for the high rate of killings and disappearances of women, in particular in the border town of Ciudad Juárez. From 1993 to 2007, 494 femicides took place only in this town (Monárrez, 2008, p. 79). It is unknown how many femicides occurred before, because statistics began to be recorded after victims’ organizations began counting the number of deaths from newspaper clips in 1993 (Driver, 2012). The lack of

reliable statistics continues today. It is known, however, that Chihuahua had its most violent year in 2010 with 32.8 femicides per 100,000 women, considerably higher than the national average of 4 femicides per 100,000 women (CESF, et al. 2012, p. 26).

State failure brought victims' relatives and human rights activists together. The lack of criminal accountability for these crimes led to the creation of various organizations. What eventually became the women's rights movement had its origins as an "anti-violence" or "victims' rights" movement. Esther Chavez Cano in Ciudad Juárez became the vociferous activist who, in 1993, first drew attention to the disappearances and killings of women. Along with 11 women's organizations, she created the "8 de Marzo" group in 1994, whose efforts focused on denouncing the lack of investigation surrounding these crimes (Braine 2010), through social mobilization and a strong mediatization of the issue. Activists continued to call attention to the lack of justice, but their main strategy was protest and media attention. Also, main objective was to frame this as "women's rights".

In 1997 a new organization was formed, Citizens Committee Against Violence, and it continued to draw attention to the pervasive impunity surrounding the killings and disappearances of women in Ciudad Juárez. This committee asked the state's Attorney General for the creation of a special prosecutor's office to look into the killing of women, which eventually was created in 1998 (Ensalaco, 2006, p. 423). Victims' relatives created new organizations, most prominently *Voces Sin Eco* (Voices Without Echo) was formed in 1998. This was the beginning of the local women's movement. In these early efforts, societal actors continued to resort to traditional strategies used in social movements, like mobilizing public opinion, organizing protests and public demonstrations. NGOs also began to help victims in two ways that the state was failing: documenting the femicides and providing counseling services for victims (Ensalaco, 2006, p. 431).

Cotton Field Murders Case.

On November 6, 2001 eight female bodies were found in a cotton field in Ciudad Juárez triggered domestic and international outrage.⁴ The bodies presented evidence of sexual violence and torture, and only three of the bodies were identified.⁵ The so-called "Cotton Field Murders" set in motion an impressive array of local, domestic, and international pressures for criminal accountability in Chihuahua; and triggered unity across the various organizations in the state. The campaign *Alto a la Impunidad: Ni Una Muerta Más* gathered over 300 local and national civil organizations (Ensalaco, 2006, p. 429).

The investigation on the case was mediocre at best. The collection of evidence was negligent. Relatives of the victims reported that forensic evidence was not collected or was

⁴ In 2002, condemnation against the Mexican state came from various international human rights bodies and mechanisms, like the UN's Special Rapporteur on the judicial independence of judges and lawyers, the UN Committee on the Elimination of Discrimination Against Women (CEDAW), the UN Office on Drugs and Crime, and the Inter-American Commission of Human Rights (IACHR). Even the Council of Europe's Committee of Ministers adopted a resolution related to the killings of women in Ciudad Juárez, a regional organization to which Mexico is not a member. Non-governmental international organizations, such as Amnesty International and Human Rights Watch, also issued reports that condemned the situation in Ciudad Juárez and blamed both the state and national authorities for their negligence to investigate the crimes (Anaya Munoz 2010). In total, more than 400 international recommendations were issued against the federal and state authorities regarding gender-violence in Chihuahua (CEDEHM 2010).

⁵ Among the identified victims were (with dates of disappearance in parenthesis): Laura B. Ramos Monárrez (9/21/2001), Claudia Ivette González (10/10/2001), and Esmeralda Herrera Monreal (10/29/2001).

not properly collected. DNA testing had to be repeated numerous times because of inconsistent results. The autopsies did not fully document all the injuries and violations the women suffered.

