

APPLYING A GENDER PERSPECTIVE TO DEFENSES OF WOMEN SURVIVORS  
OF BATTERING IN INTIMATE PARTNER HOMICIDES: SPECIAL FOCUS ON  
CHILE, ARGENTINA, AND MEXICO

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### **ABSTRACT**

This dissertation examines the legal defenses available to women who kill their intimate partners in the context of domestic violence in Argentina, Chile, and Mexico. The study identifies three central problems. First, courts interpret key legal elements of the defenses through a male-centric lens that disregards the realities of prolonged abuse. In particular, this perspective influences the concept of imminence, the interpretation of reciprocal violence, the identification and weighing of the interests and harms at stake, and the evaluation of whether the woman had alternative courses of action. Second, the reliance on Battered Woman Syndrome, the theory that portrays women as mentally impaired and reinforces stereotypes that diminish their agency. Third, courts inconsistently grant justification and excuse defenses, relying on stereotypes that ultimately cast doubt on the woman's rationality and agency. A useful tool to address these issues is the gender perspective, defined as an analytical method aimed at identifying and correcting structural gender inequality. This dissertation proposes the incorporation of U.S. legal standards that align with this perspective. Specifically, it advocates: (i) integrating the history of domestic abuse into the assessment of affirmative defenses—which would expand the concept of imminence, eliminate assumptions of symmetry in reciprocal violence, offer a more accurate framework for identifying and weighing harms and interests in self-defense and exculpatory state of necessity, and enable a more realistic evaluation of the alternatives available to these women; (ii) adopting Survivor Theory to support legal defenses without pathologizing the defendant; and (iii) eliminating stereotypes commonly associated with women who kill their intimate partners in the assessment of these women's defenses.

*To my mom, whose love and strength continue  
to guide me, even from beyond this world.*

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## TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>1</b>
<b>CHAPTER I: FROM SURVIVORS TO DEFENDANTS .....</b>	<b>11</b>
1. ORIGIN, CONTEXT, AND MOTIVES OF INTIMATE PARTNER HOMICIDES PERPETRATED BY WOMEN .....	13
1.1 Intersectionality of violence: violence against women, domestic violence, and intimate partner violence.....	13
1.1.1 International and national efforts to define and eradicate violence against women: a 40-year perspective .....	13
1.1.2 The relationship of violence against women, domestic violence, and intimate partner violence .....	23
1.2. Gender disparities in intimate partner homicide.....	29
1.3. Unveiling the uncommon: Understanding why women kill their intimate partners...34	
1.3.1 Common contexts and motives in which women kill intimate partners.....	34
1.3.2 Battered Woman Syndrome and its general acceptance among courts .....	36
1.3.2.1 The Battered Woman Syndrome Theory .....	37
a) Learned Helplessness.....	38
b) Cycle of Violence .....	40
1.3.2.2 The general acceptance of Battered Woman Syndrome theory.....	43
1.3.2.3 Acceptance of Battered Woman Syndrome theory in law.....	46
2. IDENTIFYING THE MAIN CHARACTER: WOMEN SURVIVORS OF BATTERING.....	47
2.1. Reclaiming identity through naming: Moving from the "battered woman" concept towards a less stigmatizing terminology.....	47
2.2. The elements of the "women survivors of battering" in this dissertation .....	59
2.2.1 The meaning of "woman" .....	60
2.2.2 The meaning of "survivor".....	63
2.2.3 The meaning of "battering" .....	64
3. SUMMARY .....	69
<b>CHAPTER II: CHALLENGES IN DEFENDING WOMEN SURVIVORS OF BATTERING IN CASES OF INTIMATE PARTNER HOMICIDE IN CHILE, ARGENTINA, AND MEXICO.....</b>	<b>73</b>
1. COMMON DEFENSES USED IN LATIN COUNTRIES FOR WOMEN WHO HAVE KILLED THEIR INTIMATE PARTNERS .....	75
1.1 Classification of defenses: justification and excuses .....	75
1.2 Defenses commonly used in Argentina, Chile, and Mexico.....	76
1.2.1. Self-defense.....	77
1.2.2. Exculpatory state of necessity.....	79
1.2.3. Transient mental disorder .....	82
1.2.4. Insurmountable fear .....	85

2. CHALLENGES IN DEFENDING WOMEN WHO COMMIT INTIMATE PARTNER VIOLENCE IN CHILE, ARGENTINA, AND MEXICO .....	87
2.1 The erasure of domestic abuse history by male-bias doctrine .....	87
2.1.1 Examples of cases in which the history of abuse was not taken into account by courts .....	90
2.1.1.1 Claudia Moya's case .....	90
2.1.1.2 Karina Sepúlveda's case .....	96
2.1.1.3 Case number 56/2021 .....	101
2.2.2. Identification of the problems: Imminence, crossed violence, identification of harms, and availability of choices .....	105
2.2.2.1 Temporal Proximity in Imminence: A Remnant of Male-Biased Traditions .....	105
2.2.2.2 Misinterpreting cross-violence: Equating unequal adversaries .....	113
2.2.2.3 Failure to identify and ponder the interests and harms involved .....	119
a) Misidentifying interests in self-defense and harms in exculpatory state of necessity ..	119
b) Misjudgment on the severity of violence and danger of death or severe bodily harm ..	125
2.2.2.4 The illusion of alternative courses of action .....	128
2.2 The distorted portrayal of women by Battered Woman Syndrome .....	134
2.2.1 Examples of cases in which trial courts have relied on Battered Woman Syndrome to grant a defense .....	135
2.2.1.1 The case of Ms. Olmedo (Argentina) .....	135
2.2.1.2 The case of María José Olmedo (Chile) .....	138
2.2.1.3 The Mexican case No. 101-2021 .....	141
2.2.2 Examples of cases in which higher courts have relied on Battered Woman Syndrome to grant a defense .....	143
2.2.2.1 The case of María Leiva (Argentina).....	144
2.2.2.2 The case Rol 655-2022 (Chile).....	144
2.2.2.3 The case No. 6181/2016 (Mexico).....	145
2.2.3 The dark side of Battered Woman Syndrome: Impairing nomenclature, inadequate explanation of women's actions and mental state, and the perpetuation of stereotypes ..	146
2.2.3.1 Impaired by nomenclature .....	146
2.2.3.2 Battered Woman Syndrome and its impossibility to explain the actions and mental state of women who kill their intimate partners.....	148
2.2.3.3 The perpetuation of stereotypes by Battered Woman Syndrome .....	153
2.3 Granting justification and excuse defenses .....	155
2.3.1 The pervasive shifting between justifications and excuses in Argentina, Chile, and Mexico .....	158
3.2.2 Problems associated to shifting between defenses.....	170
3.2.2.1 The distortion of battering and its effects .....	170
3.2.2.2 Undermining agency, and portraying women as impaired and incapable of self-governance .....	173
3. SUMMARY .....	176

### **CHAPTER III. THE GENDER PERSPECTIVE IN ARGENTINA, CHILE, AND MEXICO.....181**

1. ORIGIN, CONCEPT, AND OBJECTIVE OF THE GENDER PERSPECTIVE.....	182
2. GENDER PERSPECTIVE AND THE LAW .....	186
2.1 Integrating the gender perspective in legislation .....	187
2.2 Integrating the gender perspective into judicial rulings.....	188
2.2.1 Right to equality.....	189
2.2.2 Right to non-discrimination .....	192
3. NORMATIVE FRAMEWORKS THAT PROVIDE A MANDATORY CHARACTER TO THE OBLIGATION TO APPLY A GENDER PERSPECTIVE IN JUDICIAL REASONING .....	197
3.1 Common International Law in Argentina, Chile, and Mexico .....	197
3.1.1 History of international instruments and women's rights.....	197
3.1.2 Specific and mainstream international treaties and declarations .....	202
3.1.3 The legal hierarchy of international human rights treaties in Chile, Argentina, and Mexico .....	211
3.2. National legislation of Argentina, Chile, and Mexico .....	216
3.2.1 Argentina.....	216
3.2.1.1. Domestic normative .....	216
3.2.1.2 Guidance instruments.....	220
a) Previous Court decisions on the use of a gender perspective .....	220
b) Judicial Power Guidance on the use of a Gender Perspective.....	221
3.2.2 Chile.....	222
3.2.2.1 Domestic normative .....	222
3.2.2.2 Guidance instruments.....	228
a) Gender Equality and Nondiscrimination Policy of the Judicial Power .....	228
b) Judicial Power Guidance: Good practices notebook to incorporate the gender perspective into judicial decisions .....	229
c) Previous Court decisions on the use of a gender perspective .....	231
3.2.3 Mexico .....	233
3.2.3.1 Domestic normative .....	234
3.2.3.2 Precedents and jurisprudential thesis of Supreme Court of Justice of the Nation on Gender Perspective .....	238
a) Jurisprudential thesis "Access to justice in equal conditions. Elements to judge with a gender perspective" .....	238
b) Rulings that constitute jurisprudence (precedents).....	239
3.2.3.3 Guidance instruments.....	244
a) Isolated Thesis "Gender perspective in the administration of justice. Its meaning and scope" .....	244
b) Isolated Thesis "Access to justice under conditions of equality. All jurisdictional authorities in the country must deliver justice with a gender perspective" .....	244



c) Isolated Thesis "The delivery of justice with a gender perspective. This analytical method must be applied in all cases involving asymmetric relationships, prejudices, and stereotypical patterns, regardless of the gender of the people involved" .....	245
d) Isolated Thesis "Delivery of justice with a gender perspective. Obligations the Mexican state must comply in the matter" .....	246
e) Isolated Thesis "Judge from a gender perspective. concept, applicability, and methodology to fulfill such obligation" .....	246
f) Protocol for Judging with a Gender Perspective .....	247
4. REASONING WITH A GENDER PERSPECTIVE IN JUDICIAL DECISIONS: WHEN AND HOW TO APPLY A GENDER PERSPECTIVE .....	250
5. SUMMARY .....	260

#### **CHAPTER IV. APPLYING A GENDER PERSPECTIVE TO CASES IN WHICH WOMEN HAVE KILLED THEIR INTIMATE PARTNER .....264**

1. THE PARTIAL IMPLEMENTATION OF A GENDER PERSPECTIVE AS AN EMERGING TREND AMONG SOME COURTS.....	265
2. STANDARDS COMPATIBLE WITH A GENDER PERSPECTIVE .....	270
2.1 Incorporating the history of domestic abuse into the assessment of criminal defenses .....	271
2.2.1 Incorporating the experiences and perspective of the woman victim of domestic abuse in the analysis of imminence.....	271
2.2.1.1 Considering gender-based violence as a permanent threat is not enough .....	271
2.2.1.2 The hybrid standard of reasonableness in imminence .....	278
a) The hybrid standard of reasonableness in imminence .....	278
b) The Battered Woman Syndrome and imminence .....	282
b) Incorporating elements from the hybrid standard of reasonableness .....	284
2.2.1.3 Compatibility of the standard with a gender perspective and effects of its application.....	289
2.2.2 Assessing crossed violence through the lens of power and control .....	290
2.2.2.1 The power and control standard to determine the type of violence in a relationship .....	291
2.2.2.2 Compatibility of the standard with a gender perspective and effects of its application.....	295
2.2.3 Using the Danger Assessment Instrument to evaluate the risk of lethal or severe bodily harm in abusive relationships .....	298
2.2.3.1 Expanding the concept of imminence: Advancing toward a gender perspective to extend the time frame.....	298
2.2.3.2 Complementing a broader time frame with the Danger Assessment Instrument .....	301
2.2.3.3 Compatibility of the standard with a gender perspective and effects of its application.....	304

2.2.4 Considering the unavailability of options for the woman trapped in abusive relationship.....	305
2.2.4.1 Unavailability of other options .....	305
2.2.4.2 Establishing the unavailability of options.....	313
2.2.4.3 Compatibility of the standard with a gender perspective and effects of its application.....	315
2.2 Using the Survivor Theory as the foundation of legal defenses .....	316
2.2.1 Potential alternatives to Battered Woman Syndrome .....	318
2.2.2 The Survivor Theory.....	320
2.2.2.1 The theory .....	320
2.2.2.2 Compatibility of the standard with a gender perspective and effects of its application.....	325
2.3 Eliminating stereotypes in the selection of defenses for women who kill their intimate partners in the context of domestic violence.....	329
2.3.1 The origin of the shifting between justifications and excuses: stereotypes .....	329
2.3.2 A gender-sensitive defense strategy.....	336
2.3.3 Judge's obligation to avoid stereotypes in the assessment of evidence.....	341
2.3.4 Compatibility with a gender perspective .....	347
3. SUMMARY .....	348
<b>CONCLUSION .....</b>	<b>353</b>
<b>BIBLIOGRAPHY .....</b>	<b>363</b>

## INTRODUCTION

Every crime has a context. A criminal offense is not a single, straightforward action, but an act encompassed in a complex picture. Consider the case of a woman who endured nearly eighteen years of relentless physical abuse at the hands of her intimate partner. During that time, she accumulated sixty-four visible scars—evidence of injuries inflicted with rods, sticks, and belts.

Despite repeated attempts to seek help, every protection mechanism failed her. The police let her abuser walk free, even when an active arrest warrant had been issued. She watched him reappear in court repeatedly for other crimes, yet he was never sentenced to a long prison term. He threatened to kill her parents if she tried to leave, a threat made more credible by the state's inaction. Even her family, while aware of the abuse, offered no refuge. With no system willing or able to protect her, and facing escalating violence, she was left with no other real alternative but to endure the abuse.

Eventually, the abuse extended to her children. They were also subjected to their father's violence whenever their behavior failed to meet his expectations. In the incident that ultimately triggered the final act, her eldest son was physically punished by his father simply for asking for money to buy a gift for a friend, an act the family tyrant condemned as homosexual. Later that day, the woman saw the aftermath of his abuse: her son's face was bruised and swollen.

The next day, she left early to drop her daughters off at school and returned home, where her son and her aggressor were still sleeping. Seeking solace, she decided to take a shower. As she stared at her bruised reflection in the mirror, the haunting image of her son's weary, sorrowful face—marked by his father's beatings—overwhelmed her. Confronted with this unbearable reality and knowing that the abuser would soon awaken and resume violence, she resolved to put an end to years of terror. She retrieved the gun he kept under the bed and, while he was still sleeping, shot him once in the head, causing his immediate death.

This is one of the rare cases in which a woman, a survivor of domestic violence, killed her intimate partner to protect herself and her children against his abuse. As a result, these women transition from being victims to survivors and, ultimately, to criminal defendants, prosecuted for the homicide of the very man who abused them. Once in court, their survival-driven actions are scrutinized and judged through the lens of the law.

### *The selected countries*

The criminal affirmative defenses for women who kill their partners in the context of domestic abuse vary from country to country. This dissertation focuses on Argentina, Chile, and Mexico. Given that the killing of intimate partners by women is directly related to a context of domestic violence, these Latin countries were chosen because of their rate of domestic abuse. Chile's relatively low rate—0.5 femicides per 100,000 women. Mexico, with a higher rate of 1.4, highlights more critical challenges and conditions under which women might resort to lethal violence. Argentina, registering 1.1, sits between these two extremes, offering a midpoint perspective.

Additionally, to address some of the challenges surrounding the legal defenses available to women who have killed their intimate partners, this dissertation draws on the United States as a point of reference. This choice is grounded in the country's extensive jurisprudence and scholarly literature on intimate partner homicides perpetrated by women.

*The problems and main objective of this investigation*

This dissertation identifies three main problems across the legal systems of Argentina, Chile, and Mexico.

i) The existence of a male bias in the assessment of criminal defenses, which influences how courts assess the actions of women who have killed their intimate partners in the context of domestic violence. This bias influences key legal aspects of the defenses' requirements, such as the concept of imminence, the understanding of cross-violence between partners, the identification and weighing of interests and harms in self-defense and exculpatory state of necessity, and the availability of options for the defendant.

ii) The current use of Battered Woman Syndrome to sustain affirmative defenses. This theory is widely employed to explain and support the defenses of women in these cases. However, its application is problematic given that it impairs the defendant by using nomenclature associated with mental illness, offers an inadequate explanation for the defendant's actions and mental state, and reinforces stereotypes that can diminish the perceived agency of these women.

iii) The inconsistent use of justification and excuse defenses in cases where women kill their abusive partners. Courts in Argentina, Chile, and Mexico often shift between the

two based on whether the woman's actions resemble a male-centered model of self-defense. This creates confusion about whether domestic abuse explains rational, defensive behavior or impaired judgment. As a result, the legal strategy becomes unclear, weakening the role of expert testimony and undermining the woman's agency, as excuse defenses portray her as mentally impaired rather than as a rational actor responding to a life-threatening situation.

The main objective of this investigation is to assess the feasibility of integrating U.S. standards compatible with a gender perspective into the defenses of women who have killed their intimate partners in the context of domestic violence within heterosexual relationships.

### *Methodology*

The methodology employed in this thesis does not encompass an exhaustive empirical analysis of all rulings concerning cases where women have killed their intimate partners, but rather focuses on those decisions that were publicly available and were gathered from legal research platforms—such as Vlex, Microjuris, Tirant Latam—judiciary websites, and internet search engines.

One limitation of this study is that, in all three countries, not all rulings are published; many cases are classified as reserved, restricting their public disclosure.<sup>1</sup> For

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<sup>1</sup> Ley Federal de Transparencia y Acceso a la Información Pública [Federal Law of Transparency and Access to Public Government Information], Diario Oficial de la Federación [DOF] November 12, 2015 (Mexico); Law No. 20.285, Diario Oficial [D.O.] Febrero 7, 1997, (Chile); Law No. 27.275, Boletín Oficial [B.O.] September 29, 2016, (Argentina).

this reason, this dissertation complements the case studies with articles available in newspapers.

The deficiencies in the publication of rulings are especially evident in Mexico, where it is not uncommon to find cases on the news in which women have killed their intimate partners and that have been found guilty of charges, such as Yuridia Brito, Alina Narciso (trial ruling), María Tanus, Natalia Laura González, and María Guadalupe Pereda, (trial ruling).<sup>2</sup> However, none of these rulings are publicly available.

EQUIS Justicia para las Mujeres has highlighted this issue, stating that access to Mexican legal rulings is limited because the General Law of Transparency and Access to Public Information has, ironically, caused a decline in judicial transparency.<sup>3</sup> This law mandates the publication of only those judgments considered to be of "public interest" while leaving it to judicial authorities to determine which decisions meet this criterion.<sup>4</sup> This term lacks a clear definition and is open to subjective interpretation, leading to

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<sup>2</sup> María Julia Castañeda, *Condenada una mujer a 43 años de cárcel por defenderse de su agresor en el Estado de México*, EL PAÍS (July 10, 2022), <https://elpais.com/mexico/2022-07-09/condenada-una-mujer-a-43-anos-de-carcel-por-defenderse-de-su-agresor-en-el-estado-de-mexico.html>; Leslie Mora, *Mujer lleva 10 años en prisión tras matar a su esposo quien la prostituyó por varios años en Puebla*, TELEDIARIO (June 20, 2022), <https://www.telediario.mx/comunidad/en-puebla-mujer-mata-a-su-esposo-tras-prostituir-la>; El Tiempo, “*Me dijo que me iba a cortar la vagina para que no le gustara a nadie*”, EL TIEMPO (July 31, 2018), <https://www.eltiempo.com/mundo/latinoamerica/maria-guadalupe-pereda-la-joven-que-estuvo-presa-casi-3-anos-por-defender-su-vida-249954>; Marinee Zavala, *Dan 45 años de prisión a mujer expolicía de Tijuana por disparar y matar a su pareja bajo supuesta autodefensa*, TELEMUNDO20 SAN DIEGO (October 05, 2022), <https://www.telemundo20.com/noticias/mexico/dan-45-anos-de-prision-a-mujer-ex-policia-de-tijuana-por-disparar-y-matar-a-su-pareja-bajo-supuesta-auto-defensa/2244793/>; Carolina Amézquita Pino, *Hija de famoso actor mexicano fue condenada a varios años de prisión por asesinato*, PEOPLE EN ESPAÑOL (March 19, 2020), <https://peopleenespanol.com/celebridades/condenan-por-homicidio-a-hija-de-actor-mexicano/>

<sup>3</sup> EQUIS JUSTICIA PARA LAS MUJERES, TRANSPARENCIA EN LA PUBLICACIÓN DE SENTENCIAS: ¿RETROCESOS A PARTIR DE LA LEY GENERAL DE TRANSPARENCIA Y ACCESO A LA INFORMACIÓN PÚBLICA?, 14-16 (2018), <https://equis.org.mx/transparencia-publicacion-sentencias/>

<sup>4</sup> *Id.*

decreased transparency and public access to judicial decisions, thereby undermining the right to information access and the accountability of the judicial system.<sup>5</sup>

In an attempt to access caselaw, I submitted formal requests to the judicial authorities of each state through Mexico's National Transparency Platform, with no positive results.<sup>6</sup> This issue directly affects the cases examined in this dissertation, which are not deemed of "public interest," rendering many pertinent sentences inaccessible to the public and constraining their analysis, thereby significantly limiting the scope of judicial transparency and research potential.