The *Campo Algodonero* (or Cotton Field Murders) case pushed the new women NGOs to try a new strategy to fight impunity: legal support for victims' relatives. It is worthy to note that Mexican civil society traditionally has not litigated human rights cases in domestic courts (Michel, 2018). At the time, in Mexico victims of crime lacked participation rights in the criminal proceedings, limiting victims' relatives to their only resource, the *amparo* appeal, which was usually dismissed. NGO litigation was limited in international courts (Davis, 2014; Ensalaco, 2006) and focused on exerting pressure from abroad filing individual complaints at the Inter-American Commission of Human Rights.

The mother of Esmeralda, one of the victims in Campo Algodonero, with the support of an NGO called *Red Ciudadana de No Violencia y por la Dignidad Humana* filed a complaint with the Inter-American Commission of Human Rights on March 6, 2002. On February 2005 the IACHR accepted the case. In 2007, the IACHR joins three complaints together into what is known as the Cotton Field case. In 2008 the victims relatives and various NGOs (Centro para el Desarrollo Integral de la Mujer A.C. (CEDIMAC), ANAD y CLADEM) present their evidence to the court.⁶ Years after bringing their claim to the Inter-American Commission of Human Rights, the Inter-American Court issued a resolution in November 2009 urging the Mexican state to implement reforms to protect women (Vázquez Camacho 2011).⁷

Despite the impressive grassroots mobilization the Cotton Fields Murders were never solved. Litigation at the international level had minimal impact on the actual cases, but the international shaming it produced at least did result in important legal reforms (Michel, 2018, pp?). An important contribution from the women's movement at the time was a shift in the discourse surrounding the killings, framing these as violations of international human rights, in particular violence against women (Fregoso, 2012). Framing the problem as a gender-issue would have important consequences because the support structure that developed domestically and internationally would consist of a network of NGOs, international organizations, discourses, norms, and resources, that focused on gender-violence exclusively, not on victims of crime in general. In 2006, the Citizens' National Femicide Observatory (*Observatorio Ciudadano Nacional del Femicidio* or OCNF) an umbrella organization that today includes more than 46 NGOs, was created with the objective to monitor femicide across various states in Mexico.

El Navajo Case

Probably most discouraging is that despite wide local, domestic, and international mobilization, the violence against women did not decrease in Ciudad Juarez as it just became a part of the wider violence experienced in the state as a result of the war on drugs. This was most evident when a new mass grave was found. One morning in October 2011,

⁶ For a timetable of the complaint presented to the IACHR see CLADEM, "Caso Algodonero Mexico (femicidio) available at: <https://www.cladem.org/es/espanol/64-que-hacemos/estrategias-de-accion/litigio/litigios-internacionales/litigios-internacionales-oea/174-caso-campo-algodonero-mexico-femicidio-femicidio>

⁷ González et al. ("*Campo Algodonero*") vs. Mexico, IACHR, November 16, 2009.

in the outskirts of Ciudad Juarez a cowboy found the remains of a human body. After this man reported his finding to the authorities, forensic excavations unearthed the biggest clandestine mass grave of femicide victims. At least 21 bodies were found in the area of the El Navajo Creek (*Arroyo El Navajo*), but DNA testing could only confirm the identity 11 women, who ranged from 15 to 20 years of age.⁸ Among the identified victims, the first to have disappeared was “Lupita” Perez Montes, who was last seen in downtown Ciudad Juarez on December 31, 2009.

Once again the local women’s movement mobilized to exert pressure on domestic and federal authorities to investigate the case. The main difference, however, was that this time they were able to also litigate in domestic courts. A huge difference from 2001, when the Cotton Field Murders took place, was that by 2009 an important judicial reform had introduced important victims’ rights within criminal procedure. With this new right at their disposal, NGOs now had stronger tools to fight impunity.

The impact of NGO litigation is most evident at the investigation stage. For instance, *Red Mesa de Mujeres* and *Justicia para Nuestras Hijas* collaborated with the victims’ relatives to gather evidence in this case. This might have been similar to what they did before, but now they had the power to incorporate evidence into a criminal case. [Add a bit more about impact at investigation stage...]