Additionally, it is worth mentioning that there are other similar studies in this area aiming to understand how certain defenses have functioned in the cases of women who have killed their intimate partners. For instance, a study conducted by Carolina Olivares and Antonia Reyes in 2019 examined several defenses in Chile. Another study by Julieta Di Corleto et al. in 2020 focused on self-defense cases in Argentina. Also in 2020, Lorenzo et al. developed a study on defenses for women accused in a context of violence or vulnerability in Argentina.<sup>7</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> Most of the states redirected or excused to fulfill the requirement and provided an answer either redirecting the request to access the public rulings available in the state judicial power website or indicated that if the rulings were not available there, the organ is not obliged to "produce" a public version to fulfill the transparency requirement or indicated they had no records available. Of the 7 states that replied the request by sending case law, 4 of them sent convictions occurring in abbreviated procedures, in which the defendant agreed to declare guilty of the homicide in exchange of a reduction of their sentence, 3 states sent rulings on women killing family who were not intimate partners, and 1 state sent rulings in which the defense strategy was arguing the defendant had no participation on the death of the victim.

<sup>7</sup> Carolina Alexandra Olivares Barrios and Antonia Fernanda Reyes Fález, *De Víctima A Victimaria: Defensa de la Mujer Parricida en el Contexto de Violencia Intrafamiliar: Un Estudio desde la Jurisprudencia Chilena* (2019) (B.A. dissertation, Universidad de Chile), available at [https://bibliotecadigital.uchile.cl/discovery/fulldisplay?vid=56UDC\\_INST:56UDC\\_INST&tab=Everything&docid=alma991007542361803936&lang=es&context=L](https://bibliotecadigital.uchile.cl/discovery/fulldisplay?vid=56UDC_INST:56UDC_INST&tab=Everything&docid=alma991007542361803936&lang=es&context=L); Julieta Di Corleto, *Legítima Defensa Y Géneros*:



However, neither study is based on comprehensive empirical research of case law due to the aforementioned limitations on public records. Furthermore, the dissertation by Reyes and Olivares illustrates 14 cases spanning from 1954 to 2017, which renders the sample too diverse, considering that rulings are expressions of a specific culture, and incorporating cases over 70 years old may not accurately reflect how defenses are applied today.<sup>8</sup> On the other hand, Di Corleto's study is limited solely to the use of self-defense in Argentina, and it includes cases of women and LGBTTIQ+ members who suffered violence, which combined makes a total of 25 rulings. Lastly, Laurenzo's study includes cases of criminalization of women for crimes against the people, which includes a section of crimes against their intimate partners, but it includes cases of homicide and injuries, and this dissertation only centers on homicide.

This research differs from the previous studies because it examines cases from 2005 forward, including a sample more representative of contemporary society. It excludes cases involving LGBTTIQ+ individuals and focuses exclusively on women who have experienced domestic violence. Lastly, this dissertation only considers those cases in which a homicide was involved (including attempted or frustrated homicide), excluding those cases of injuries.

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*Una Cartografía De La Jurisprudencia Argentina*, in ESTUDIOS SOBRE JURISPRUDENCIA 88, 117 (Ministerio Público de la Defensa Argentina ed., 2020); PATRICIA LAURENZO ET AL, MUJERES IMPUTADAS EN CONTEXTOS DE VIOLENCIA O VULNERABILIDAD 96 (2020).

<sup>8</sup> Patricia Laurenzo, *Mujeres en el abismo: delincuencia femenina en contextos de violencia o exclusión*, 21 REVISTA ELECTRÓNICA DE CIENCIA PENAL Y CRIMINOLOGÍA 1, 15 (2019) (Author acknowledges that the historical context in which an old ruling was issued might diverge from legal framework and social values applied to the present day).

Unless otherwise noted, all translations are my own.

### *Organization of the dissertation*

Following this line of investigation, Chapter I of this dissertation focuses on the phenomenon of women who kill their intimate partners across the USA, Argentina, Chile, and Mexico. Initially, it explores the interconnections between violence against women, domestic violence, and intimate partner violence, highlighting the predominant victimization of women in these contexts. It unveils the circumstances and motivations behind intimate partner homicides perpetrated by women, underpinned by an analysis of Battered Woman Syndrome to comprehend their actions. Subsequently, it defines the central figure of our study: women survivors of battering and the elements that characterize them, aiming to provide an enriched and empowering perspective on their experiences and the reasons behind committing intimate partner homicide.

Chapter II exposes the problems in the current defenses used for women who kill their intimate partners in Argentina, Chile, and Mexico by some courts. The chapter begins by outlining the range of defenses employed—self-defense, exculpatory state of necessity, transient mental disorder, and insurmountable fear—as well as their equivalent defenses in the USA. It then identifies three central issues. First, a pervasive male bias that affects some of the core concepts of these defenses, such as imminence, cross-violence, the assessment of harms and interests involved, and the defendant's availability of options, results in defenses that fail to consider the context of domestic abuse adequately. Second, the problematic use of Battered Woman Syndrome creates a dual narrative in which the

defendant is portrayed as mentally impaired, thereby reinforcing stereotypes that diminish women's agency. Third, the reliance on both justification and excuse defenses based on the history of domestic abuse leads to inconsistencies in judicial decisions, ultimately weakening these defenses and perpetuating a framework that either undermines women's autonomy or neglects their right to self-determination.

Chapter III lays the groundwork for the proposed solution by arguing for the incorporation of a gender perspective in judicial decisions concerning women who have killed their intimate partners within a domestic violence context in Argentina, Chile, and Mexico. This approach is essential for realizing women's rights to equality and non-discrimination as guaranteed by both international human rights treaties and domestic legislation. Rather than being a mere suggestion, the use of a gender perspective is a binding obligation derived from a network of legal instruments—ranging from international treaties and declarations to domestic laws—that explicitly or implicitly require its application. In essence, adopting a gender perspective is imperative for the judiciary to effectively materialize the principles of equality and nondiscrimination enshrined in these legal frameworks, and ultimately, provide a solution to the problems identified.

Chapter IV focuses on applying a gender perspective as a solution to the challenges identified in previous chapters regarding the defenses for women who have killed their intimate partners under domestic violence conditions. The chapter builds on the problems of male-biased legal assessments, the problematic reliance on Battered Woman Syndrome,

and the inconsistent use of justification versus excuse defenses by proposing the integration of U.S. legal standards that are compatible with a gender perspective.

## CHAPTER I: FROM SURVIVORS TO DEFENDANTS

The act of a woman taking the life of her intimate partner is quite uncommon, drawing significant attention from society when such a tragic event occurs. Newspapers' headlines often rush to portray these women as deviants, suggesting that they kill either due to mental illness or as cold-blooded murderers.<sup>9</sup> However, these perceptions overlook the context that led to this tragedy.

This introductory chapter has two objectives. First, it aims to shed light on the material circumstances leading women to commit such acts against their intimate partners, delving into the background and context marked by violence, underlying motives, and the psychological aftermath of enduring abuse that precedes these actions. The second objective is to articulate the central figure of this dissertation, women survivors of battering.

For matters of order, this chapter is structured into two main sections. The first one delves into the context in which women kill their intimate partners in the USA, Argentina, Chile, and Mexico. Here, I illustrate the relationship between violence against women, domestic violence, and intimate partner violence, emphasizing women's predominant victimization in these scenarios. Furthermore, this section shows the reality of intimate

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<sup>9</sup> Marianne S. Noh et al., *Mad, Bad, Or Reasonable? Newspaper Portrayals of the Battered Woman Who Kills*, 27 GENDER ISSUES, 110, 126 (2010) (Marianne S. Noh and her colleagues conducted a study in which they analyzed newspaper portrayals of battered women who committed homicide in both the U.S. and Canada. Their findings revealed that the prevalent social perception of battered women who commit homicide often portrayed them as female deviants, categorizing them as either mentally ill (mad) or bad cold-blooded murderers (bad), in any case, rational human beings). See also: Julieta Di Corleto, *Mujeres que matan. Legítima defensa en el caso de las mujeres golpeadas*, REV. DERECHO PENAL Y PROC. PENAL LEXIS NEXIS, No. 5, 860, 861 (2006) (Although the number of women who respond to violence by killing their aggressors is low, paradoxically, the cases in which they are involved are the most visible).

partner homicide committed by women, exposing the reasons that drive them to take the lives of their significant others. Finally, to provide a rich context for understanding these women's behavior, I outline the leading theory used to explain battering and its effects on women, the Battered Woman Syndrome.

In the second section of this chapter, I will delineate the main character of this investigation –women survivors of battering – and the elements that characterize them. This section aims to empower survivors by challenging the traditional "battered woman"<sup>10</sup> label, and replacing it with "women survivors of battering." Through this analysis, the study aims to offer a more comprehensive and empowering framework for understanding the experiences and identities of women who have survived battering and committed intimate partner homicide.

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<sup>10</sup> The criticisms I apply to the term "Battered women" can also be extended to its Spanish translations, such as "mujeres maltratadas" or "mujeres golpeadas."

## **1. Origin, context, and motives of intimate partner homicides perpetrated by women**

### **1.1 Intersectionality of violence: violence against women, domestic violence, and intimate partner violence**

#### **1.1.1 International and national efforts to define and eradicate violence against women: a 40-year perspective**

Women worldwide endure abuse throughout their lives due to their gender. This abuse manifests in various forms, ranging from minor disrespectful behaviors, like criticizing a woman's clothes or mansplaining, to extreme acts resulting in death or severe physical harm, such as femicide. Numerous actions in this range fall into the definition of violence against women, also known as gender-based violence.<sup>11</sup>

Over the past 40 years, numerous international instruments have been enacted to address violence against women from a global perspective. These instruments define violence against women, identify its various manifestations, and require states to take concrete actions to eliminate such violence. Additionally, these instruments provide frameworks for understanding the structural causes of violence, outline legal and policy

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<sup>11</sup> World Bank Group, *Violence Against Women and Girls -- Resource Guide*, <https://www.worldbank.org/en/programs/violence-against-women-and-girls/terminology> (last visited Feb. 20, 2025, 10:05 AM) (the terms "gender-based violence" and "violence against women" are often used interchangeably because most gender-based violence is perpetrated by men against women. However, the first term is an umbrella for violence against men, boys, and sexual minorities or those with gender-nonconforming identities. In this manner, violence against women is one type of gender-based violence).

measures, and establish preventive strategies and support for victims. In the following, I will provide a brief summary of these international efforts to eradicate this type of violence.

In 1993, the United Nations enacted the Declaration on the Elimination of Violence Against Women, which defines it 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 private life.”<sup>12</sup>

This declaration also enumerates some examples of forms of violence against women, including: “a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”<sup>13</sup>

Later, in 1992, General Recommendation No. 19, enacted by the Committee on the Elimination of Discrimination against Women of the United Nations, incorporated gender-based violence as a form of discrimination, defining it as the one “directed against a woman

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<sup>12</sup> Declaration on the Elimination of Violence Against Women, art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>13</sup> Declaration on the Elimination of Violence Against Women, art. 2, Dec. 18, 1979, 1244 U.N.T.S. 13.



because she is a woman or that affects women disproportionately.”<sup>14</sup> It also acknowledged that gender-based violence seriously inhibits women's ability to enjoy rights and freedoms on the basis of equality with men.<sup>15</sup>

Furthermore, General Recommendation No. 19 states that traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks, and female circumcision.<sup>16</sup> These forms of violence contribute to sustaining these subordinate roles and low levels of political participation, education, skills, and work opportunities for women.<sup>17</sup>

In 1995, the Beijing Declaration and Platform for Action, a policy framework adopted at the Fourth World Conference on Women in Beijing, outlined a global agenda for achieving gender equality and improving the status of women.<sup>18</sup> This declaration identifies violence against women as one of its strategic objectives and actions, defining it in the same terms as the previous instruments mentioned.<sup>19</sup> Also, this declaration acknowledged that violence against women is a manifestation of the unequal power

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<sup>14</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 on Violence Against Women, ¶ 6, U.N. Doc. A/47/38, (1992).

<sup>15</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 on Violence Against Women, ¶ 1 and 7, U.N. Doc. A/47/38, (1992).

<sup>16</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 on Violence Against Women, ¶ 11, U.N. Doc. A/47/38, (1992).

<sup>17</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 on Violence Against Women, ¶ 11, U.N. Doc. A/47/38, (1992).

<sup>18</sup> Beijing Declaration and Platform for Action, Fourth World Conference on Women, Beijing, China, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 Sept. 15, 1995.

<sup>19</sup> Beijing Declaration and Platform for Action, Fourth World Conference on Women, Beijing, China, ¶112-114, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 Sept. 15, 1995.

relations between men and women, and it is born in cultural patterns that have resulted in men's domination and discriminatory treatment of women, hindering their development.<sup>20</sup>

The document ends with a call on governments, civil society, and international organizations to take concrete steps—including enacting and enforcing legislation that criminalizes all forms of violence against women, allocating resources to support victims, training law enforcement, judicial and social service personnel, and public education campaigns—to eliminate all forms of violence against women and to ensure that women can live free from fear and discrimination.<sup>21</sup>

In 2006, the UN Secretary-General published his In-depth study on all forms of violence against women and the settings in which it occurs.<sup>22</sup> It identifies the structural causes of this type of violence as the patriarchy and relations of dominance and subordination, along with cultural and economic inequalities.<sup>23</sup> It also identifies various forms and manifestations of violence against women, including those occurring within the family and community, those perpetrated or condoned by the state, and those occurring during armed conflicts.<sup>24</sup> It also provides examples of promising practices in law, service provision, and prevention and puts forward a blueprint for action by states,

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<sup>20</sup> Beijing Declaration and Platform for Action, Fourth World Conference on Women, Beijing, China, ¶118, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 Sept. 15, 1995.

<sup>21</sup> Beijing Declaration and Platform for Action, Fourth World Conference on Women, Beijing, China, ¶124-128, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 Sept. 15, 1995.

<sup>22</sup> United Nations, Secretary-General's Study on Violence Against Women, S/2005/108 (2005).

<sup>23</sup> United Nations, Secretary-General's Study on Violence Against Women, ¶69-91, S/2005/108 (2005).

<sup>24</sup> United Nations, Secretary-General's Study on Violence Against Women, ¶111-146, S/2005/108 (2005).

intergovernmental bodies, and UN entities to make progress in preventing and eliminating violence against women.<sup>25</sup>

A last instrument that acquires relevance regarding violence against women is General Recommendation No. 35, an update of Recommendation No. 19, enacted by the Committee on the Elimination of Discrimination against Women of the United Nations in 2017. In this instrument, the Committee has recognized that despite the advances in gender-based violence against women, it remains pervasive in all countries, with high levels of impunity.<sup>26</sup> It keeps manifesting a “continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology-mediated settings and in the contemporary globalized world it transcends national boundaries”<sup>27</sup>

Regarding the concept of violence against women, Recommendation No. 35 rephrased it as “gender-based violence against women.”<sup>28</sup> This concept highlights explicitly gendered causes and impacts of this type of violence and strengthens the understanding of violence as a social problem that requires comprehensive responses beyond individual perpetrators and victims/survivors.<sup>29</sup> Also, the Committee expands its original definition, now including “acts or omissions intended or likely to cause or result

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<sup>25</sup> United Nations, Secretary-General’s Study on Violence Against Women, Sec. VII-VII, S/2005/108 (2005).

<sup>26</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence against Women, ¶6, U.N. Doc. E/C.12/2017/35, (2017).

<sup>27</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence against Women, ¶6, U.N. Doc. E/C.12/2017/35, (2017).

<sup>28</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence against Women, ¶9, U.N. Doc. E/C.12/2017/35, (2017).

<sup>29</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence against Women, ¶9, U.N. Doc. E/C.12/2017/35, (2017).

in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.”<sup>30</sup>

Recommendation No. 35 also considers this type of violence as a means that subordinate women to men and perpetuate stereotypical roles, becoming an obstacle to the achievement of substantive equality between women and men and to the enjoyment by women of their human rights and fundamental freedoms.<sup>31</sup> This type of violence “is rooted in gender-related factors, such as the ideology of men’s entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour.”<sup>32</sup>

At an international Latin American level, Chile, Argentina, and Mexico have all subscribed to international treaties aimed at eradicating violence against women, such as the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (the Convention of Belém do Pará).

Domestically, each nation has enacted a range of laws to protect women and address gender-based violence. Among the most important are the following: Argentina

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<sup>30</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence against Women, ¶14, U.N. Doc. E/C.12/2017/35, (2017).

<sup>31</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence against Women, ¶10, U.N. Doc. E/C.12/2017/35, (2017).

<sup>32</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence against Women, ¶19, U.N. Doc. E/C.12/2017/35, (2017).

has issued the Comprehensive Protection Law to Prevent, Sanction, and Eradicate Violence Against Women (26.485), the Micaela Law on Mandatory Gender Training for All Members of the Three Branches of Government (27.499), and the Law on Protection Against Domestic Violence (24.417).<sup>33</sup> In Chile, the legal framework includes the Domestic Violence Law (20.066) and the Comprehensive Law Against Gender-Based Violence Towards Women (21.675). Meanwhile, Mexico has enacted the Federal Law to Prevent and Eliminate Discrimination, the General Law on Women's Access to a Life Free of Violence, and the General Law for Equality between Women and Men.

In addition to these laws, each country has policies, programs, and initiatives aiming to eradicate violence against women. In Argentina, a series of comprehensive measures have been implemented to eliminate violence against women as part of an integrated state strategy. With the creation of the Ministry of the Women, Gender and Diversity, the government launched the National Action Plan against Violence due to Gender Motives, which encompasses a variety of programs and initiatives.<sup>34</sup> For example, the program “Acompañar” provides direct economic support and comprehensive assistance to individuals at risk; the program “Apoyo Urgente” provides support to families that suffer extreme violence; the modernization of Línea 144 enhances emergency response services;

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<sup>33</sup> Ministerio de Salud, *Atlas de Violencia de Género*, [http://leg.msal.gov.ar/atlas/violencia\\_genero.html#:~:text=Ley%208561.,Adhiere%20a%20la%20ley%2027499](http://leg.msal.gov.ar/atlas/violencia_genero.html#:~:text=Ley%208561.,Adhiere%20a%20la%20ley%2027499) (last visited Mar. 22, 2025) (Although this are the most important laws, there are others aiming to eradicate violence against woman in each province).

<sup>34</sup> See in general: MINISTERIO DE LAS MUJERES, GÉNEROS Y DIVERSIDAD DE LA NACIÓN, GESTIÓN 2020 (2020) [chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.argentina.gob.ar/sites/default/files/210128-mgd-informegestion2020-maquetaweb\\_simples.pdf](chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.argentina.gob.ar/sites/default/files/210128-mgd-informegestion2020-maquetaweb_simples.pdf)

and the establishment of centers called “Centros Territoriales Integrales de Políticas de Género y Diversidad” that ensure specialized local support.<sup>35</sup> Additionally, Micaela Law has promoted among public officials to be trained to incorporate a gender perspective into their work.<sup>36</sup> These initiatives, alongside efforts to boost economic autonomy and foster inclusive communication, demonstrate Argentina’s strong commitment to eradicating gender-based violence and advancing equality.

In Chile, various programs and initiatives have been implemented to prevent and address violence against women. For instance, the organism in charge of coordinating these programs and initiatives is the National Service for Women and Gender Equity. This organization promotes programs aimed at preventing violence against women, focusing on the development of effective prevention tools.<sup>37</sup> It also supports initiatives that help victims and survivors reclaim their autonomy, including the provision of shelters, specialized centers for addressing violence, and legal representation.<sup>38</sup> The most important of these programs is the APR Program, an initiative that aims to reduce psychosocial harm and strengthen women's right to live free from violence.<sup>39</sup> To achieve this, it provides both

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<sup>35</sup> *Id.* at 30.

<sup>36</sup> Ministerio de Justicia de Argentina, *Día Internacional de la Eliminación de las Violencias contra las Mujeres: las políticas y articulación territorial y un mejor Estado*, Argentina.gob.ar, Nov. 23, 2023, <https://www.argentina.gob.ar/noticias/dia-internacional-de-la-eliminacion-de-las-violencias-contra-las-mujeres-las-politicas-y#:~:text=Pol%C3%ADticas%20de%20articulaci%C3%B3n%20territorial%20y,con%20m%C3%A1s%20y%20mejor%20Estado..>

<sup>37</sup> SERNAMEG, <https://www.sernameg.gob.cl/prevencion/> (last visited March 22, 2025).

<sup>38</sup> SERNAMEG, <https://www.sernameg.gob.cl/recuperacion-de-la-autonomia/> (last visited March 22, 2025).

<sup>39</sup> Ministerio de Desarrollo Social y Familia, *Programa de Atención, Protección y Reparación en Violencia contra las Mujeres (APR)*, [https://www.reddeproteccion.cl/fichas/programa\\_de\\_atencion\\_proteccion\\_y\\_reparacion\\_en\\_violencia\\_conta\\_las\\_mujeres\\_apr](https://www.reddeproteccion.cl/fichas/programa_de_atencion_proteccion_y_reparacion_en_violencia_conta_las_mujeres_apr) (last visited Mar. 22, 2025).

psychosocial and legal support—either in-person or remotely—to victims of intimate partner and sexual violence, as well as legal representation in cases of attempted femicide and for families of victims of consummated femicide.<sup>40</sup> It also offers a phone line 1455 for victims and temporary housing for women and their children in situations of severe risk, and includes rehabilitation centers for men who perpetrate violence.<sup>41</sup> Other efforts by the National Service for Women and Gender Equity include a plan of action to eradicate violence against women 2021-2030, which centers on four pillars: awareness and prevention; comprehensive care and protection; access to justice; and information, data collection, and research, establishing concrete goals for the effective elimination of this type of violence.<sup>42</sup>

Also, in Mexico, there has been an advancement in policies and initiatives. For example, the National System for the Prevention, Care, Sanction, and Eradication of Violence against Women is an interinstitutional mechanism that coordinates efforts, instruments, policies, services, and actions to guarantee women's right to live free from violence.<sup>43</sup> Other initiatives have also been taken in each state of Mexico. For example, Ciudad de Mexico implemented initiatives that focus on the program to eliminate violence

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> MINISTERIO DE LA MUJER Y DE LA EQUIDAD DE GENERO, Resolución Exenta N° 1408 (Dic. 20, 2020), <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://minmujeryeg.gob.cl/wp-content/uploads/2021/12/RESEX-1408-2020-Plan-VCM.pdf> (last visited Mar. 22, 2025).

<sup>43</sup> Gobierno de Mexico, *¿Qué es el Sistema Nacional de Prevención, Atención, Sanción y Erradicación de la Violencia contra las Mujeres?*, <https://www.gob.mx/conavim/articulos/que-es-el-sistema-nacional-de-prevencion-atencion-sancion-y-erradicacion-de-la-violencia-contra-las-mujeres#:~:text=contra%20las%20Mujeres?-.El%20Sistema%20Nacional%20de%20Preveni%C3%B3n%2C%20Atenci%C3%B3n%2C%20Sanci%C3%B3n%20y%20Erradica%C3%B3n%20de,una%20vida%20libre%20de%20violencia> (Last visited March 22, 2025).

against women, embodying several measures that include prevention, comprehensive care, enforcement, and support.<sup>44</sup> It emphasizes early detection and reporting, offers specialized legal and psychosocial services, ensures coordinated action among various government agencies, and establishes a robust information network for monitoring and evaluation.<sup>45</sup> Other measures focus on establishing specialized services that provide immediate, tailored attention to victims, SOS phone lines, prevention actions in public places, and the installation of the “women lawyers” program to provide legal assistance to women.<sup>46</sup> These actions underscore a commitment to strengthening response mechanisms and support systems aimed at ensuring the safety and well-being of individuals affected by violence.

Despite significant international and national advances in addressing violence against women, gender-based violence remains a pervasive issue in Latin America, disproportionately affecting women.

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<sup>44</sup> Ciudad de Mexico, *Programa de Erradicación de Violencia hacia las Mujeres, Gobierno de la Ciudad de México*, <https://informedegobierno.cdmx.gob.mx/acciones/programa-de-erradicacion-de-violencia-hacia-las-mujeres/#:~:text=Un%20punto%20de%20partida%20para,de%20la%20Red%20de%20informaci%C3%B3n> (last visited Mar. 22, 2025).

<sup>45</sup> *Id.*

<sup>46</sup> Ciudad de Mexico, *Implementa Gobierno de la Ciudad de México acciones para atender y prevenir la violencia, SEMujeres*, <https://www.semujeres.cdmx.gob.mx/comunicacion/nota/implementa-gobierno-de-la-ciudad-de-mexico-acciones-para-atender-y-prevenir-la-violencia#:~:text=El%20avance%20en%20las%20medidas,32%20mil%20014%20atenciones%20especializadas> (last visited Mar. 22, 2025).



### **1.1.2 The relationship of violence against women, domestic violence, and intimate partner violence**

A related concept to violence against women is domestic violence. In many regions, domestic violence is understood as the abuse of women by current or former male intimate partners.<sup>47</sup> Other definitions conceptualize it as violence between partners without explicitly identifying the perpetrator and the victim. For instance, the United Nations defines it as “a pattern of behavior in marriage or intimate partnership used to gain or maintain power and control over an individual through physical, sexual, emotional, economic, or psychological actions or threats that influence another person.”<sup>48</sup> However,

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<sup>47</sup> MARY ELLSBERG ET AL., RESEARCHING VIOLENCE AGAINST WOMEN: A PRACTICAL GUIDE FOR RESEARCHERS AND ACTIVISTS 11 (2005).

<sup>48</sup> United Nations, *What Is Domestic Abuse?*, <https://www.un.org/en/coronavirus/what-is-domestic-abuse> (last visited Mar. 6, 2025).

in certain countries, such as the United States,<sup>49</sup> Argentina,<sup>50</sup> Chile,<sup>51</sup> and Mexico,<sup>52</sup> the term encompasses any violence occurring within the home, including that directed at children, the elderly, and an intimate partner.<sup>53</sup>

This dissertation focuses on this last form of abuse, defined by WHO as “a behavior within an intimate relationship that causes physical, sexual, or psychological harm, including acts of physical aggression, sexual coercion, psychological abuse, and

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<sup>49</sup> Violence Against Women Act, 34 U.S.C. § 12291 (12) (“The term “domestic violence” includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who-- (A) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shares a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction”).

<sup>50</sup> Law No. 24.417, Boletín Oficial [B.O.] December 28, 1994, (Argentina) (Article 1. Any person who suffers physical or psychological harm or mistreatment by a member of their family group may report these acts, either verbally or in writing, to the judge with jurisdiction over family matters and request related precautionary measures. For the purposes of this law, the family group is understood as one formed through marriage or de facto unions.); Law No. 26.485, Boletín Oficial [B.O.] August 07, 2009 (Argentina) (defining violence against women as the one perpetrated by a member of the family group, regardless of the physical location where it occurs, that harms their dignity, well-being, physical, psychological, sexual, economic, or patrimonial integrity, or their freedom—including reproductive freedom and the right to full personal development. The family group is understood to include relationships based on kinship, whether by blood or affinity, as well as marriage, de facto unions, and romantic partnerships or courtships. This definition applies to both ongoing and past relationships, with cohabitation not being a requirement.

<sup>51</sup> Law No. 20.066, art. 5, Diario Oficial [D.O.] Septiembre 22, 2005 (Chile)(Art. 5. Domestic violence shall consist of any mistreatment that affects a person's life or physical or psychological integrity, sexual freedom or safety, or subsistence or economic autonomy, when inflicted upon a person who has or had, in relation to the perpetrator of the violence, any of the following relationships: 1. Spouse or civil partner. 2. Cohabitant. 3. Partner in a sentimental or sexual relationship without cohabitation. 4. Parent of a child in common. 5. A relative by blood or marriage in the direct line or in the collateral line up to and including the third degree of the perpetrator.)

<sup>52</sup> Código Penal Federal [CPF], art. 343 Bis, Diario Oficial de la Federación [DOF] 12-08-1931, últimas reformas DOF 17-10-2016 (Mex.) (A person commits the crime of domestic violence if, by action or omission, they cause physical, psychological, financial, economic, or sexual harm to any family member, whether inside or outside the family home, with the intent to control, subdue, assault, or intimidate.)

<sup>53</sup> ELLSBERG ET AL. *supra* note 47; Huecker Martin et al, *Domestic Violence*, in *StatPearls* [Internet] (StatPearls Publishing, updated Apr. 9, 2023), <https://www.ncbi.nlm.nih.gov/books/NBK499891/> (last visited Mar. 5, 2025).

controlling behaviors. This definition covers violence by both current and former spouses and partners.”<sup>54</sup>

Violence against women and intimate partner violence are intrinsically related, given that women are the most significantly impacted.<sup>55</sup> Conversely, the predominant perpetrators of this form of violence are men.<sup>56</sup>

Two primary indicators prove that women are the main victims of intimate partner violence: The number of women affected by this type of violence and the disproportionate ratio of female to male victims and perpetrators.

The first indicator refers to the total number of women who were, are, or will be affected by intimate partner violence at some point in their lifetime. A World Health Organization study has shown that nearly one-third of ever-partnered women have been physically and/or sexually abused by an intimate partner at some point in their lives in the American continent.<sup>57</sup> In other words, in terms of probabilities, among every three women,

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<sup>54</sup> World Health Organization, *Intimate Partner Violence*, <https://apps.who.int/violence-info/intimate-partner-violence/> (Lat visited Mar. 5, 2025).

<sup>55</sup> Michael Johnson, *Domestic Violence: The Intersection of Gender and Control*, in GENDER VIOLENCE: INTERDISCIPLINARY PERSPECTIVES 257, 263 (Laura L. O’Toole, Jessica R. Schiffman, & Margie Kiter Edwards (Eds.) 2nd ed. 2007) (In heterosexual relationships, intimate terrorism is committed almost entirely by men against female partners). See also: CLAIRE M. RENZETTI ET AL., SOURCEBOOK ON VIOLENCE AGAINST WOMEN 7 (2nd ed. 2011).

<sup>56</sup> Ceri Hayes, *Tackling violence against women: a worldwide approach*, in GENDER-BASED VIOLENCE 1, 2 (Geraldine Terry & Joanna Hoare Eds., 2007).

<sup>57</sup> WORLD HEALTH ORGANIZATION, GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN: PREVALENCE AND HEALTH EFFECTS OF INTIMATE PARTNER VIOLENCE AND NON-PARTNER SEXUAL VIOLENCE 16-17 (2013), [https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625\\_eng.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf?sequence=1)

one will become a victim of some form of intimate partner violence during her lifetime in this region.

The reality of each country explored in this dissertation study varies, but it does not depart significantly from the previous ratio mentioned. In the United States, the CDC reported in 2018 that at least 1 in 3 women experienced sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime.<sup>58</sup> In Argentina, the Ministry of Justice and Human Rights reported in 2017 that the proportion of women between 18 and 69 years old who have experienced intimate partner physical and/or sexual violence at least once in their lifetime is 26.9%,<sup>59</sup> approximately 1 in 4 women. In Chile, in 2018, 1 in 3 women declared to have been victims of violence from their partner.<sup>60</sup> Finally, in Mexico, the measurements are different, however, they still show the extent of intimate partner violence.<sup>61</sup> The Mexican National Institute of Statistics and Geography indicated in 2017 that 43.9% of women older than 15 years old had experienced violence from their current or last partner during the relationship.<sup>62</sup> It also reported that 25.6% of women older than

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<sup>58</sup> SHARON G. SMITH ET AL., THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2015 DATA BRIEF – UPDATED RELEASE 8 (2018), <https://stacks.cdc.gov/view/cdc/60893>

<sup>59</sup> MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS DE LA NACIÓN, PRIMER ESTUDIO NACIONAL SOBRE VIOLENCIAS CONTRA LA MUJER 55 (2017), <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.saij.gob.ar/docs-f/ediciones/libros/Primer-estudio-nacional-violencias-mujer.pdf>

<sup>60</sup> Vesna Madariaga Gjordan, *Presentación – Erradicación de la Violencia Contra la Mujer* [PowerPoint slides] (n.d.), available at [https://www.chileagenda2030.gob.cl/storage/docs/Presentacion\\_-\\_Erradicacion\\_de\\_la\\_violencia\\_contra\\_la\\_mujer\\_MMyEG\(1\).pdf](https://www.chileagenda2030.gob.cl/storage/docs/Presentacion_-_Erradicacion_de_la_violencia_contra_la_mujer_MMyEG(1).pdf) (last visited Mar. 5, 2025).

<sup>61</sup> While Argentina, Chile, and the U.S. compare the proportion of women who suffer violence over an extended period of time that could equal a lifetime or at least, adult life, Mexico compares women older than 15 years who have suffered violence from their current or last partner during the relationship –which could vary significantly from one relationship to another– and those who have experienced violence from their current or previous partner in the last 12 months, reducing the time frame.

<sup>62</sup> INSTITUTO NACIONAL DE ESTADÍSTICA Y GEOGRAFÍA (INEGI), ENCUESTA NACIONAL SOBRE LA DINAMICA DE LAS RELACIONES EN LOS HOGARES 11 (2016), <chrome->

15 years old had experienced violence from their current or previous partner over the last 12 months.<sup>63</sup> In conclusion, the extent of intimate partner violence during a woman's life varies depending on the country; however, the numbers everywhere are close to the 1 in 3 proportion indicated for the American continent.

The second indicator refers to the proportion of women versus men who are the victims of intimate partner violence. Each country included in this study employs its own measurement system to ascertain the ratio of victims between men and women in cases of intimate partner violence. Consequently, no comprehensive statistic is available for the entire American continent. However, the main point of the following statistics is the overwhelming representation of women among victims of intimate partner violence. Approximately 8 out of every 10 victims are female, demonstrating the gender disparity.

In the U.S., the Department of Justice reported that from 2003–2012, 82% of intimate partner violence victims were females, and 18% were males.<sup>64</sup> In Chile, Adimark reported in 2012 that, of all women between 15 and 65 years who were victims of domestic violence (physical, psychological, or sexual), in 74% of the cases, the perpetrator was a partner or an ex-intimate partner.<sup>65</sup> Following the same line, in 2020, the Subsecretary of

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extension://efaidnbmnnnibpcajpcgclclefindmkaj/https://www.inegi.org.mx/contenidos/programas/endireh/2016/doc/endireh2016\_presentacion\_ejecutiva.pdf

<sup>63</sup> *Id.*

<sup>64</sup> U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE, NONFATAL DOMESTIC VIOLENCE, 2003–2012 1 (2014) <https://bjs.ojp.gov/content/pub/pdf/ndv0312.pdf> (“The majority of domestic violence was committed against females (76%) compared to males (24%)”).

<sup>65</sup> MINISTERIO DEL INTERIOR Y SEGURIDAD PÚBLICA, PRINCIPALES RESULTADOS ENCUESTA NACIONAL DE VICTIMIZACIÓN POR VIOLENCIA INTRAFAMILIAR Y DELITOS SEXUALES 21 (2013) [chrome-extension://efaidnbmnnnibpcajpcgclclefindmkaj/https://www.sename.cl/wsename/otros/Presentacion\\_VIF\\_adimark\\_final\\_5-7-2013.pdf](chrome-extension://efaidnbmnnnibpcajpcgclclefindmkaj/https://www.sename.cl/wsename/otros/Presentacion_VIF_adimark_final_5-7-2013.pdf)

Crime Prevention performed a survey of violence against women females between 15 and 65 years.<sup>66</sup> This study showed that 73.7% of psychological violence aggressions and 72.2% of physical violence aggressions were committed by a partner or former partner.<sup>67</sup> In Argentina, the Domestic Violence Office reported in 2020 that 76% of the victims of domestic violence are women.<sup>68</sup> Of these women, 79% have a partner relationship with the perpetrator of domestic violence offenses.<sup>69</sup> In Mexico, the Government website reported that 76,2% of the syndicated perpetrators of domestic violence were male, and 23,8% were female.<sup>70</sup>

In summary, both indicators — the number of women affected and the ratio of women to men — underscore the same undeniable truth: Women constitute the primary victims of intimate partner violence, while men predominantly assume the role of perpetrators. This predominant victimization of women in intimate partner violence is important for two reasons. First, it demonstrates that this type of violence is gender-based because it disproportionately affects women. Second, it creates the basic conditions that drive women to kill their intimate partners.

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<sup>66</sup> SUBSECRETARÍA DE PREVENCIÓN DEL DELITO DEL MINISTERIO DEL INTERIOR Y SEGURIDAD PÚBLICA, IV ENCUESTA DE VIOLENCIA CONTRA LA MUJER EN EL ÁMBITO DE VIOLENCIA INTRAFAMILIAR Y EN OTROS ESPACIOS 5 (2020) <https://cead.spd.gov.cl/centro-de-documentacion/>

<sup>67</sup> *Id.* at 72.

<sup>68</sup> OFICINA DE VIOLENCIA DOMÉSTICA (OVD), INFORME ESTADÍSTICO ANUAL AÑO 2020 10-15 (2021), <http://www.ovd.gov.ar/ovd/verMultimedia?data=4739>

<sup>69</sup> *Id.*

<sup>70</sup> Instituto Mexicano de la Juventud, *Violencia contra hombres. Una violencia más silenciosa*, <https://www.gob.mx/imjuve/articulos/violencia-contra-hombres-una-violencia-mas-silenciosa> (last visited Mar. 5, 2025).

## **1.2. Gender disparities in intimate partner homicide**

In general, homicide rates have a marked gender difference, with men being substantially overrepresented in comparison to women. A 2020 global study revealed that men accounted for approximately 90% of all recorded homicides, whereas women accounted for about 10%.<sup>71</sup> Additionally, the study indicated that around 81% of recorded homicide victims worldwide were male, and 19% were female.<sup>72</sup> These patterns were

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<sup>71</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, GLOBAL STUDY ON HOMICIDE: EXECUTIVE SUMMARY 23 (2019), <https://www.unodc.org/documents/data-and-analysis/gsh/Booklet1.pdf>

<sup>72</sup> *Id.* at 23.

reflected in the homicide rates of both perpetration and victimization in the USA,<sup>73 74</sup> Argentina,<sup>75 76</sup> Chile,<sup>77 78</sup> and Mexico.<sup>79 80</sup>

However, in intimate partner homicides, victimization patterns undergo a reversal, with women being significantly overrepresented. This is evidenced by two factors: The

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<sup>73</sup> Federal Bureau of Investigation (FBI), *Homicide Offender vs. Victim Demographics*, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend> (last visited Mar. 5, 2025) (In 2024, the FBI reported that out of a total of 76,577 homicide offenders, 52,850 were male—approximately 69% of the total—while 7,601 were female, representing around 10%. These figures highlight a significant gender disparity among homicide offenders).

<sup>74</sup> Datosmacro, *Estados Unidos - Homicidios Intencionados*, <https://datosmacro.expansion.com/demografia/homicidios/usa> (last visited Mar. 6, 2025) (In 2023, there were a total of 19,796 homicides in the US. Of these, 4,359 were women—accounting for approximately 22% of the total—while 15,437 were men, representing about 78% of the homicides).