But the impact of NGO litigation may be more relevant at the trial stage, in particular in developing legal arguments that highlight international law related to gender violence. Their most important contribution has been to support the Public Prosecutor in building a case of “femicide.” Contrary to a regular homicide, to demonstrate a “femicide” in court a prosecutor must provide evidence that the way the killing was committed was driven by gender violence. This is usually time-consuming and difficult, as a prosecutor has to prove misogyny as the motive. In the El Navajo Creek case, these NGOs were successful in supporting the public prosecutor in building a femicide case. As private prosecutors in the case, they brought to trial 24 pieces of evidence that were not about the culpability of the accused per se, but instead focused on “demonstrating to the judge how this case relates to gender-violence and to international law” (Carmona, 2014).

These cases in Mexico show, that as NGOs identified areas of state failure, they have tried to fill in the spaces with various support for victims. Beyond seeking justice for individual claims, NGOs in Mexico are embracing the “massive” nature of violence in the country. They also acknowledge the systemic nature of the problem and its root causes in misogyny, For these reasons NGOs have specialized in providing various services to victims. Today, some NGOs even offer shelter and protection for victims, like CEDEHM in Chihuahua. Some have begun to offer forensic assistance (CITE).

⁸ In alphabetical order, the name of the victims were (with their date of disappearance in parenthesis): Perla Ivonne Aguirre González (7/20/2009), Lizbeth Avilés García (4/21/2009), Mónica Liliana Delgado Castillo (10/18/2010), Andrea Guerrero Venzor (8/16/2010), Beatriz Alejandra Hernández Trejo (4/27/2010), Idaly Juache Laguna (2/23/2010), Jessica Leticia Peña García (5/30/2010), Deysi Ramírez Muñoz (07/22/2010), Jazmín Salazar Ponce (12/27/2010), Jessica Terrazas Ortega (12/20/2010), and Maria Guadalupe Perez Montes (1/31/2009) (See: Rodriguez Nieto, 2015, “Llanos de la Barbarie”)

The impact of legal mobilization on women's rights: case studies from Guatemala *Missing background of violence in Guatemala To match Mexico's narrative*

Guatemala developed an NGO support structure for cases of femicide and violence against women more generally. One such organization providing litigation and other services is the organization Sobrevivientes. This organization was formally established in 2003, four years after the director Norma Cruz's daughter became a victim of sexual violence, and they faced many obstacles in their search for justice through the state. In addition, several other organizations provide victim and family assistance and advocacy, such as Tierra Viva, Grupo Guatemalteca de Mujeres (GGM), and Sector de Mujeres.

A key distinctive characteristic of NGOs in Guatemala is that they have had vast experience in mobilizing claims to the courts, due to their work in fighting for accountability in human rights violations during the civil war and the dictatorship (see Michel, 2018, p.??). This in a way shaped the type of services that NGOs provided to victims. But NGOs have also expanded services as a response to state failings in the area of justice.

Murder of Claudina: A Case without NGO Accompaniment in Guatemala

The unsolved murder of Claudina Isabel Velasquez Pais is well documented. Subsequent to the many flaws in the case, as described by Sanford (2008) below, the Velasquez family began working with NGOs in Guatemala that finally helped bring it before the Inter-American Court of Human Rights. Among other things in Claudina's case, the Inter-American Commission of Human Rights found the state of Guatemala responsible for the following violations: 1) violations of the right to life and personal integrity of Claudina Velasquez, 2) violation of judicial guarantees and protection, equality before the law, and 3) violation of rights to personal integrity to the detriment of family members.