<sup>75</sup> DIRECCIÓN NACIONAL DE POLÍTICA CRIMINAL EN MATERIA DE JUSTICIA Y LEGISLACIÓN PENAL, INFORME SOBRE LOS DETENIDOS POR HOMICIDIOS DOLOSOS - SNEEP, 11 (2015), <http://www.jus.gob.ar/media/3202706/Detenidos%20por%20Homicidios%20Dolosos.pdf> (In 2015 of the total people detained for intentional homicides -both prosecuted and convicted- the large majority were men, representing 96% of the detained population for this criminal offense, this is 10146 people).

<sup>76</sup> Datosmacro, *Argentina - Homicidios Intencionados*, <https://datosmacro.expansion.com/demografia/homicidios/argentina> (last visited Mar. 6, 2025) (In 2022, there were 1,961 homicide cases, of which 347 (17,7%) involved female victims and 1,614 (82,3%) involved male victims).

<sup>77</sup> FISCALÍA NACIONAL DIVISIÓN DE ESTUDIOS, ANÁLISIS DESCRIPTIVO DEL HOMICIDIO CONSUMADO EN CHILE 2016 – 2020 23 (2021) <http://www.fiscaliadechile.cl/Fiscalia/archivo?id=45675&pid=20166&tid=2&d=1> (Fiscalía Nacional informed in 2021 that between the years 2016 and 2020, most of the defendants in homicide cases were men, with a representation rate of 92% versus 8% being women).

<sup>78</sup> Datosmacro, *Chile - Homicidios Intencionados*, <https://datosmacro.expansion.com/demografia/homicidios/chile> (last visited Mar. 6, 2025) (In 2022, there were 1,322 homicide cases, of which 146 (11%) involved female victims and 1,176 (89%) involved male victims).

<sup>79</sup> Instituto Nacional de Estadística y Geografía (INEGI), *Comunicado de prensa, Defunciones por homicidio: de enero a junio de 2024 (datos preliminares)*, [https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2025/edr/dh2024\\_en-Jn.pdf](https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2025/edr/dh2024_en-Jn.pdf) (last visited Mar. 07, 2025) (There were 15,243 homicides registered from January to June 2024. The rate was 11.7 homicides per 100,000 inhabitants—2.6 for women and 21.2 for men).

<sup>80</sup> Datosmacro, *Mexico - Homicidios Intencionados*, <https://datosmacro.expansion.com/demografia/homicidios/mexico> (last visited Mar. 6, 2025) (In 2023, there were a total of 32,252 homicides. Among these, 3,739 involved female victims—approximately 11.6%—while 28,243 involved male victims, representing roughly 87.6% of the total).



proportion of intimate partner homicides in the total number of homicides for each gender and the ratio of men to women as victims and perpetrators in these homicides.

Regarding the first indicator, in 1993, a systematic global review study showed that 1 in 7 homicides (13,5%) were committed by an intimate partner.<sup>81</sup> The same study also indicated that 38,6% of all murdered women were killed by their significant other, whereas only 6,3% of all murdered men were killed by their partner.<sup>82</sup> A more recent systematic global study showed that in 2017, 1 in 5 (20%) homicides were perpetrated by an intimate or another family member.<sup>83</sup> The same study showed that, of all murdered women and girls, 34% were killed by their partners.<sup>84</sup> Other local studies have shown that the percentage of males killed by an intimate partner does not surpass 5%.<sup>85</sup> In practice, this means that intimate partner violence disproportionately affects women, leading to significantly higher rates of female homicide by a partner compared to men.

However, the situation is particularly grim in the American continent, where the incidence of women being murdered by their intimate partners has surged compared to the global trend of intimate partner homicides. In these countries nearly half of all female

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<sup>81</sup> Heidi Stockl et al., *The global prevalence of intimate partner homicide: A systematic review*, 382 THE LANCET 859, 863 (1993).

<sup>82</sup> *Id.*

<sup>83</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 71, at 11.

<sup>84</sup> *Id.* at 17.

<sup>85</sup> BUREAU OF JUSTICE STATISTICS, HOMICIDE TRENDS IN THE UNITED STATES 1980–2008 4 (2011), <https://bjs.ojp.gov/content/pub/pdf/htus8008.pdf>. See also: BUREAU OF JUSTICE STATISTICS, FEMALE VICTIMS OF VIOLENCE 4 (2009), [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://bjs.ojp.gov/content/pub/pdf/fvv.pdf](https://bjs.ojp.gov/content/pub/pdf/fvv.pdf); FISCALÍA NACIONAL DIVISIÓN DE ESTUDIOS, *supra* note 77, at 36. (Fiscalía Nacional informed in 2021 that between the years 2016 and 2020, 49,2% of all murdered women were killed in a domestic violence context, whereas only 6,6% of all murdered men were killed in that scenario).

homicides were perpetrated by an intimate partner. In the USA, between 2003–2014, over half of all female homicides (55.3%) for which circumstances were known, were related to intimate partner violence.<sup>86</sup> According to the Gender Equality Observatory for Latin America and the Caribbean, a similar ratio is reached in most Latin American countries, where 2 out of 3 femicides (66.6%) occur in the context of relationships between partners or ex-partners.<sup>87</sup> In Chile, for the year 2019, 46.2% of female homicides were killed by their partner or ex-intimate partner.<sup>88</sup> In Argentina, for the year 2019, this percentage reached 44%.<sup>89</sup> In Mexico, the data is unclear, given that only 3% of female murders could identify the relationship or link between the victim and the aggressor.<sup>90</sup> However, of the

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<sup>86</sup> Emiko Petrosky et al., *Racial and Ethnic Differences In Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014*, 66 MORBIDITY & MORTALITY WKLY. REP., 741, 743 (2017). See also: Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 AM. J. OF PUB. HEALTH, 1089, 1089 (2003).

<sup>87</sup> Gender Equality Observatory for Latin America and the Caribbean, *Women's deaths at the hands of their intimate partner or former partner*, <https://oig.cepal.org/en/indicators/womens-deaths-hands-their-intimate-partner-or-former-partner> (last visited Mar. 10, 2025). See also: Jacquelyn C Campbell et al., *Intimate partner homicide: review and implications of research and policy*, 8 TRAUMA, VIOLENCE, & ABUSE 3, 246 (2007).

<sup>88</sup> Datosmacro, *Chile - Homicidios Intencionados*, <https://datosmacro.expansion.com/demografia/homicidios/chile> (last visited Mar. 26, 2025) (Datosmacro informed that the total number of murdered women in 2022 was 146); Barbara Haas, *43 consumados y más de 300 frustrados: qué dicen las últimas cifras de femicidios en Chile*, BIOBIO CHILE (March 08, 2025), <https://www.biobiochile.cl/noticias/servicios/explicado/2025/03/08/43-consumados-y-mas-de-300-frustrados-que-dicen-las-ultimas-cifras-de-femicidios-en-chile.shtml>.

<sup>89</sup> Datosmacro, *Argentina - Homicidios Intencionados*, <https://datosmacro.expansion.com/demografia/homicidios/argentina> (last visited Mar. 26, 2025) (Datosmacro informed that 400 intentional murders 2019 of women); CORTE SUPREMA DE JUSTICIA DE ARGENTINA, RESUMEN REGISTRO NACIONAL DE FEMICIDIOS DE LA JUSTICIA ARGENTINA, 5 (2019), [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.csjn.gov.ar/omrecopilacion/docs/resumen2019\\_fem.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.csjn.gov.ar/omrecopilacion/docs/resumen2019_fem.pdf) (In 2019, 90% of the direct victims of femicide had a previous relationship with the active subjects: In 66% of the cases, the femicides were committed by active subjects who were probably a relationship of partner (113 cases) or ex-partner (66 cases) with the direct victims. In 10% they were relatives and 14% have another type of relationship. Only 7% were unknown people for the victims. Information on this variable could not be obtained in 3% of cases).

<sup>90</sup> Juan Pablo Becerra-Acosta, *Por la pareja y en casa, 40% de feminicidios*, MILENIO (September 04, 2019), <https://www.milenio.com/policia/feminicidios-mexico-40-ciento-pareja-casa>.

cases in which this relationship was identified, 40% of female homicides, the perpetrator was a partner or ex-partner.<sup>91</sup>

Regarding the second indicator – the proportion of men versus women as victims and perpetrators in intimate partner homicides – a closer examination reveals the persistent disproportionate victimization of women in these killings, with a ratio of 5:1 in the representation of women and men in this type of killing.<sup>92</sup> According to the 2017 U.N. global study on homicide, a notable disparity exists in the shares of male and female victims, particularly in homicides perpetrated exclusively by an intimate partner: 82% of the victims were female, while 18% were male.<sup>93</sup> Through proxies,<sup>94</sup> we can find the same proportion is present in some of the countries object of this investigation, such as the USA<sup>95</sup> and Chile.<sup>96</sup> However, this data was not available for Argentina and Mexico.

Cases where these roles are reversed are not common but do exist, constituting a small proportion, approximately 16%, of the total intimate partner homicides. This dissertation focuses on these last cases, given that even though they represent a small

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<sup>91</sup> *Id.*

<sup>92</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 71, at 14-15.

<sup>93</sup> *Id.* at 18.

<sup>94</sup> U.S. DEPARTMENT OF JUSTICE, INTIMATE PARTNER VIOLENCE: ATTRIBUTES OF VICTIMIZATION, 1993–2011 3 (2013) <https://bjs.ojp.gov/content/pub/pdf/ipvav9311.pdf>

<sup>95</sup> FBI, Expanded Homicide Data Table 10 Murder Circumstances, by relationship, 1 (2019) <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/expanded-homicide-data-table-10.xls> (A similar ratio can be appreciated in some countries' object of study. In the USA, for the year 2019, using the criteria of the relationship between the offender and the victim, the ratio between wife and girlfriends murdered versus the husband and boyfriend murdered is approximately also 5:1. Considering that the number of wives murdered was 482, the number of girlfriends murdered was 505, husbands murdered was 85, and the number of boyfriends murdered was 187).

<sup>96</sup> MINISTERIO PUBLICO, BOLETÍN ESTADÍSTICO ANUAL ENERO - DICIEMBRE 2020 53 (2021) <http://www.fiscaliadechile.cl/Fiscalia/estadisticas/index.do> (According to the Public Ministry, in 2020, Chile presented approximately the same ratio when comparing the representation of men and female victims in homicide and femicide perpetrated in a domestic violence context).

number, they are relevant because they stem from domestic and intimate partner violence—pervasive forms of violence that primarily affect women and perpetuate the phenomenon of violence against them. The problem is exacerbated even more when these women enter the criminal system for killing their abusers, and they are judged in a system historically designed by and for men. Thus, on top of suffering abuse from their intimate partners, then they suffer the misunderstanding of the criminal justice system.

### **1.3. Unveiling the uncommon: Understanding why women kill their intimate partners**

#### **1.3.1 Common contexts and motives in which women kill intimate partners**

When we talk of context, we refer to the scenario in which women kill their abusers. Intimate partner deaths typically do not arise from casual or impulsive actions but rather stem from a preceding gender-related violence context.<sup>97</sup> Repeated victimization of the female partner by the male partner is considered a high-risk factor for a lethal outcome for both the abused woman and the abusive male.<sup>98</sup> Thus, the context of domestic violence emerges as one of the main factors contributing to intimate partner homicide.

The findings of several studies indicate that domestic violence leads to female-perpetrated homicides of male partners. For instance, Block's study, published in 2003, showed that abused women who killed their partners had experienced more severe and

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<sup>97</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 71, at 11. See also: MARIEKE LIEM AND FRANS KOENRAADT, DOMESTIC HOMICIDE: PATTERNS AND DYNAMICS 74-75 (2018).

<sup>98</sup> Carolyn Block and Antigone Christakos, *Intimate Partner Homicide in Chicago Over 29 Years*, 41 CRIME & DELINQ. 496, 520–521 (1995).

increased violence than other abused women.<sup>99</sup> Another study performed by Campbell in 1992 showed that 79% of the sample cases in which female-perpetrated homicides of a current or estranged husband or boyfriend, male victims had beaten their female partners.<sup>100</sup> A review of police records by Chimbos in 1978 on intimate partner homicides found that most women who killed their partners were beaten by them.<sup>101</sup> Finally, an investigation conducted by the University of Florida showed that most women who killed their husbands only did it after being subjected to prolonged physical or verbal abuse.<sup>102</sup> All these studies show one thing: a context of domestic violence in which the woman is constantly victimized is the setting where they kill their male intimate partners.

This contextual backdrop is intimately intertwined with the motivations driving women to resort to lethal actions against their significant others. Researchers have found evidence suggesting that the main reasons women murder their male partners are due to self-defense, retaliation, or desperation after years of victimization.<sup>103</sup> Several studies have shown that self-defense is the most common motivation for a woman to kill their partner. A study by Holly Maguigan showed that 75% of these cases involve situations where a battered woman killed her significant other during an ongoing attack or under an imminent

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<sup>99</sup> Carolyn Rebecca Block, *How Can Practitioners Help an Abused Woman Lower Her Risk of Death?*, 250 NIJ J. 4, 7 (2003), <https://www.ojp.gov/pdffiles1/jr000250c.pdf> (last visited April 04, 2025).

<sup>100</sup> J. Campbell, *If I can't have you, no one can: Power and control in homicide of female partners*, in FEMICIDE: THE POLITICS OF WOMAN KILLING 99, 109 (J. Radford et al. eds., 1992).

<sup>101</sup> PETER D. CHIMBOS, MARITAL VIOLENCE: A STUDY OF INTERSPOUSE HOMICIDE 49 (1978), cited in Geris Serran & Philip Firestone, Intimate Partner Homicide: A Review of the Male Proprietariness and the Self-Defense Theories,

<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.991.396&rep=rep1&type=pdf>.

<sup>102</sup> Ann Jones, *When Battered Women Fight Back*, 9 Barrister 12, 15 (1982).

<sup>103</sup> BRENDA RUSSELL, BATTERED WOMAN SYNDROME AS A LEGAL DEFENSE 17 (2010).

threat.<sup>104</sup> Also, an investigation conducted by Marvin Wolfgang showed that in at least 60% of the cases where husbands were killed by their wives, the victims had precipitated their deaths by being the first to use physical force or by showing and using a deadly weapon or by striking a blow.<sup>105</sup> Similar results were presented by Weizmann and his colleagues' research, according to which the likelihood of intimate partner homicide committed by females increases in three circumstances: the victim being intoxicated at the time of the offense, self-defense, and quarrels due to intoxication.<sup>106</sup> The main conclusion of these studies is that women's immediate motivation for these killings is the need to protect themselves from further attack.

### **1.3.2 Battered Woman Syndrome and its general acceptance among courts**

One question often raised by scholars, judges, and juries is why these women did not leave the abusive relationship. In other words, why wait until the situation gets unbearable and resort to lethal force instead of exiting the abuse? The psychological leading theory that addresses these inquiries, explaining the mindset and behavior of women who are victims of domestic abuse, is Battered Woman Syndrome.

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<sup>104</sup> Holly Maguigan, *Battered Women and Self – Defense: Myths and Misconceptions in Current Reform Proposals*, in DEFENDING BATTERED WOMEN IN CRIMINAL CASES 395 (AMERICAN BAR ASSOCIATION AND CALIFORNIA COALITION FOR BATTERED WOMEN IN PRISON ED. 1993)

<sup>105</sup> MARVIN WOLFGANG, PATTERNS IN CRIMINAL HOMICIDE 259-260 (1975) (The author found that of the forty-seven husbands killed by their wives, twenty-eight of the victims precipitated their own deaths).

<sup>106</sup> Angela Browne, *Assault and homicide at home: When battered women kill*, in ADVANCES IN APPLIED SOCIAL PSYCHOLOGY 57, 57-79 (M. J. Saks & L. Saxe Eds., 1986). See also: Ghitta Weizmann-Henelius et al., Gender-Specific Risk Factors for Intimate Partner Homicide: A Nationwide Register-Based Study, 27 J. of Interpersonal Violence 1519, 1530 (2012); Patrick A. Langan & John M. Dawson, *Spouse Murder Defendants in Large Urban Counties: Executive Summary* (1995), <https://www.ojp.gov/library/publications/spouse-murder-defendants-large-urban-counties-executive-summary> (last visited April 04, 2025).

### 1.3.2.1 The Battered Woman Syndrome Theory

Along with the battered women movement in the 1970s,<sup>107</sup> and to help battered women who have killed their intimate partner, Lenore E. Walker developed the theory of Battered Woman Syndrome.<sup>108</sup> She initially defined this syndrome as "a pattern of signs and symptoms that have been found to occur after a woman has been physically, sexually and/or psychologically abused in an intimate relationship, when the partner (usually, but not always, a man) exerted power and control over the woman to coerce her into doing whatever he wanted without regard her rights or feelings."<sup>109</sup>

Walker stated the syndrome is identified by a scientific analysis-based concept defined by seven groups of criteria: (1) reexperiencing the trauma events intrusively, (2) high levels of arousal and anxiety, (3) high levels of avoidance and numbing of emotions, (4) cognitive difficulties, (5) disruption in interpersonal relationships, (6) physical health and body image problems and (7) sexual and intimacy issues.<sup>110</sup> The first four criteria correspond to the criteria for Post-Traumatic Stress Disorder (PTSD).<sup>111</sup> Consequently, the syndrome is considered a subcategory of this disorder,<sup>112</sup> a diagnostic category enumerated

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<sup>107</sup> SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT 29-34 (1982) (The Battered Woman Movement took strength in the 1970s in the USA as a result of the changing political consciousness, organizing activity of women and the feminist movement. These social changes allowed women to recognized themselves as battered and gave them self-awareness regarding this topic).

<sup>108</sup> Lenore E. Walker et al., *The Battered Woman Syndrome* (paper presented at the AM. PSYCHOL. ASS'N CONVENTION, Washington, D.C., Sept. 1976). See also: Lenore E. Walker, *Who Are The Battered Women?*, 2 FRONTIERS: A J. OF WOMEN STUD. 52, 56-57 (1977).

<sup>109</sup> LENORE E. WALKER, THE BATTERED WOMAN SYNDROME 54 (4th ed. 2016).

<sup>110</sup> *Id.* at 54-55.

<sup>111</sup> *Id.* at 49.

<sup>112</sup> *Id.* at 77.

in the Diagnostic and Statistical Manual of Mental Disorders V (DSM-5).<sup>113</sup> The additional three criteria of Battered Woman Syndrome are present in victims of intimate partner violence (IPV).<sup>114</sup>

Along with these criteria, there are two elements that characterize the Battered Woman Syndrome, Learned Helplessness and the cycle of violence.<sup>115</sup>

#### **a) Learned Helplessness**

As in the initial version of her Battered Woman Syndrome theory, Walker still sustains that Learned Helplessness provides a "research-based theory" to explain why battered women do not attempt to free themselves from abusive relationships and their circle of violence.<sup>116</sup>

The Learned Helplessness theory was proposed and developed by Martin Seligman, who performed experiments on dogs to analyze their response to electroshocks.<sup>117</sup> He observed that the dogs who received shocks eventually did not try to escape them anymore or respond to the negative stimuli, given that the canines learned that whatever they did, they could not avoid the electroshock.<sup>118</sup> In this scenario, Learned Helplessness results from an inescapable shock applied to the dogs, in which the canines learned that their

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<sup>113</sup> AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5<sup>th</sup> ed. 2013).

<sup>114</sup> WALKER, *supra* note 109, at 49.

<sup>115</sup> LENORE WALKER, THE BATTERED WOMAN 43-70 (1979).

<sup>116</sup> WALKER, *supra* note 109, at 76-77.

<sup>117</sup> Martin E. Seligman and Steven F. Maier, *Failure to Escape Traumatic Shock*, 74 J. OF EXPERIMENTAL PSYCH. 1, 2-5 (1967); J. Bruce Overmier and Martin E. Seligman, *Effects of Inescapable Shock Upon Subsequent Escape and Avoidance Responding*, 63 J. OF COMPAR. & PHYSIOLOGICAL PSYCH 28, 28 (1967).

<sup>118</sup> J. Bruce Overmier and Martin E. Seligman, *supra* note 117, at 28-33.



response is independent of shock termination, and therefore, the probability for the dogs to initiate a response during the shock decreased over time.<sup>119</sup> In simple words, an organism will not try to escape a negative situation if it is taught that whatever response it has to adverse stimuli will not change the result; instead it becomes helpless.