The last time Claudina communicated with her parents was around 11:45 pm on August 12, 2005. Around two in the morning on August 13, her parents were awakened by Zully Moreno, the mother of Claudina's boyfriend Pedro Samayoa Moreno, who went to their home to inform them that Claudina was in grave danger. Senora Moreno claimed that Claudina called her to tell her she was walking home and that this call was cut short by Claudina's screams for help. Claudina's parents immediately went out to search for their daughter—first at the house where Claudina had attended a party in the nearby neighborhood of Colonia Panorama. With no leads from the party, they began to search the neighborhoods from the party to their home. Desperate, they attempted to make a report at the local police station at about 3:00 am on August 13. The police, however, refused to take a report or even to listen to the worried parents. They suggested that Claudina had run-off with her boyfriend and that, in any case, they would not receive any reports until Claudina had been officially missing for 24 hours. It was not until 8:30 in the morning that the police formally received Claudina's parents and made an official report that classified Claudina Isabel Velasquez Paiz as missing. This was 31/2 hours after her lifeless body was found on the street on 10th Avenue in Colonia

Roosevelt in Zona 11—a neighborhood not more than two miles from the party where she was last seen by friends. Still, she was not identified until much later that day (Sanford 2008, 113).

This case is exemplary of the broad range of failures in investigation and processing of murder cases of women at the time, when and if they were actually investigated. Many such cases did not even get this far in the investigation process. Sanford (2008) describes these in detail (115-117):

- Forensic mistakes include failures to properly inventory Claudina's clothing
- There were inconsistencies in dates and times in the reports given by investigators and medical examiners, including inconsistencies in reports about critical information, such as the time of death. There were discrepancies in the identification and description of injuries across forensic reports.
- It is unclear who and whether relevant witnesses were interviewed
- The prosecutor's office didn't even interview family members until a month after the murder, and only then when they sought information about here case at the prosecutor's office.
- The prosecutor's office did not search the homes of primary suspects until three months after the murder.

Without accompaniment or assistance from NGOs in the early stages of this case, Claudina's family initially had to navigate the labyrinth of the justice system on their own. Without oversight, the state committed repeated blunders. *Why NGO did not take the case? I would add here that Sobrevivientes at the time was not doing legal accompaniment.*

Murder of "Maria": A Case with NGO Accompaniment in Guatemala
Year?

Maria died young— [she was] under 25 years old. Maria grew up in a working class family living in a small rural town. During the last moments of her life, she went to run an errand in her neighborhood, but later appeared in the street injured and bleeding. She had been sexually assaulted so brutally that her internal injuries ended up being fatal. The preponderance of evidence pointed to a neighbor as the perpetrator. She was able to name the perpetrator during her last moments of consciousness. She passed away two days after being admitted to the hospital of her injuries and blood loss. Her sexual assault conforms in many ways to a broader pattern of sexualized torture and killings that have occurred in Guatemala (Carey Jr. and Torres 2010). Against all odds...Maria's [family] decided to work through the legal system to pursue justice for their daughter.¹

Because the justice system has so systematically ignored the killings of women in Guatemala, some non-governmental organizations have stepped in to research the issue and one provides direct assistance to families with their cases. One NGO

reported that about 5 percent of families of women who have been murdered are provided with assistance and accompaniment. Thus, it was not the state, but a local NGO that provided Maria's family with resources to pursue and prosecute her case. The family reports:

Family: Now, what did we find with [the organization]? They gave us economic support, moral support, support in every sense, psychological help, I don't know...a ton of things! Thank God, we feel that...if I were alone in the [court], without [the organization], I don't know how I would feel ...

Even so, the assistance has not been sufficient to provide them with enough help to keep them from fleeing and going hungry. So, even in this "best case scenario" of the minority of families who get help, it is insufficient to meet their most basic needs (Walsh and Menjivar 2016).

I do not want to add more to Guatemala yet but I do have some info in my book that we can draw upon to highlight NGO services and how these have changed according to state failures and demands from below.

Final thoughts: making women's rights a reality from below

The dead body of a woman represents a clear failure on behalf of the state on its duty to prevent and protect women from violence. However, there is still a chance for the state to provide relief in the form of punishment. In contexts of impunity, such as Mexico and Guatemala, the state is further failing to provide equal treatment under the law and judicial remedies for victims' relatives. Femicide cases are thus by definition created and perpetrated by state failings.