By the end of the 1970s, Lenore Walker applied this theory to the Battered Woman Syndrome, explaining that repeated battering diminishes the woman's motivation to respond.<sup>120</sup> In Walker's words, "a woman who has learned to expect battering as a way of life has learned that they cannot influence its occurrence."<sup>121</sup> Under this scope, the perpetuation of the battered women's process of victimization provokes in these victims a psychological paralysis.<sup>122</sup> Women do not flee the abuse situation because they are acting from the belief that they are helpless, and this perception becomes a reality, which makes them "passive, submissive, and helpless."<sup>123</sup> Helplessness also debilitates the ability of these women to solve problems, which reduces the responses a battered woman has to the battering situation, becoming "blind" to her options.<sup>124</sup>

Applying Learned Helplessness to battered women shows how the victimization process occurs. First, repetitive beatings reduce the woman's impulse to respond.<sup>125</sup> Second, her ability to perceive success is impaired, making her believe that favorable

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<sup>119</sup> *Id.* 33 (According to Overmier and Seligman, learned helplessness results "from receiving aversive stimuli in a situation in which all instrumental responses or attempts to respond occur in the presence of the aversive stimuli and are of no avail in eliminating or reducing the severity of the trauma.")

<sup>120</sup> WALKER, *supra* note 115, at 45-54.

<sup>121</sup> *Id.*, at 48.

<sup>122</sup> *Id.*, at 43.

<sup>123</sup> *Id.*, at 47-48.

<sup>124</sup> *Id.*, at 49-50.

<sup>125</sup> *Id.*

outcomes of her actions are impossible and that nothing she does could change any outcome.<sup>126</sup> Finally, her emotional well-being is compromised, making her prone to depression and anxiety.<sup>127</sup>

Walker still sustains that the Learned Helplessness theory is the most suited to explain why battered women do not leave abusive relationships.<sup>128</sup> In 2016, she reiterated that the concept of helplessness is not the center of the Battered Woman Syndrome theory but the idea that aleatory negative behavior fosters the belief that the any efforts to stop the abuse will not succeed.<sup>129</sup> For this reason, they develop coping strategies instead of escaping skills.<sup>130</sup>

### **b) Cycle of Violence**

The cycle of violence refers to a model of the battering cycle, which helps explain how women get victimized, fall into Learned Helplessness, and do not attempt to leave the abusive relationship.<sup>131</sup> There are three phases associated with a recurring battering cycle, in which duration and pattern might vary from couple to couple and in the same couple over time.<sup>132</sup>

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<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*, at 86.

<sup>129</sup> *Id.* at 87.

<sup>130</sup> *Id.*

<sup>131</sup> WALKER, *supra* note 115, at 55.

<sup>132</sup> *Id.*

The initial phase, known as "tension-building," is marked by a gradual escalation of tension that causes increased friction.<sup>133</sup> This stage of domestic abuse involves a series of escalating behaviors and coping mechanisms, such as minor battering incidents, the woman employing various techniques that have previously helped to calm the batterer; taking on part of the responsibility for the abuse, and legitimizing his actions towards her; denying her anger and, in some cases, believing she deserves the abuse; maximizing the harm inflicted upon her and may attribute the abuser's behavior to external factors, and further distancing herself from the reality of the abuse and perpetuating the cycle.<sup>134</sup>

After each minor battering incident, there is a residual tension that decreases the control the woman has over the situation through her coping mechanisms, and eventually, she withdraws from the batterer, which creates an unbearable tension between the partners and leads them into the next phase.<sup>135</sup>

The second phase, known as the "acute battering incident," represents a critical escalation in the cycle of domestic abuse, marked by an uncontrollable discharge of tensions that have built up during the first phase.<sup>136</sup> This phase is characterized by the presence of more severe and less controlled incidents than those in the initial phase, with the batterer's rage becoming uncontrollable and aimed at teaching the woman a lesson through beating, stopping only when he perceives the lesson has been learned; instances where the woman may purposefully provoke the acute battering incident as a means to

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<sup>133</sup> WALKER, *supra* note 109, at 95.

<sup>134</sup> LENORE E. WALKER, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* 42-43 (1989).

<sup>135</sup> WALKER, *supra* note 115, at 57-59.

<sup>136</sup> WALKER, *supra* note 115, at 59.

escape the unbearable terror, anger, and anxiety of the first phase, seeking to hasten its transition; this phase is typically shorter than the others, lasting anywhere from 2 to 24 hours, though it can extend beyond this duration; the woman's ability to predict these acute battering incidents is limited, leading up to the event, she may experience significant physical and psychological distress, including anxiety, depression, and headaches, and; the violence during this phase is excessively brutal, often resulting in severe injuries.<sup>137</sup>

The third phase is the "kindness and contrite loving behavior," characterized by a temporary shift in the batterer's conduct.<sup>138</sup> This phase is marked by the batterer expressing remorse for the harm caused, begging for forgiveness, and making promises not to harm the woman again; he may believe that having "taught her a lesson," there will be no need for further violence; the woman, on her part, might see this as an opportunity to help the batterer change, believing in his need for help and her role in facilitating it; the batterer may buy gifts and make grand gestures in an attempt to prove his good intentions, offering the woman a glimpse of the loving relationship she initially dreamed of—a love that conquers all.<sup>139</sup> It is in this phase that she imagines the abuser as the man of her dreams, and it is here where the couple gets emotionally interdependent, they feel they do not function without the other.<sup>140</sup>

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<sup>137</sup> WALKER, *supra* note 115, at 59-63.

<sup>138</sup> WALKER, *supra* note 115, at 65-68. WALKER, *supra* note 134, at 43-45 (1989); WALKER, *supra* note 109, at 94.

<sup>139</sup> See *supra* note 138.

<sup>140</sup> WALKER, *supra* note 134, at 45.

### 1.3.2.2 The general acceptance of Battered Woman Syndrome theory

Bess Rothenberg conducted a study in 2002 to assess the levels of cultural authority of five of the theories to explain why women remain in abusive relationships.

The explanations analyzed were:<sup>141</sup>

(i) Snell et al.'s Functionalist Theory: This theory posits that abusive relationships serve a functional purpose, claiming that men beat their intimate partners to regain control over aggressive, masculine, frigid, and masochistic women. The violent dynamics are thought to maintain an equilibrium in the relationship, which is disrupted when the women seek outside help.

(ii) Lenore Walker's Battered Woman Syndrome Theory: Walker argues that women suffer from "learned helplessness," becoming passive, submissive and helpless. In addition, these women experience a cycle of violence that traps them in submission, further reinforced by societal indifference and failed institutional support.

(iii) Gondolf and Fisher's Survivor Theory: This theory portrays women as active survivors who try to escape abuse but are often thwarted by the failure of external help systems. Women do not stay out of helplessness but because of unmet needs for support.

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<sup>141</sup> Bess Rothenberg, *The Success Of The BWS: An Analysis Of How Cultural Arguments Succeed* 17, no. 1, SOCIOLOGICAL FORUM 81, 83-86 (2002).

(iv) Straus et al.'s Mutual Abuse Theory: Based on a nationwide study, this theory suggests that abusive relationships continue because both partners rely on violence. It also highlights that, in some instances, men are victims too.

(v) Baker's Resistance to Cultural Script Theory: Baker argues that women who stay in abusive relationships resist societal expectations to leave. These women make an active, reasoned choice to remain as a form of independence, even though this often results in further abuse. This theory frames staying as an assertion of control over their own lives.

To measure cultural authority, Rothenberg surveyed academia, the media, and the government and judicial systems.<sup>142</sup> Rothenberg evaluated her findings using Schudson's framework, which posits that for an argument to gain cultural authority, it must satisfy five key criteria: resonance with broader social and cultural patterns, retrievability, rhetorical force, resolution, and institutional retention.<sup>143</sup>

The study concluded that Lenore Walker's Battered Woman Syndrome has become the most recognized explanation for why abusive relationships continue because it accomplishes the criteria for obtaining cultural authority.<sup>144</sup> First, it has a strong cultural

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<sup>142</sup> *Id.* at 88.

<sup>143</sup> *Id.* at 91-96 (The author describes Michael Schudson's model in "How Culture Works," defining each of its criteria as follows: "Resonance, he argues, is both the relevance and utility of a cultural object for an audience and is a function not only of the content of a cultural argument but also of its relation to the larger society. (...) retrievability is the need to make an argument accessible to the public if it is to be accepted. Rhetorical force is the attractive "packaging" that makes an argument both memorable and powerful to its audience. Resolution is a directive for action that makes clear what needs to be done given the particular understanding of the social phenomenon. Finally, Schudson notes the importance of institutional retention in which an argument is legitimized through its incorporation into a social institution"). See also: Michael Schudson, *How Culture Works: Perspectives From Media Studies On the Efficacy of Symbols*, 18 THEORY & SOC'Y, 153 (1989).

<sup>144</sup> Rothenberg, *supra* note 141, at 96.

resonance, evidenced by how Walker stresses how the abuser, society, and system have contributed to these women's victimization, aligning with larger societal themes, allowing it to resonate deeply with public and institutional perceptions of domestic violence.<sup>145</sup> Second, this theory is retrievable, given it is culturally available to a wide audience thanks to Waker's ability to market her argument.<sup>146</sup> Third, Lenore Walker's theory attained rhetorical force by packaging the theory as a "syndrome" and including terms such as "learned helplessness" and "cycle theory of violence", which created clear markers that distinguished Walker's theory from competing arguments, making it both memorable and powerful in public discourse.<sup>147</sup> In terms of resolution, Walker advocates for individual therapy as a key solution to help battered women leave abusive relationships while also acknowledging broader societal issues that contribute to domestic violence.<sup>148</sup> Finally, the theory gained institutional retention through its adoption in legal systems, where it was widely accepted as a legitimate argument in defense of battered women.<sup>149</sup>

While Battered Woman Syndrome has gained cultural authority, maintaining it is not guaranteed.<sup>150</sup> Rothenberg acknowledged that the syndrome has faced significant criticism, but these critiques have not been strong enough to diminish its acceptability.<sup>151</sup> Even when other arguments have gained strength over time, without the rhetorical force that the battered woman syndrome holds through its medicalization and individualization

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<sup>145</sup> *Id.* at 95.

<sup>146</sup> *Id.* at 96.

<sup>147</sup> *Id.* at 97.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 98.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 989.

of the issue, it remains uncertain whether they can achieve the same level of cultural authority.<sup>152</sup> As Rothenberg noted, “The syndrome may be facing criticism that could ultimately topple its power but, for now, it is still the most recognized, cited-by-name explanation for why abusive relationships continue.”<sup>153</sup>

### **1.3.2.3 Acceptance of Battered Woman Syndrome theory in law**

The spread of Battered Woman Syndrome has also found acceptance among legal operators such as judges, scholars, and lawyers in the USA, Chile, Argentina, and Mexico. In the USA, modern courts are very receptive to admitting evidence on Battered Woman Syndrome, and it has achieved such widespread acceptance that some courts hold that an attorney’s failure to pursue a “BWS defense” constitutes ineffective assistance of counsel.<sup>154</sup> Similarly, in Argentina, Chile, and Mexico, there is also a predominance of the use of expert testimony on Battered Woman Syndrome as a foundation for affirmative defenses, either by using the syndrome itself or referring to the core elements –learned helplessness theory and the cycle of violence–, which will be analyzed in depth as one of the problems this dissertation addresses in the next chapter.

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<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> D. KELLY WEISBERG, DOMESTIC VIOLENCE LAW 250 (2019).



## **2. Identifying the main character: Women Survivors of Battering**

### **2.1. Reclaiming identity through naming: Moving from the "battered woman" concept towards a less stigmatizing terminology**

Naming is not merely a linguistic choice but a fundamental act that not only shapes the qualities and values attributed to what is named but is also a form of social message.

According to Barbara Du Bois, the act of naming holds a dual power: Naming shapes the quality and value of what is named while simultaneously denying reality and value to what remains unnamed or not uttered.<sup>155</sup> That which lacks a name—something for which we have no words or concepts—becomes silent and invisible, unable to influence or transform our awareness, understanding, or perspective.<sup>156</sup>

The same is applicable to naming women's experiences. Until the appearance of woman-centered scholarship, women's lives and experiences were invisible, given that male science and scholarship have shaped dominant world views, excluding females.<sup>157</sup> Thus, the primary goal of feminist social science and scholarship is to develop theories rooted in women's genuine experiences and visions.<sup>158</sup> In this regard, naming plays a

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<sup>155</sup> Barbara Du Bois, *Passionate Scholarship-Notes on Values, Knowing and Method in Feminist Social Science*, in THEORIES OF WOMEN'S STUDIES 105, 108 (Gloria Bowles & Renate Klein eds., 1983).

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

crucial role in making women's experiences comprehensible to themselves and the legal system, facilitating recognition and validation when such experiences arise.<sup>159</sup>

Elizabeth Schneider also highlighted the importance of naming women's experiences, considering it as a form of social claiming –whether the subject demands identity, rights, or experiences– “the names that are used define the claims that are made.”<sup>160</sup> At the same time, the meaning of the name sends a social message that determines its impact.<sup>161</sup>

Taking these ideas into account, precision in naming is essential when identifying these women, as it ensures their experiences are fully recognized and valued. Additionally, the concept chosen must convey a clear and powerful social message, defining the claims made and their impact. The meaning behind the name must also be relatable to women who encounter themselves in that same situation.

A common term to refer to victims of intimate partner violence is "battered woman."<sup>162</sup> In Spanish, the naming are “mujeres maltratadas”o “mujeres golpeadas.”<sup>163</sup>

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<sup>159</sup> Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1, 68 (1991) (In this case, the author was referring to naming separation assault and how its name has the potential to change consciousness in a similar way to the concept of “date rape”).

<sup>160</sup> ELIZABETH SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* 46 (2000).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 60.

<sup>163</sup> The terminology “mujeres maltratadas” is common in literature. See f.e.: Mexico: Carolina Agoff et al., *Perspectivas de las mujeres maltratadas sobre la violencia de pareja en México*, 48 SALUD PÚBLICA MÉX. S307 (2006); Ricardo Rodríguez Luna and Encarna Bodelón González, *Mujeres maltratadas en los juzgados: la etnografía como método para entender el derecho "en acción"*, 24 REV. ANTROPOL. SOC. 105 (2015); Pablo Méndez-Hernández et al., *Violencia contra la mujer: conocimiento y actitud del personal médico del Instituto Mexicano del Seguro Social, Morelos, México*, 45 SALUD PÚBLICA MÉX. 472 (2003). Chile: MARÍA ANGÉLICA JIMÉNEZ ALLENDES ET AL., *VIOLENCIA CONTRA LA PAREJA EN LA JUSTICIA PENAL: MAYORES PENAS, MAYOR VIOLENCIA* (2011); Catalina de los Ángeles Sierra Campos, *Aproximación a la defensa preventiva en el caso del tirano familiar: ¿Necesitamos una teoría del control coercitivo?*, 28 REV. IUS ET PRAXIS 160

However, this terminology –in its English version and Spanish– is heavily criticized for several reasons.

First, according to Marta Mahoney, the term has a restrictive meaning, given that it confines women's identities and total life experiences to their experience of abuse –a “battered woman” can be no more than a woman who has been battered– leading many to reject this label for themselves, and, most importantly, to identify with it given they feel they are so much more than their experience, but active agents in seeking help.<sup>164</sup> Critics of reductionism have also come from Latin America. For example, in Chile, Sheila Fernández has argued that the label of “battered woman” imposes a one-dimensional definition and reduces the totality of her life experience.<sup>165</sup> Thus, there is a risk of identifying the woman solely through her experience of abuse, as if that condition exhausted her identity completely.

Second, Mahoney has also pointed out that the terminology “Battered Women” bears negative connotations, as it inaccurately portrays the women as the problem, failing to encompass the full range and complexity of their experiences beyond the abuse.<sup>166</sup> In other words, the term “battered woman” shifts focus to the woman in a violent relationship

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(2022). Argentina: Mariana Carolina Miracco et al., *Estrategias de afrontamiento en mujeres maltratadas: la percepción del proceso por parte de las mujeres*, 17(1–2) ANU. INVESTIG. - FAC. PSICOL., UNIV. B. AIRES 59 (2010).

<sup>164</sup> Mahoney, *supra* note 159, at 24–28. See also: SCHNEIDER, *supra* note 160, at 61; SCHECHTER, *supra* note 107, at 252.

<sup>165</sup> Sheila Fernández, *Crítica a los conceptos de maltrato a la mujer desde la epistemología feminista*, 2 REVISTA FARO 26 120, 136–137 (2017). See also: Barbijaputa (seud.), “Yo no soy una mujer maltratada”, EL DIARIO.ES (January 29, 2019), [https://www.eldiario.es/barbijaputa/violencia-de-genero-barbijaputa-feminismo\\_132\\_1720573.html#:~:text=Las%20camp%C3%B1as%20para%20prevenir%20la,la%20soluci%C3%B3n%20para%20C3%A9l%20E2%80%9Ccambi%C3%A9%20E2%80%9D](https://www.eldiario.es/barbijaputa/violencia-de-genero-barbijaputa-feminismo_132_1720573.html#:~:text=Las%20camp%C3%B1as%20para%20prevenir%20la,la%20soluci%C3%B3n%20para%20C3%A9l%20E2%80%9Ccambi%C3%A9%20E2%80%9D)

<sup>166</sup> Mahoney, *supra* note 159, at 24–25. See also: Fernández, *supra* note 165, at 136–137.

rather than the perpetrator or the process of battering itself, inadvertently suggesting that the woman is the problem.<sup>167</sup> Similarly, Sheila Fernández has stated that the label shifts the focus of the issue to the woman herself rather than her experiences.<sup>168</sup>

Third, Martha Mahoney and Elizabeth Schneider have stated that the resistance to the term "battered woman" stems not only from a state of denial among these women but also because its stereotypical connotations clash with their self-perceptions, failing to mirror an accurate self-assessment.<sup>169</sup> The dynamic interplay of negative denial and positive self-respect creates a lethal combination, compelling women to dismiss any depiction that insinuates degradation and helplessness, which the term "battered woman" inherently embodies.<sup>170</sup> This is also tied to the construction of a profile of a battered woman: over 50 years old, a housewife with children, silenced by fear, marked by black eyes, and portrayed as endlessly patient and kind—an image no woman wishes to identify.<sup>171</sup>

Fourth, the label battered woman also reinforces images of these women being weak, defeated, and pathologized—often associated with conditions such as battered woman syndrome.<sup>172</sup> The term “battered woman” operates as a label that further entrenches the notion of women as passive subjects, relying on frameworks like battered woman

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<sup>167</sup> Mahoney, *supra* note 159, at 25.

<sup>168</sup> Fernández, *supra* note 165, at 136–137.

<sup>169</sup> Mahoney, *supra* note 159, at 25. See also: SCHNEIDER, *supra* note 160, at 61 (2000).

<sup>170</sup> Mahoney, *supra* note 159, at 25; Lumidla Lopez, "No soy víctima, soy sobreviviente": la historia de "la seño Noe", la mujer que fue golpeada y prendida fuego por su pareja, ROSARIO3 (June 04, 2022), <https://www.rosario3.com/informaciongeneral/No-soy-victima-soy-sobreviviente-la-historia-de-la-seno-Noe-la-mujer-que-fue-golpeada-y-prendida-fuego-por-su-pareja-20220602-0052.html>

<sup>171</sup> Barbijaputa, *supra* note 165.

<sup>172</sup> Fernández, *supra* note 165, at 137.

syndrome to explain their experiences.<sup>173</sup> In doing so, domestic violence is objectified, and a medicalized stigma is imposed, depicting women as inherently damaged.<sup>174</sup>

Other alternatives have been proposed, such as "battered spouse,"<sup>175</sup> "battered wife,"<sup>176</sup> "survivor,"<sup>177</sup> and "a woman who has or had a relationship with a battering man."<sup>178</sup> However, each suggestion comes with its problems, rendering them unsuitable.

The first two terms contain negative implications that strongly advise their use. The term "battered spouse" has been criticized because it minimizes or denies the experience of violence through less woman-focused terminology.<sup>179</sup> In this sense, this term can potentially overshadow women-specific experiences of violence by using gender-neutral language. A second criticism, applicable to both terms, is that they circumscribe the violence only in the realm of marriage,<sup>180</sup> excluding women who suffer abuse from

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<sup>173</sup> Olga G. Brunatti, *La judicialización de los conflictos intrafamiliares en el fuero penal bonaerense. Modelos interpretativos de violencia familiar y nociones nativas de la categoría víctima*, in ANTROPOLOGÍA, VIOLENCIA Y JUSTICIA: REPENSANDO MATRICES DE LA SOCIABILIDAD CONTEMPORÁNEA EN EL CAMPO DEL GÉNERO Y DE LA FAMILIA 125, 145 (Theophilos Rifiotis & Natalia Castelnuovo Eds., 2011);

<sup>174</sup> Ana Carcedo Cabañas, *Diagnósticos y valoraciones psicológicas de las mujeres maltratadas: los riesgos revictimizantes*, 21 MED. LEG. COSTA RICA 71 (2004), [https://www.scielo.sa.cr/scielo.php?script=sci\\_arttext&pid=S1409-00152004000200009](https://www.scielo.sa.cr/scielo.php?script=sci_arttext&pid=S1409-00152004000200009) (last visited Apr. 5, 2025).

<sup>175</sup> Gail Rodwan and Jeanice Dagher-Margosian, *Michigan Recognizes Battered Spouse Syndrome*, 72 MICH. B.J. 82, 82-97 (1993).

<sup>176</sup> Melva Jo Hendrix et al., *The Battered Wife*, 78 THE AMERICAN JOURNAL OF NURSING 4 650, 650-653 (1978).

<sup>177</sup> EDWARD GONDOLF AND ELLEN FISHER, BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS (1988). See also: LEE ANN HOFF, BATTERED WOMEN AS SURVIVORS (1990).

<sup>178</sup> SCHNEIDER, *supra* note 160, at 61; Asociación MUM, *Sobre Nosotras*, <https://asociacionmum.org/nosotras> (Last visited April 05, 2025).

<sup>179</sup> Mahoney, *supra* note 159, at 26.

<sup>180</sup> PATRICIA GAGNE, BATTERED WOMEN'S JUSTICE: THE MOVEMENT FOR CLEMENCY AND THE POLITICS OF SELF-DEFENSE 9-12 (1998) (These terms are probably related to the origin of women's abuse in the marriage, reflected on the fact that women were the property of their husbands, and for this reason, their husbands had the right to punish them physically. In this sense, wife battering would be the first stage that feminist focused their attention on regarding intimate partner violence in a domestic violence context against women). See

their partners outside this legal contract. Another critique of both concepts is that the behavior of their abuser defines these women, that is, it is the batterer's behavior that identifies them.<sup>181</sup>

The term “survivor” presents some advantages regarding the previous terms by highlighting these women’s agency, reshaping the battered woman’s image, emphasizing strength over weakness and agency over passivity.<sup>182</sup> However, as Jeniffer Dunn points out, calling battered women “survivors” while granting them agency may only shift responsibility and attention back to them as individuals and away from the social structures and forces that they must overcome.<sup>183</sup> In other words, it focuses only on the strength these women have and leaves out the experience of battering.

The fourth term suggested –a woman who has or had a relationship with a battering man– has the advantage of evoking the image of a woman who is a survivor of a relationship with a controlling man and that she exists independently of this relationship, rather than defining her by the behavior of her abuser.<sup>184</sup> However, this naming is not free of problems, given it puts a spotlight on the relationship the woman had with her abuser, and it overlooks the violence experience the woman has suffered.

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also: SCHNEIDER, *supra* note 160, at 65-66; VENESSA GARCIA & PATRICK M. MCMANIMON, *GENDERED JUSTICE: INTIMATE PARTNER VIOLENCE AND THE CRIMINAL JUSTICE SYSTEM* 23 (2011).

<sup>181</sup> SCHNEIDER, *supra* note 160, at 61.

<sup>182</sup> Jennifer Dunn, *Victims" and "survivors": Emerging Vocabularies of Motive for "battered Women Who Stay*, 75 *SOCIO. INQUIRY* 1, 17-21 (2005) (Analyzing the perspectives of several authors who portray battered women as survivors, this discussion emphasizes their agency, strategic decision-making, and resilience, challenging narratives that reduce them to passive victims).

<sup>183</sup> *Id.* at 23.

<sup>184</sup> SCHNEIDER, *supra* note 160, at 61.

The first concern about this terminology is that it highlights women's relationships above all else, making it a problematic terminology for two reasons. On the one hand, it depicts the relationship as if it is under the woman's absolute control, overwhelmingly skewing the balance between agency and victimhood towards the former.<sup>185</sup> On the other hand, highlighting the relationship implicitly questions the woman's choice to enter or remain in it in the same way that a "poisoned person" becomes "a person who drinks poison." While this distinction may seem nuanced, it subtly sheds blame onto the victim, suggesting she willingly chose the abusive relationship as if it is under her control and will to be in it. Numerous complex reasons may prevent a woman from leaving such a relationship, reasons often not apparent to outsiders.<sup>186</sup> In this sense, this naming provides a false suggestion of absolute agency for these women, which, in many cases, is unreal.

Second, this naming strips these women entirely of the violent experiences they have endured. At first sight, it indeed leaves the woman intact, and the behavior of the abuser does not define her. However, this comes at a price — the terminology suggests she merely had a relationship with a violent man, much as someone might have a relationship with a drug dealer, bank robber, or con artist. The term does not express that the violence happened to the woman in the same way as having a relationship with a con artist does not necessarily imply that he deceived the woman.

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<sup>185</sup> *Id.* at 76 (The phrase battered woman survivor is often used instead of victim, and along with this rhetorical change has come a developing literature concerning battered woman survivors. Many resource materials on battered woman now emphasize the strengths of but that woman who survives, protect themselves, and keep their families functioning).

<sup>186</sup> GONDOLF AND FISHER, *supra* note 177, at 11. See also: WALKER, *supra* note 115, at 42-54.

The issue with all the proposed alternative terms to "battered woman" is that they fail to recognize the significance of naming mentioned at the beginning of this section: capturing the relevant aspects of what is named. In other words, the image of the "passive victim" and the image of the "active survivor" reduce these women's experiences to one aspect.<sup>187</sup> As said, the terminology must embody the qualities and values of these women, convey a clear and powerful social message, and be relatable, meaning that women experiencing these situations must be able to identify with it. Thus, I suggest the term "woman survivor of battering".

I acknowledge that some authors reserve the survivor label for those women who have exited the abusive relationship and the label victim for those women still trapped in it.<sup>188</sup> For example, Romero-Sánchez et al. conducted an experiment addressing the effects of the labels "victim," "battered woman," and "survivor" on the perception of women who have experienced intimate partner violence in Spanish undergraduate students.<sup>189</sup>

The results showed that the term "survivor" evoked more positive associations than "victim" and "battered woman", which did not differ from each other.<sup>190</sup> Labels applied to women who have experienced violence, and found that the term "victim" was perceived as more appropriate than "survivor" by the participants.<sup>191</sup> A possible explanation for this is

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<sup>187</sup> Dunn, *supra* note 182, at 24.

<sup>188</sup> Mónica Romero-Sánchez et al., *Talking About 'Victims', 'Survivors' and 'Battered Women': How Labels Affect the Perception of Women Who Have Experienced Intimate Partner Violence*, 36 INT'L J. SOC. PSYCHOL. 30, 39-40 (2021).

<sup>189</sup> *Id.* at 30.

<sup>190</sup> *Id.* at 40.

<sup>191</sup> *Id.* at 39-40.



that the term “victim” is seen as more fitting because when a woman experiences violence, it is not perceived as clearly life-threatening, and consequently, observers may hesitate to see her as a survivor—especially if the abusive relationship is ongoing.<sup>192</sup>

However, this thesis proposes to apply the survivor terminology to all cases—even when the woman is still in a violent relationship. This is because the use of the term “battered woman” or “victim” conveys the idea that the woman is passive, helpless, or powerless, which may reinforce stereotypes and discourage women from identifying with that category. Moreover, these terms may be interpreted as a form of implicit consent or as an inability to act, when in fact many women develop strategies of resistance, protection of their children, and self-preservation within the context of violence.<sup>193</sup>

Most importantly, the term “survivor” should not be reserved solely for women who have successfully left an abusive relationship; rather, it must encompass all women who endure and navigate such relationships on a daily basis. These women are survivors not because of a singular, identifiable event, but because violence in abusive relationships is a chronic, ongoing phenomenon. Each day they remain alive within that context is a day they survive. This framing broadens our understanding of survivorship, shifting the focus from the endpoint—the moment of leaving—to the continuous process of resilience and endurance these women have during their relationships.

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<sup>192</sup> *Id.* at 40.

<sup>193</sup> Dunn, *supra* note 182, at 17-21.

The term "woman survivor of battering" also presents other advantages. First, this terminology captures the dichotomy of victim–agency,<sup>194</sup> presenting them as both victims of intimate partner violence and proactive agents without overly emphasizing one facet over the other. This eliminates the problem of the term "battered woman" that delimits her by the behavior of the abuser, defining these women only by their victimhood. Instead, the proposed term recognizes the experiences of domestic violence victims who become defendants. At the same time, it portrays them as survivors of these experiences, providing a more complete depiction of these women that recognizes their agency as a direct consequence of their victimhood.

The surviving element is essential because these women define themselves in this manner and are aware of their strength in enduring the abuse.<sup>195</sup> There is self–respect in this endurance, and an attempt to improve their situation needs recognition.<sup>196</sup> Yet, the inclusion of the word in their concept is a subtle but crucial detail, highlighting the resilience of these women who navigated a battering relationship, employing coping strategies to endure to stay alive in an abusive situation and tried their best to escape.

Second, the suggested terminology not only brings to light the plight of domestic violence victims, whose predicaments are a result of both the batterer's actions and the state's complicity through its failure to offer protection, but also emphasizes the systemic

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<sup>194</sup> Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 14 WOMEN'S RTS. L. REP. 213, 239 (1992) (The author points out the dichotomy of being agents and victim).

<sup>195</sup> GONDOLF AND FISHER, *supra* note 177, at 16 (1988).

<sup>196</sup> *Id.*

neglect faced by a battered woman, battered child, and battered elder alike, highlighting them as manifestations of the state's inadequacy to prevent ongoing abuse.<sup>197</sup>

In the proposed terminology, integrating the fact they survived battering mirrors the chronic nature of their abuse, their endurance to survive, and the state's passive role or inability to stop these women from being assaulted by their intimate partners. This acquires relevance when women face trials for the death of their abusive partner because this terminology highlights the broader context of domestic abuse where these offenders were forged, emphasizing the irony that the same state, which previously failed to intervene, now prosecutes them for their abuser's death.

Third, society determines classifications and schemas to deal with problems through naming.<sup>198</sup> The term "battered women" sheds light only on one side of these women: their victimhood. Therefore, society responds to this problem with counseling and psychological treatments for victims, handling Learned Helplessness symptoms, and other similar actions.<sup>199</sup> However, battering needs to be addressed as a social issue, treating these

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<sup>197</sup> Arthur Ripstein, *Self-Defense and Equal Protection*, 57 U. PITT. L. REV. 685, 710-711 (1996) (Author states that in a society of equals, the battered woman would have far more opportunities to escape her abuser. He also points out that in a society that enforces the citizens' rights, the batterer would be less able to repeat his offense. However, this is not the case. And this has an impact on the so-called wrongful act (woman killing intimate partner) because this is a product of the state's failings. The woman's behavior is itself a direct result of the failure of the law to provide her with the equal protection to which she is entitled. The author further states that because the state has failed to protect her, it has no business punishing her.); Julieta Di Corleto & María Lina Carrera, *Responsabilidad Penal de las Mujeres Víctimas de Violencia de Género: Lineamientos para una Defensa Técnica Eficaz*, 5 REV. DAS DEFENSORÍAS PÚBLICAS DO MERCOSUR 11, 13 (2017) (The neglect of violence in cases where women appear as defendants reverses the axis of the conflict, as the failure to consider the phenomenon results in the victim's criminalization. This inaction constitutes a new form of aggression since the very same systematic shortcomings that prevent the state from preventing, eradicating, and sanctioning violence are the ones that lead to its involvement in criminal activities—a cycle that ultimately deepens discrimination).

<sup>198</sup> GARCIA AND MCMANIMON, *supra* note 180, at 22.

<sup>199</sup> GONDOLF AND FISHER, *supra* note 177, at 12.

women not solely as victims in need of support to address their traumas but also valuing them as survivors, encouraging them to go on and begin a new life after the abuse.<sup>200</sup> It is necessary to provide them with help that goes beyond curing their mental wounds.<sup>201</sup> Thus, it is crucial to establish help centers, offer legal guidance on child support and tuition, and ensure safety nets — giving them the tools they need to start again.

Fourth, as already said, the choice of nomenclature is essential to the feminist struggle for social and legal change, as naming serves as a form of social claiming—demanding identity, rights, or experiences—and a powerful conveyor of social messages that shape its impact. As a social claim, the proposed naming highlights the recognition of these women's full experiences as victims of battering and as individuals who seek help, look for resources, and search for a way out of their situation. This is indeed surviving, recognizing this experience, not defining them by the acts of their abuser, but by the acts they do to survive abuse and stay alive. The term "women survivor of battering" communicates a social message that acknowledges the dual aspects of victimhood and agency inherent in these women's experiences. This shifts the narrative from one solely focused on victimhood, as implied by the term "battered woman," to a more balanced perspective that recognizes their active role in navigating and overcoming their circumstances.

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<sup>200</sup> GONDOLF AND FISHER, *supra* note 177, at 12. See also: ANGELA BROWNE, *WHEN BATTERED WOMEN KILL* 186 (1987).

<sup>201</sup> GONDOLF AND FISHER, *supra* note 177, at 12.

In summary, rethinking the terminology we use to refer to women who have suffered domestic violence is relevant because words shape realities and recognize truths. Women survivors of battering is a concept that conveys the double facet of these females—as victims and agents—reducing at minimum negative connotations other terms have. However, I acknowledge that the terminology "battered women" is widely used in doctrine,<sup>202</sup> specialized literature,<sup>203</sup> and courts<sup>204</sup>. In this manner, changing a commonly used concept for another might be challenging in the short term. Still, it is necessary to identify these women with terminology that restores their dignity.

## **2.2. The elements of the "women survivors of battering" in this dissertation**

After defining the terminology applicable to the protagonists of this study, it is crucial to delineate the elements of this concept with precision. This clarity is essential to prevent confusion and misunderstandings regarding the focus of this dissertation.

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<sup>202</sup> See in general: BROWNE, *supra* note 200; Charles J. Aron, *In Defense of Battered Women - Is Justice Blind - The Federal Justice System Often Ignores a Woman's Troubled Past*, 20 HUM. RTS. 14 (1993); DONALD DOWNS, MORE THAN VICTIMS: BATTERED WOMEN, THE SYNDROME SOCIETY AND THE LAW (1997); SCHNEIDER, *supra* note 160; Joshua Dressler, *Battered Women and Sleeping Abusers: Some Reflections*, 3 OHIO ST. J. CRIM. L. 457 (2006).

<sup>203</sup> See in general: WALKER, *supra* note 115, GONDOLF AND FISHER, *supra* note 177; CHARLES EWING, TRIALS OF A FORENSIC PSYCHOLOGIST: A CASEBOOK (2008).

<sup>204</sup> Bechtel v. State, 1992 OK CR 55, 840 P.2d 1, 12; Marley v. State, 747 N.E.2d 1123, (Ind. 2001); People v. Ambrose, 160 A.D.2d 1097 (NY App. Div. 1990); People v. Humphrey, 13 Cal. 4th 1073, 56 Cal. Rptr. 2d 142, 921 P.2d 1 (1996); People v. Yaklich, 833 P.2d 758 (Colo. App. 1991); State v. Hodges, 239 Kan. 63, 716 P.2d 563 (1986); State v. Leaphart, 673 S.W.2d 870 (Tenn. Crim. App. 1983); State v. Leidholm, 334 N.W.2d 811 (ND 1983); State v. Norman, 378 S.E.2d 8, (NC 1989); State v. Stewart, 243 Kan. 639, 648, 763 P.2d 572 (1988).

### 2.2.1 The meaning of "woman"

One of the main ideas of the second wave of feminism<sup>205</sup> was to challenge biological determinism through the distinction of sex and gender, this is, the recognition of "the social constitution of human character".<sup>206</sup> In this line, Simone de Beauvoir, one of the leading exponents of this period, recognized this distinction between gender and sex by asserting that "one is not born, but rather becomes, a woman. No biological, psychological, or economic fate determines the figure that the human female presents in society; It is civilization as a whole that produces this creature, intermediate between male and eunuch, which is described as feminine."<sup>207</sup>

In this manner, the concept of "woman" is understood as a social construction assigned to female bodies, contrasting with "men," a social construction attributed to male bodies.<sup>208</sup> Nonetheless, this definition may be insufficiently precise for the subject of investigation in this thesis, especially considering the extensive feminist literature on the

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<sup>205</sup> Dorling Kindersley, *The Feminism Book: Big Ideas Simply Explained* 15 (2021) (There is a consensus that there are four waves of feminism: the first took place between the mid-19th and the early 20th century and aimed to achieve equal rights in education, law, employment, and politics. The second wave took place from the mid-1960s to the early 1980s and sought to analyze and eliminate women's oppression. This period is marked by goals such as retrieving birth control for women, fighting for the legal right to abortion, and standing up to physical assault.<sup>205</sup> The third wave took place in the 1990s, and it focused on sexual freedom, the inclusion of trans women, and the debate over feminist goals in a capitalist society. The last wave has been occurring since 2010, aided by social media, and it focused on going deeper regarding different problems, from sexual harassment to the gender pay gap.)

<sup>206</sup> Linda Nicholson, *Interpreting Gender*, 20 SIGNS 79, 80 (1994) (Gender was introduced in feminism as a concept that complements sex, not to replace it).

<sup>207</sup> SIMONE DE BEAUVOIR, *THE SECOND SEX* 301 (1974).

<sup>208</sup> MICHELLE DENTON, *FEMINISM AND GENDER EQUALITY* 13 (2020) (Simply speaking, sex translates into an assigned gender in a way that males will be assigned as men, and females will be assigned as women).

social construction of women.<sup>209</sup> What appears to be the missing link in this definition is the subordination element leading to gender inequality.

Already in the mid–XIX century, the first Euro-American feminists asserted that women's subjugation to men resulted from a system of inequality where the weaker sex was submitted to the strongest one.<sup>210</sup> By the 1970s, De Beauvoir also identified the problem of gender inequality by stating that the social construction of this so-called creature named woman puts her in a position of subordination in a masculine universe.<sup>211</sup> Characteristics assigned to women in childhood create this individual who has respectful obedience, no grasp, patience, and passiveness, and she has been taught to accept masculine authority as if they were a superior caste.<sup>212</sup> Hence, it is the characteristics and roles of women that assign them to a second place in society, and it is the social creation of a creature that does not allow her to become more and develop her full potential.

Women's subordination persists to this day. Modern feminists highlight this embedded subordination in the construction of women, identifying it as the root of gender inequality. For example, Venessa Garcia and Patrick McManimon established that this inequality comes from the social structure that assigns women specific roles and

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<sup>209</sup> Mari Mikkola, *Feminist Perspectives on Sex and Gender*, <https://plato.stanford.edu/archives/spr2023/entries/feminism-gender/> (last visited Mar. 12, 2025) (It is not hard to review all the strands of feminism trying to define what a woman is from different perspectives, all of them putting emphasis on the attributes they find the most relevant).

<sup>210</sup> JOHN STUART MILL, *THE SUBJECTION OF WOMEN* 4 (1869).

<sup>211</sup> BEAUVOIR, *supra* note 207, at 665 (1974) (“women herself recognized that the world is masculine on the whole; those who fashioned it, ruled it, and still dominate it today are men”).

<sup>212</sup> *Id.*

characteristics that put them at a disadvantage in this patriarchal society.<sup>213</sup> <sup>214</sup> Similarly, Cecilia Ridgeway stated that the socially constructed roles of men and women establish a hierarchy between one gender over the other, making differences between them regarding resources, power, and status.<sup>215</sup>

Subordination of women might take many forms in several contexts, regardless of the class a woman belongs to, such as discrimination, disregard, insult, control, exploitation, oppression, and violence.<sup>216</sup> Other authors speak of the oppression of women, stating that oppression can acquire five forms: exploitation, marginalization, powerlessness, cultural imperialism, and violence.<sup>217</sup> Both concepts –subordination and oppression– encapsulate nuanced descriptions of the disadvantage of women in society. It is of particular note that violence against women, the central subject of this thesis, is a manifestation of both.