In the face of state failures such as these it becomes necessary to understand the impact of grassroots efforts for victims of this type of gender violence. Grassroots responses, we argue, have to be understood as being dynamic. NGOs work in a highly rich normative context in regards to women's rights, and they mobilize law as a tool to respond to the environment they operate in. But NGOs change tactics and strategies based on the type of government failures, victims' demands or needs, and resources. They fill-in spaces of state inaction or inactivity, yet they also push for the state to act or change. With the objectives to provoke systemic change, and to provide relief to victims, usually NGOs have to operate at two different levels (systemic and individual) to contribute to change. NGOs frame/respond to failings by invoking norms/discourses, by legalizing claims, and by specializing in justice matters.

What are the lessons from this paired-comparison exercise? It is evident that NGO accompaniment and the various services they provide for victims has served the families of victims well. Criminal investigations do improve. But did NGO accompaniment has had an impact to access to justice and rule of law in these two countries?

- 1) There are positive contributions of NGOs for particular cases of gender violence

that is beyond just litigation

- 2) These contributions have appeared as NGOs navigate the context of impunity: as they identify areas of state failure and of victims' needs (such as victim services, improve ROL through training police, coordination with justice system, shelter services, health services, massage) WE NEED TO ADD THIS TO OUR CASE STORIES...
- 3) These contributions also respond to resources available (not only money, but also norms, institutions, ... this relates as well to reforms)
- 4) There are limitations – small percentage of cases get litigation that are strategically selected (selecting cases where evidence tends to be stronger), so for cases that are already difficult to investigate and prosecute, these cases are less likely to get help from NGOs because of their small capacity, so they are doubly neglected by the legal system and by NGOs
- 5) There are also unintended consequences (NGOs that provide technical assistance to the justice system in terms of training are position of monitoring but also collaborating with police and judiciary); NGOs specializing justice for women – is driven by donor agendas – maybe ignoring important/difficult cases b/c of the way they are selected to be accountable to donors and this can undermine the ROL (unequal treatment of cases); can also note in discussion that may ignore other cases. With legal tolls, the NGOs are helping alleviate them, but unintended consequences that impact other victims of crime that are left out.

Conclusions and some final thoughts

- Are the criticisms fair against NGOs? They are not, nor should they, replace the state. So maybe the fact that they are strategically selecting cases should be addressed through a different lens, rather than criticism for failing to “address all cases” (which is the job of the state) or for discriminating against other cases that do not fit their agenda (which again should be investigated by the state)
- Does this mean that justice is further “privatized”? Obviously, donors do not want this to happen, nor NGOs... But is this happening?

While these efforts provide much-needed support, they also represent a potentially problematic trend of outsourcing state responsibilities in ways that could have negative long-term consequences for citizen security and good governance. Because local efforts often rely on international support to overcome limited local resources, NGOs tend to specialize in helping vulnerable and marginalized populations (often identified as “target populations” by international organizations). Such outsourcing neglects the critical issue of weak and uneven state capacity, which continues to plague the criminal justice system and pose obstacles to the rule of law.

Yet this paired comparison also demonstrates that even with these efforts, there are many areas in which the state continues to fail victims, including excessive bureaucracy, a widespread lack of gender consciousness (further exacerbated by an entrenched culture of misogyny), inept justice system operators, and corruption.

Furthermore, we also identify important unintended consequences from foreign aid/donor agendas. As the push an agenda that focuses on women's rights, donors are pushing the specialization of NGOs that cater to only a small percentage of the overall victim population

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ⁱ The names of Maria and Rosa are pseudonyms to maintain the confidentiality of the families. For the remainder of this article, interviewees will be referred to by their relationship to Maria and Rosa. Some minor identifying details have been excluded or modified slightly for the same reason. The source of this information was from a series of interviews conducted by Shannon Drysdale Walsh in fall 2014 and summer 2015.