In this manner, the concept of subordination acquires relevance when identifying what characterizes women as a group. Particularly, I will center on the approach of social subordination of women, according to which "S is a woman iff<sub>df</sub> S is systematically

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<sup>213</sup> GARCIA AND MCMANIMON, *supra* note 180, at 5 (2011) (Patriarchy is the societal organization that establishes male dominance over women, causing inequality. In the words of the author, "in any case of patriarchal structure, gender inequality persists, and women are oppressed.")

<sup>214</sup> The concept of gender inequality will be developed in depth in the Chapter III, however, for now, it is worth noticing that social constructions such as gender are malleable, and the traits and capacities assigned to males and females are socially created and can be reconstructed aiming at equality.

<sup>215</sup> CECILIA RIDGEWAY, *FRAMED BY GENDER: HOW GENDER INEQUALITY PERSISTS IN THE MODERN WORLD* 10 (2011).

<sup>216</sup> Kamla Bhasin, What Is Patriarchy? 2 (2021), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://pria.org/knowledge\_resource/1632826588\_PRIA@MFF\_Kamala%20Bhasin%20on%20What%20is%20Patriarchy.pdf#:~:text=The%20term%20patriarchy%20refers%20to%20the%20system,the%20family%2C%20at%20the%20workplace%2C%20in%20society. (Last visited Feb. 04, 2025)

<sup>217</sup> IRIS YOUNG, *THE JUSTICE AND POLITICS OF DIFFERENCE* 48-63 (2022).



subordinated along some dimension (economic, political, legal, social, etc.), and S is "marked" as a target for this treatment by observed or imagined bodily features presumed to be evidence of a female's biological role in reproduction."<sup>218</sup>

While I acknowledge that this definition may face challenges in comprehensively defining 'woman' across all contexts, it effectively delineates the subject of this thesis: individuals with female bodies whose societal roles involve subordination, with violence being one of its manifestations.

### **2.2.2 The meaning of "survivor"**

The term "survivor" embodies an alternative characterization to the "helpless victim" that women reject, showing them instead as active survivors of abusive relationships.<sup>219</sup> It highlights the agency side of these women, suggesting that they respond to abuse with help-seeking largely unmet efforts.<sup>220</sup> These women are trapped and cannot leave their relationships because they lack resources and social support.<sup>221</sup> Given that they cannot leave, these women create coping strategies to reduce abuse, and expose themselves to the least amount of danger.<sup>222</sup> In other words, they look for mechanisms that will permit

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<sup>218</sup> Sally Haslanger, *Gender and Race: (What) Are They? (What) Do We Want Them to Be?*, 34 *Noûs* 1 31, 39 (2000).

<sup>219</sup> GONDOLF AND FISHER, *supra* note 177, at 17 (1988)

<sup>220</sup> *Id.* at 11.

<sup>221</sup> *Id.*

<sup>222</sup> BROWNE, *supra* note 200, at 124 (In these situations, assailant or capture has a major influence on how the victim evaluates the situation and alternatives available to him or her period studies show that victims select coping strategies in light of their evaluation of the alternatives and their appraisal of whether a particular method of coping would further endanger them, and to what degree"). See also: GONDOLF AND FISHER, *supra* note 177, at 12; OLUCHI OTTI, *INSIDE THE MIND OF A BATTERED WOMAN: UNDERSTANDING THE MINDSET AND BEHAVIORS OF ABUSED VICTIMS* 49 (2012); Russell, *supra* note 103, at 124.

them to function and survive.<sup>223</sup> This ability to deal through these mechanisms with life-threatening crises despite self-blame and intimidation reveals that these women are more survivors than helpless victims.<sup>224</sup> For this reason, the term "survivor" reflects their resistance to succumb to a long story of abuse from their partner.

### 2.2.3 The meaning of "battering"

Within domestic violence, intimate partner violence is typically categorized into five distinct types of abuse: physical, psychological, sexual, economic, and stalking.<sup>225</sup>

Physical abuse refers to all those acts aimed to injure, endanger, or cause physical pain to the victim.<sup>226</sup> In other words, it is referred to any nonsexual person-on-person or object-on-person violence, such as pushing, shaking, pinching, biting, slapping, punching, kicking, stomping, and choking.<sup>227</sup>

The second is psychological abuse, which some authors subdivide into emotional, psychological, and social abuse.<sup>228</sup> The first involves comments and actions aimed to undermine the victim's self-respect and self-worth.<sup>229</sup> It includes acts intended to shame,

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<sup>223</sup> OTTI, *supra* note 222, at 49.

<sup>224</sup> HOFF, *supra* note 177, at 229.

<sup>225</sup> Kathleen Basile and Michele Black, *Intimate Partner Violence Against Women*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 111, 113-115 (Claire M Renzetti et al. eds., 2nd ed., 2011) (physical, psychological, sexual, and stalking); See also: GARCIA AND MCMANIMON, *supra* note 180, at 25-35 (physical, psychological, sexual, economic, and stalking).

<sup>226</sup> DAWN BRADLEY BERRY, THE DOMESTIC VIOLENCE SOURCE BOOK 3 (1995).

<sup>227</sup> GARCIA AND MCMANIMON, *supra* note 180, at 25.

<sup>228</sup> *Id.* at 32 (2011)

<sup>229</sup> Maureen Outlaw, *No One Type of Intimate Partner Abuse: Exploring Physical and Non-Physical Abuse Among Intimate Partners* 24J FAM VIOL 263, 264 (2009).

insult, ridicule, embarrass, demean, belittle, or mentally hurt the victim.<sup>230</sup> The second of them refers to those acts aimed at making the victim think she is mentally unbalanced.<sup>231</sup> Its objective is to knock off balance the security of the female's logic and reasoning.<sup>232</sup> The third one refers to attempts to isolate the woman from her social network support.<sup>233</sup>

The third type of abuse –sexual abuse– refers to unwanted sexual contact or threat of it, including acts like touching, rubbing, grabbing, or injuring of private parts, rape, attempted rape, sodomy, and penetration or attempted penetration.<sup>234</sup>

The fourth type, economic abuse, has been defined as "a deliberate pattern of control in which individuals interfere with their partner's ability to acquire, use, and maintain economic resources."<sup>235</sup> It comprehends a wide range of acts, such as denying the woman money, monitoring her spending, spending the funds destined for the household on the abuser, failing to provide, appropriating the woman's earnings, saddling her with debt, demanding dowry, dragging the woman through court processes to impoverish her and the children; and not paying child support, among others.<sup>236</sup>

The fifth type, stalking, is a pattern of behavior directed against an individual that would cause a reasonable person to feel fear or suffer emotional distress.<sup>237</sup> In an intimate

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<sup>230</sup> BRADLEY, *supra* note 226, at 3.

<sup>231</sup> GARCIA AND MCMANIMON, *supra* note 180, at 32.

<sup>232</sup> Outlaw, *supra* note 229, 264 (2009).

<sup>233</sup> GARCIA AND MCMANIMON, *supra* note 180, at 32.

<sup>234</sup> GARCIA AND MCMANIMON, *supra* note 180, at 27.

<sup>235</sup> Judy L. Postmus et al., *Economic Abuse As an Invisible Form of Domestic Violence: A Multicountry Review*, 21 TRAUMA, VIOLENCE & ABUSE 261, 262 (2020).

<sup>236</sup> SUPRIYA SINGH, DOMESTIC ECONOMIC ABUSE: THE VIOLENCE OF MONEY 2 (2021).

<sup>237</sup> Rebecca J. Dreke et al., *Challenges with and Recommendations for Intimate Partner Stalking Policy and Practice: a Practitioner Perspective*, 35 J. of Fam. Violence, 769, 771 (2020).

partner violence context, it involves shadowing, mailing, telephoning, and cyberstalking.<sup>238</sup> All these kinds of abuse commonly overlap, which means that one woman might suffer several types of abuse.<sup>239</sup>

At the beginning of the Battered Woman Movement, the concept of battering was circumscribed only to physical abuse as a strategy to strengthen the survivor's / victim's claim.<sup>240</sup> Society would be more likely to recognize and address a demonstrable problem, such as physical injuries, rather than something less tangible.<sup>241</sup>

Authors that understand battering in this sense are, for example, Lenore Walker, who defined battered woman as "a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights."<sup>242</sup> Subsequently, she introduces a crucial physical criterion to this definition, stating that for a woman to qualify as a battered individual, she must experience the battering cycle of violence on at least two occasions.<sup>243</sup> In this cycle, physical abuse is the main component of phase II.<sup>244</sup> Similarly, Angela Browne considered in her study about battered women who kill only those females who were subject to physical violence at the hands of an intimate partner at least twice.<sup>245</sup> It is important to note that these authors do not aim to restrict the abuse experienced by these

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<sup>238</sup> GARCIA AND MCMANIMON, *supra* note 180, at 36.

<sup>239</sup> Basile, *supra* note 225, at 115.

<sup>240</sup> SCHNEIDER, *supra* note 160, at 65.

<sup>241</sup> *Id.* at 65.

<sup>242</sup> WALKER, *supra* note 115, at xv.

<sup>243</sup> *Id.*

<sup>244</sup> *Id.* at 59-65.

<sup>245</sup> BROWNE, *supra* note 200, at 14 (1987).

women only to physical violence. Instead, both acknowledge that women could endure multiple forms of violence from their intimate partners. Nonetheless, they delineated their subject in this manner for the effects of the studies they were performing.<sup>246</sup>

Other authors contemplate the concept of battering in a broader sense that includes any coercive behavior of power and control without a limit on the number of assaults.<sup>247</sup> For example, Marta Mahoney has indicated battering is power and control marked by violence and coercion. A battered woman is a woman who experiences the violence against her as determining or controlling her thoughts, emotions, or actions, including her efforts to cope with the violence itself.<sup>248</sup> In the same sense, David Adams defined wife-beating as a "controlling behavior that serves to create and maintain an imbalance of power between the battering man and the battering woman."<sup>249</sup> These authors' primary focus is coercion and power imbalance rather than the acts of violence themselves.

For the matter of this research, battering will be considered in its original sense, this is, as reiterated (at least twice) physical abuse, defining this last one as "any physically assaultive act by one person against another, with or without evident resultant physical

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<sup>246</sup> *Id.* at 144 (1987) (Information about other kinds of abusive behavior was also collected in the investigation the author performed. These actions had a more significant impact on the woman than physical violence in some cases. However, because the study was not designed to measure psychological abuse alone, all women participants were required to have experienced at least two physically violent incidents the author calls assaults.); WALKER, *supra* note 115, at 78-184 (The author recognizes that abusers use many techniques to maintain control of battered women, such as physical abuse, sexual abuse, economic deprivation, familiar discord, and social battering. These are all dimensions of a battered women's abuse.)

<sup>247</sup> Susan Schechter, *Building bridges between activists, professionals and researchers*, in FEMINIST PERSPECTIVES ON WIFE ABUSE 299, 300 (Kersti Yllö and Michele Louise Bograd eds., 1988).

<sup>248</sup> Mahoney, *supra* note 159, at 25.

<sup>249</sup> David Adams, *Treatment models of men who batter: a postfeminist analysis*, in FEMINIST PERSPECTIVES ON WIFE ABUSE 176, 191 (Kersti Yllö and Michele Louise Bograd eds., 1988).

injury."<sup>250</sup> The reasons for using this concept centers on scholarly attention, the requirements of affirmative defenses, and the contexts in which most intimate partner killings committed by women occur.

The first is that physical abuse, particularly in intimate partner violence, accounts for most of the scholarly attention.<sup>251</sup> Besides, the main theories that try to explain these women's behavior are built upon a concept of battering centered on physical abuse.<sup>252</sup> These theories are relevant because they provide a foundation for affirmative defenses already recognized by the law for abused women who have committed a criminal offense.<sup>253</sup>

The second reason is that only the threat of physical injury provides a plausible base to meet the requirements of some affirmative defenses. For example, in self-defense, one might justifiably use deadly force against another if the defendant reasonably believed the other was about to inflict unlawful death or serious bodily harm.<sup>254</sup> Likewise, a threat of significant physical harm must also be present in defenses like duress and necessity. As some authors have pointed out, it would be challenging for a woman to justify killing her

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<sup>250</sup> BROWNE, *supra* note 200, at 13.

<sup>251</sup> Outlaw, *supra* note 229, 263 (2009) (Describing that physical violence, particularly by men against women—accounts for a majority of the scholarly attention to intimate partner violence).

<sup>252</sup> GONDOLF AND FISHER, *supra* note 177, at 5 (1988) (The theory characterizes its sample of subjects as women who have suffered severe, extensive, and cruel assaults.); WALKER, *supra* note 115, at xv (Lenore Walker when defining battered women).

<sup>253</sup> Rebecca D. Cornia, *Current Use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes About Women*, 8 UCLA Women's L. J. 99, 104 (1997) (Author refers to Battered Woman Syndrome as a psychological theory offered with the traditional law of self-defense to explain the behavior of battered women which otherwise seems irrational); GONDOLF AND FISHER, *supra* note 177, at 17 (1988) (The author presents a survivor hypothesis that challenges the learned helplessness theory underlying Battered Woman Syndrome, which is currently the dominant framework supporting defenses for battered women who kill their intimate partners).

<sup>254</sup> WAYNE R. LAFAVE, CRIMINAL LAW 572 (Fifth edition, ed. 2010).

intimate partner on the threat of psychological harm.<sup>255</sup> Another example would be the imminence required in self-defense,<sup>256</sup> necessity,<sup>257</sup> and duress.<sup>258</sup> Repeated physical assaults by the abuser are the only way for the woman to determine a pattern of violence, which would allow her to foresee imminence in those cases where the abuser has already finished beating her, has only threatened to attack her at some time in the future, or has even fallen asleep.<sup>259</sup>

The third reason is that most scenarios where these women kill their intimate partner are confrontational settings where the woman is physically attacked by her intimate partner.<sup>260</sup> To defend themselves, women kill the abuser in response to an attack. Using the original meaning of battering allows this research to focus on most cases, making this investigation quantitatively more comprehensive.

### 3. Summary

The first part of this chapter outlines the foundation and background of the investigation, delving into several aspects of intimate partner violence that escalate to homicide. To begin, violence against women takes various forms, with one of the most

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<sup>255</sup> CHARLES PATRICK EWING, *BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION* (1987).

<sup>256</sup> LAFAVE, *supra* note 254, at 574.

<sup>257</sup> *Id.* at 561-562.

<sup>258</sup> *Id.* at 525.

<sup>259</sup> Kit Kinports, *Defending Battered Women's Self-Defense Claims*, 67 Or. L. Rev. 393, 425 (1988).

<sup>260</sup> Maguigan, *supra* note 104, at 397 (Holly Maguigan made a study of 223 cases that met the definition established for battered women's homicide cases. 75% of these cases involved confrontational scenarios, 20% were nonconfrontational cases (4% "contract killings," 8% sleeping-man cases, and 8% defendant as the initial aggressor during a lull in the violence), and the remaining 5%, the appellate opinions did not include a discussion of the incident facts introduced at trial).

insidious being intimate partner violence. Numerous studies consistently indicate that women are the most affected by this type of aggression, predominantly perpetrated by their male partners. Two main indicators support this assertion: the vast number of women affected and the significant disparity in the ratios of female to male victims and perpetrators.

Further complicating the problem is the potential escalation of intimate partner violence to homicide, where a notable gender disparity exists in global homicide rates. Men are perpetrators and victims of approximately 90% of all homicides across Chile, the USA, Argentina, and Mexico. Yet, in cases of intimate partner homicide, the typical pattern of victimization is inverted, with women disproportionately impacted. Support for this assertion comes from two key indicators: the ratio of intimate partner homicides to total homicides for each gender and the comparison of men and women as victims and perpetrators in these crimes. Statistics reveal that women are five times more likely to be victims of these homicides. This study focuses on the exceptions to the rule: the cases where women kill their male intimate partners, which account for approximately 16% of intimate partner homicides.

Diving deeper into the context, these homicides are typically not impulsive acts but are grounded in a history of domestic violence. This has been confirmed by numerous studies that evidence the link between intimate partner homicides committed by women and a prior history of domestic abuse against them. Also, studies have confirmed that the main reasons women kill their intimate partners include self-defense, retaliation, or



desperation stemming from prolonged victimization. Self-defense emerges as a leading motive, frequently arising in response to ongoing violence.

The end of the first part delineates the characteristics of the main theory that explain the effects of battering on these women. Battered Woman Syndrome refers to the psychological and behavioral patterns exhibited by women who have endured persistent physical, emotional, or psychological abuse from a partner. Rooted in the Cycle of Violence and Learned Helplessness, this theory describes how some victims believe they cannot escape their abusive situations due to a perceived lack of control, often causing them to stay in harmful relationships.

The second part of this chapter aimed to identify the main character of this investigation: women survivors of battering. There is a call to reconsider the term "battered woman," given it might be unsuitable to refer to women who have suffered physical intimate partner abuse. Reevaluating the terminology we employ to describe women subjected to domestic violence is essential because language reflects and shapes our understanding of reality. The term "woman survivor of battering" captures the dual nature of these women—as both victims and proactive agents—minimizing the negative undertones found in other terms.

I recognize that the term "battered women" is prevalent in legal texts, specialist literature, and courtrooms, and transitioning to new terminology may pose challenges in the immediate future. Nevertheless, it is imperative to adopt language that encapsulates their experiences and restores their dignity.

Finally, in order to avoid confusion and misunderstandings, this chapter finishes by defining the distinctive elements of the main character of this dissertation: women survivors of battering. Thus, the first relevant characteristic is that, for the purpose of this thesis, women are understood as a social construction from a gender realist perspective and centers on the approach of social subordination of women. Simply put, a woman in this research refers to a person with a female body whose social construction encompasses subordination, violence being one of the primary expressions of it. The second relevant characteristic of these women is that they suffer abuse and also survive it, embedding a dichotomy of agency and victimhood that cannot be denied or omitted in these women. Especially, assigning the reference "survivor" is a small but essential detail that draws attention to how these women overcame a battering relationship using their coping mechanisms to stay alive in an abusive situation and tried their best to escape. The third relevant characteristic is that they have suffered battering, understanding this word in its traditional sense, that is, repeated (at least twice) physical abuse.

This introductory chapter has delineated the trajectory of the main character of this dissertation: women who are both victims and survivors and who ultimately find themselves as defendants within the criminal justice system for the murder of their abuser.

**CHAPTER II: CHALLENGES IN DEFENDING WOMEN SURVIVORS OF  
BATTERING IN CASES OF INTIMATE PARTNER HOMICIDE IN CHILE,  
ARGENTINA, AND MEXICO**

Despite significant efforts by countries in the region to eradicate violence against women, it remains a severe problem.<sup>261</sup> This context of widespread violence can drive some women to take extreme measures, such as killing their abusive intimate partners, which leads them to face criminal charges for homicide. However, when women appear as defendants, it is not rare to find a legal system that overlooks their victimization.

The lessons about the characteristics of gender-based violence—particularly its evolution under conditions of subjugation, high levels of isolation, and limited opportunities for reporting—have not sufficiently permeated the awareness of judicial operators, sometimes resulting in a failure to recognize that this type of violence transcends class distinctions and procedural formalities.<sup>262</sup> Ultimately, this creates a new form of aggression since the very same systematic shortcomings that prevent the state from preventing, eradicating, and sanctioning violence are the ones that lead to its involvement in criminal activities.<sup>263</sup>

This chapter aims to examine the legal challenges faced by women survivors of domestic violence who kill their intimate partners in Chile, Argentina, and Mexico. The first aim is to highlight how courts apply a male-biased legal framework that often

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<sup>261</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 71, at 12.

<sup>262</sup> Di Corleto and Carrera, *supra* note 197, at 13.

<sup>263</sup> *Id.*

disregards the history of abuse in these cases, limiting the effectiveness of affirmative defenses for these women. Several problems arise when judges rely solely on a male-biased perspective to assess the requirements of criminal defenses. For example, defining imminence as temporal proximity, interpreting crossed-violence as symmetrical, failing to identify and ponder the interest and harms at stake in self-defense and exculpatory state of necessity, and assuming that there are realistic or plausible alternative courses of action for women in abusive relationships. Additionally, the chapter aims to expose how Battered Woman Syndrome –the leading theory to explain battering and its effects– might be more pernicious than helpful. Indeed, this theory has faced significant criticism for portraying women as mentally impaired, for its ambiguity in presenting women as rational and irrational at the same time, and for reinforcing outdated stereotypes of women. Lastly, this chapter highlights the problems arising when courts deploy the history of domestic violence to support both justification and excuse defenses, creating ambiguity about whether the defendant acted rationally or irrationally, and consequently, undermining the credibility of expert testimony and diminishing the effectiveness of the defenses.

The chapter is structured into two main sections. The first section aims to provide an introduction to the reader to the defenses most commonly used in Argentina, Chile, and Mexico, and their equivalent in the U.S. The second section analyzes the challenges in defending women survivors of battering. At once, this section is divided into 3 parts. The first part develops the problem of judges disregarding domestic violence history when assessing affirmative defenses in cases involving women who killed their intimate partners in the Latin countries subject to investigation. The second part examines the distorted

portrayal presented by expert testimony based on Battered Woman Syndrome and its impact on defenses. Finally, the last section explores how the inconsistent use of justification and excuse defenses ultimately undermines the defendant's position and presents her as lacking agency and rational thought.

## **1. Common defenses used in Latin countries for women who have killed their intimate partners**

### **1.1 Classification of defenses: justification and excuses**

In Argentina, Chile, and Mexico, defenses to homicide are commonly classified as justifications or excuses. A justification is said to negate the unlawful nature of the behavior—that is, an act that ordinarily would be criminal is held to be lawful because, under the circumstances, it was necessary for the defendant to commit that act.<sup>264</sup> An excuse negates the defendant's responsibility for the unlawful behavior—, that is, the act is found to be wrongful, but the law holds that the defendant is not blameworthy because she confronted circumstances so excruciating as to make it unfair to expect her to comply with the demands of the law.<sup>265</sup> On the one hand, justifications refer to the absence of unlawfulness—*antijuridicidad* in Spanish—meaning there is no contradiction between an

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<sup>264</sup> Marcelo Ferrante, *Argentina*, in THE HANDBOOK OF COMPARATIVE CRIMINAL LAW 12, 35 (Kevin Jon Heller and Markus Dirk Dubber eds., 2011) (Countries that follow the criminal law literature of continental Europe classify their defenses in justifications and excuses); Julian Hermida, *Convergence of Civil Law and Common Law in the Criminal Theory Realm*, 13 U. MIAMI INT'L & COMP. L. REV. 163, 188-192 (2005) (Analyzing the components of the criminal action: Act, wrongfulness and blameworthiness).

<sup>265</sup> See *supra* note 264.

act or behavior and the legal system.<sup>266</sup> On the other hand, excuses involve the absence of blameworthiness—*culpabilidad* in Spanish—which entails a value judgment of the act in relation to its author, considering whether the individual was in a position and condition to comply with the mandates or prohibitions of criminal law.<sup>267</sup>

## 1.2 Defenses commonly used in Argentina, Chile, and Mexico

In Chile, Argentina, and Mexico, self-defense is the most frequently used claim to defend women who have killed their intimate partners, which accounts for its greater doctrinal and jurisprudential development in comparison to other defenses.<sup>268</sup> However, this might also be due to the fact that most killings take place in confrontational scenarios in which the abuser is currently attacking the woman.<sup>269</sup> Nevertheless, defenses based on an exculpatory state of necessity, transient mental disorder, or insurmountable fear are also present to a lesser extent, as will be illustrated by the cases discussed in this chapter.

Although the specific requirements for each defense may vary between countries, the three Latin countries share common origins and influences in the codification of

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<sup>266</sup> MARIO GARRIDO MONTT, *DERECHO PENAL: PARTE GENERAL TOMO II* 101 (3rd ed. 2003); GUSTAVO MALO CAMACHO, *DERECHO PENAL MEXICANO* 403 (1st ed. 1997); EUGENIO RAÚL ZAFFARONI ET AL., *MANUAL DE DERECHO PENAL: PARTE GENERAL* 589 (2nd ed. 2007).

<sup>267</sup> GARRIDO, *supra* note 266, at 110; MALO, *supra* note 266, at 521; ZAFFARONI, *supra* note 266, at 650.

<sup>268</sup> See in general: COMITÉ DE EXPERTAS DEL MESECVI, *RECOMMENDATION ON THE APPLICATION OF SELF-DEFENSE IN CASES OF WOMEN IN SITUATIONS OF GENDER-BASED VIOLENCE* (2019), <https://www.oas.org/es/mesecvi/docs/RecomendacionLegitimaDefensa-EN.pdf>; Olivares and Reyes *supra* 7; Zeltzi Alejandra López Tinoco and Christian Hernández Gutiérrez, *Legítima Defensa Desde una Perspectiva de Género en México* (2023) (B.A. dissertation, Universidad Autónoma Metropolitana), available at <https://zaloamati.azc.uam.mx/server/api/core/bitstreams/70292301-5b7f-4209-afd4-bb20c8a42065/content>

<sup>269</sup> Maguigan, *supra* note 104, at 395.

criminal law.<sup>270</sup> Therefore, it is not surprising to observe similarities in the regulation of commonly used defenses and, consequently, in their practical application and the challenges arising from their implementation.

The following sections aim to provide the reader with a comparative overview of the legal framework of criminal defenses employed in Argentina, Chile, and Mexico, as well as their equivalent defense in the USA.

### 1.2.1. Self-defense

The defense is defined as a necessary action taken to prevent current or imminent illegitimate harm to a protected interest caused by another individual's actions without previous provocation.<sup>271</sup> Doctrine in Argentina, Chile, and Mexico commonly classifies this defense as a justification.<sup>272</sup>

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<sup>270</sup> In general, the penal codes of Argentina, Chile, and Mexico have a strong influence from the Spanish Penal Code of 1870, although with contributions from German criminal law and Italian criminal law in their doctrinal evolution. See: ZAFFARONI, *supra* note 266, at 248-256; CARLOS FONTAN BALESTA, DERECHO PENAL INTRODUCCIÓN Y PARTE GENERAL 65-77 (1998); SERGIO POLITOFF ET. AL., LECCIONES DE DERECHO PENAL CHILENO: PARTE GENERAL 26-53 (2d ed. 2003); MALO, *supra* note 266, at XII.

<sup>271</sup> FONTAN, *supra* note 270, at 280 (The necessary reaction to prevent the unlawful, unprovoked harm to a legal right, either occurring or imminently threatened by the action of a human being.); ENRIQUE CURY URZUA, DERECHO PENAL PARTE GENERAL (V. Corte Suprema) 372 (2nd ed. 1992) (According to the author, one acts in self-defense when undertaking an action that is an statutory offense and rationally necessary to repel or prevent an unprovoked illegitimate aggression directed against their person or rights, or those of a third party.); CARRANCÁ Y TRUJILLO, RAÚL. DERECHO PENAL MEXICANO, PARTE GENERAL, TOMO II 73 (2nd. Ed. 1941) (In the same sense, Carrancá y Trujillo, Raúl as "the proportional and necessary counteraction taken by an individual in response to an unprovoked, illegitimate aggression, either current or imminent, that seeks to harm one's own or another's legal interest.")

<sup>272</sup> FONTAN, *supra* note 270, at 281; CURY, *supra* note 271, at 372; CARRANCA Y TRUJILLO, *supra* note 271, at 304.

Article 10 n° 4 Criminal Code of Chile	Article 34 n° 6, first incise, Criminal Code of the Argentine Nation	Article 15 IV, first incise, Federal Criminal Code of Mexico
<p>Article 10. The following are exempt from criminal liability: 4.° Those who act in defense of their person or rights, provided the following circumstances are present: First.- Illegitimate aggression. Second.- Rational necessity of the means employed to prevent or repel it. Third.- Absence of sufficient provocation by the defender.</p>	<p>Article 34 The following are not punishable: 6°. One who acts in self-defense of oneself or one's rights provided that the following circumstances concur: a) Illegitimate aggression; b) Rational necessity of the means used to prevent or repel it; c) Absence of sufficient provocation on the part of the one defending.</p>	<p>Article 15.- A criminal offense is excluded when: IV.- One repels a real, current, or imminent unlawful aggression in protection of one's own or another's legal interests, provided there is a necessity for defense and rationality in the means employed, and there is no sufficient and immediate intentional provocation on the part of the victim or the person being defended.</p>



Based on the legal regulations mentioned, the requirements for this defense can be summarized as:

- a) Presence of illegitimate aggression.
- b) Rational necessity of the means employed to prevent or repel such aggression.
- c) Absence of adequate provocation on the part of the defendant.

The equivalent defense in the United States would be self-defense.

### **1.2.2. Exculpatory state of necessity**

This defense requires showing that the defendant sacrificed a legal interest of equal value to the one they aimed to protect from an imminent danger that could not be avoided by other means.<sup>273</sup> Doctrine in Argentina, Chile, and Mexico commonly classifies this defense as an excuse.<sup>274</sup>

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<sup>273</sup> CURY, *supra* note 271, at 457. Following the same line: CARLOS CREUS, *DERECHO PENAL INTRODUCCIÓN Y PARTE GENERAL* 371-372 (3rd ed. 1992) (The exculpatory state of necessity constitutes a legal defense wherein the actor, facing potential harm to their own legally protected interests or to others in which they have a vested protective interest, seeks to avert said harm through conduct that would otherwise be deemed unlawful.); MALO, *supra* note 266, at 569 (The author has defined it as the one that arises from coercion (e.g., 'I will kill you if you don't kill'); it pertains to actions taken under the threat of suffering serious harm, exemplifying the classic case of vis compulsiva).

<sup>274</sup> CURY, *supra* note 271, at 457 (The authors set this defense within the category of defenses predicated on a lack of blameworthiness.); CREUS, *supra* note 273, at 371-372; MALO, *supra* note 266, at 568; Víctor Vidal, *Análisis de las características más relevantes del estado de necesidad establecido por la Ley 20.480*, 9 *Ars Boni et Aequi* 237, 240-242 (2013); Juan Pablo Castillo Morales, *El estado de necesidad del artículo 10 n° 11 del Código penal chileno: ¿Una norma bifronte? Elementos para una respuesta negativa*, 11 *Polít. Crim.* 340, 345-348 (2016).

It is important not to mistake the exculpatory state of necessity with the justificatory state of necessity. In the justificatory variant, the protected interest must outweigh the sacrificed one.<sup>275</sup> Conversely, in the exculpatory state, the action taken does not necessarily have to prioritize a higher-valued interest over a lesser one because the evaluation of culpability predominantly focuses on the actor's subjective perspective and their response to the immediate circumstances they face.<sup>276</sup>

Article 10 n° 11 Criminal Code of Chile	Article 34 n° 2 National Criminal Code of the Argentine Nation <sup>277</sup>	Article 15 V Federal Criminal Code of Mexico
Article 10. The following are exempt from criminal liability: 11° The one who acts to prevent serious harm to one's person or a third party's rights, provided that the following	Article 34.- The following are not punishable: 2°. One who acts under the compulsion of irresistible physical force or under threats of imminent and serious harm.	Article 15.- A criminal offense is excluded when: V.- One acts out of the necessity to safeguard one's own legally protected interest or

<sup>275</sup> Vidal, *supra* note 274, at 244 (2013) (The author explains that if the harm caused is lesser than the harm avoided, it constitutes a ground for justification. Whereas if the harm caused is equal to or greater than the harm avoided, it constitutes a ground for exculpation.); CREUS, *supra* note 273, at 372.

<sup>276</sup> CREUS, *supra* note 273, at 372.

<sup>277</sup> CREUS, *supra* note 273, at 372. (Legal scholarship introduces the concept of an exculpatory state of necessity in Article 34, n° 2 of the Criminal Code. According to this provision, while the harm that the actor perceives as a threat must be serious and imminent as required by the article's own criteria, it does not necessarily need to be more serious than the resulting harm.); ZAFFARONI, *supra* note 266, at 747.

<p>circumstances occur: 1<sup>st</sup></p> <p>The harm to be avoided is current or imminent. 2<sup>nd</sup></p> <p>There is no other feasible and less harmful means to prevent it. 3<sup>rd</sup> The harm caused is not substantially greater than the one being avoided. 4<sup>th</sup> The sacrifice of the interest threatened by the harm cannot be reasonably expected from the person preventing it, or, where applicable, from the one from whom it's being prevented, as long as this was or could have been known by the actor.</p>		<p>that of another from a genuine, current, or imminent danger not intentionally caused by the actor, harming another interest of lesser or equal value than the one being protected, provided the danger cannot be averted by other means and the actor does not have a legal obligation to confront it.</p>
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Based on the legal regulations mentioned, the requirements for this defense can be summarized as:

- a) Harm to be avoided is current or imminent (not caused by the defendant).

- b) Absence of any other feasible and less harmful means to circumvent the threat.
- c) The harm caused is not substantially greater than that which is avoided.
- d) The sacrifice of the interest threatened by the harm cannot be reasonably expected from the person preventing it.

In Chile, the defense is especially relevant because of its legal history. During the discussion of the law project, legislators took into account that this defense would serve for those cases where a woman retaliates against an abusive intimate partner amid ongoing domestic violence.<sup>278</sup>

The equivalent defense in the United States would be necessity defense.

### **1.2.3. Transient mental disorder**

Transient mental disorder is an excuse defense that requires the finding of a temporary condition characterized by a significant disruption in mental faculties, rendering an individual unable to understand the criminality or unfairness of their actions or to direct their behavior according to the requirements of the law.<sup>279</sup>

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<sup>278</sup> Historia de la Ley N° 20.480, Informe Comisión Mixta en Sesión 86, Legislatura 358, Biblioteca del Congreso Nacional de Chile (October 04, 2010), <https://www.bcn.cl/historiadelaley/nc/historia-de-la-ley/4620/> (last visited Feb. 25, 2025); Vidal, *supra* note 274, at 239; María Elena Santibáñez Torres and Tatiana Vargas Pinto, *Reflexiones en torno a las modificaciones para sancionar el femicidio y otras reformas relacionadas (Ley N° 20.480)* 38 REV. CHIL. DERECHO (1), 193–207 (2011).

<sup>279</sup> FONTAN, *supra* note 270, at 488 (“Any disorder capable of preventing the understanding of the criminality of the act or the ability to control one's actions.”); CURY, *supra* note 271, at 422 (In Chile, transient mental disorder is defined as the total deprivation of reason, and according to Enrique Cury “consists of a temporary inability to understand the unfairness of acting and self-determining according to that understanding, due to a cause exogenous or endogenous.” Furthermore, it is necessary for its configuration that its origin be independent of the will of the defendant.); SERGIO GARCÍA RAMÍREZ, LA IMPUTABILIDAD EN EL DERECHO PENAL MEXICANO 30 (1981) (In Mexico, Sergio Ramirez has defined transient mental disorder as a one of the hypotheses of non-imputability based on the alteration of physical health in which the lack of temporary

Article 10 n° 1 Criminal Code of Chile	Article 34 n° 1, first incise, of Criminal Code of the Argentine Nation	Article 15 VII Federal Criminal Code of Mexico
Article 10. The following are exempt from criminal liability: 1°. The insane or mentally ill individual, unless they acted during a lucid interval, and anyone who, due to any cause beyond their control, is entirely deprived of reason.	Article 34.- The following are not punishable: 1°. An individual who, at the time of the act, due to insufficiency of their faculties, pathological alterations thereof, or their state of unconsciousness, mistake, or non-attributable ignorance of fact, could not comprehend the criminality of the act or direct their actions.	Article 15.- A crime is excluded when:  VII.- At the time of committing the typical act, the agent lacks the capacity to understand its illicit nature or to behave in accordance with that understanding, due to suffering from a mental disorder or delayed intellectual development. This exclusion does not

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psychiatric health prevents the subject from defining the illegal character of his conduct or inhibiting his criminal impulses.)

		<p>apply if the agent intentionally or negligently induced their own mental disorder, in which case they will be held accountable for the typical result, provided they had foreseen or could have foreseen it.</p>
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Based on the legal regulations mentioned, the requirements for this defense can be summarized as:

- a) The individual was unable to comprehend the criminality of their actions at the time of the act or have control over their actions due to a mental condition.
- b) The individual should not have intentionally or culpably brought about the mental disorder.
- c) Complete or significant deprivation of reason, whether due to insufficient faculties, morbid alterations, unconsciousness, or other causes independent of the individual's will.

The equivalent defense in the United States would be insanity (temporary).

#### **1.2.4. Insurmountable fear**

A severe -or insurmountable- fear is an excuse defense in which a distressing emotional disturbance arising from an actual impending risk or harm, or one conjured by the imagination, embodies a specific insurmountable emotional state of the individual that precludes them from acting otherwise.<sup>280</sup>

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<sup>280</sup> JAVIER JIMÉNEZ MARTÍNEZ, *LA ESTRUCTURA DEL DELITO EN EL DERECHO PENAL MEXICANO* 606 (3rd ed 2011); CURY, *supra* note 271, at 358 (Following the same line, according to Enrique Cury, “fear is a state of emotional disturbance, more or less profound, caused by the anticipation of oneself or another becoming a victim of harm.”).

Article 10 n° 9 Criminal Code of Chile	Article 34 n° 2 first incise, of Criminal Code of the Argentine Nation	Article 15 IX.- Federal Criminal Code of Mexico
Article 10. The following are exempt from criminal liability: 9° The individual who acts under the compulsion of an irresistible force or driven by an insurmountable fear.	Article 34.- The following are not punishable: 2°. One who acts under the compulsion of irresistible physical force or under threats of imminent and serious harm.	Article 15.- A criminal offense is excluded when: IX.- Given the circumstances surrounding the commission of an illicit act, it is not rationally expected of the agent to have acted differently than they did due to their inability to determine and act in accordance with the law.

Based on the legal regulations mentioned, the requirements for this defense can be summarized as:



- a) Existence of compulsion, force, or fear.
- b) Those conditions are severe and immediate.
- c) The act must directly result from the fear or compulsion.
- d) It is unreasonable to expect the individual to have acted differently under the circumstances.

The equivalent defense in the United States would be duress.

## **2. Challenges in defending women who commit intimate partner violence in Chile, Argentina, and Mexico**

### **2.1 The erasure of domestic abuse history by male-bias doctrine**

The inherent male bias in law is well-recognized, reflecting men's life experiences and perspectives.<sup>281</sup> This bias stems not only because law has been created by and for men but also because its enforcement, interpretation, and administration are predominantly in their hands.<sup>282</sup> Even female participants in these legal processes are educated under systems that promote a male-centric view, often perceiving and perpetuating the law's male bias as a form of objective justice.<sup>283</sup>

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<sup>281</sup> ANN JONES, WOMEN WHO KILL 346 (2009) ("Law made by men, for men, and amassed down through history on their behalf, codifies masculine bias and systematically discriminates against women by ignoring the woman's point of view."); Lynn Hecht Schafran, *Is the Law Male: Let Me Count the Ways*, 69 CHI.-KENT L. REV. 397, 401 (1993); Carol Smart, *The Woman of Legal Discourse*, in GENDER AND JUSTICE 32-33 (Naffine, Ngaire ed. 2016); Catharine A. MacKinnon, Women's Lives, Men's Laws 32-43(2005); ELENA LARRAURI, MUJERES Y SISTEMA PENAL: VIOLENCIA DOMESTICA 41 (2008); LARRAURI AND VARONA, *supra* note 281, at 11.

<sup>282</sup> JONES, *supra* note 281, at 346.

<sup>283</sup> *Id.*

A male-centered perspective also applies to criminal law, which Stephen Schulhofer characterized as “a system of rules conceived and enforced by men, for men, and against men.”<sup>284</sup> In this law branch, the androcentric character not only arises from the creation of the law but also from the fact that men have historically been the main perpetrators, both as victims and offenders.<sup>285</sup> This is what is commonly called “traditional criminal law.”<sup>286</sup> Under these circumstances, women—even more so among certain groups of women—have mostly remained at the margins of criminal justice and its problems.<sup>287</sup> Consequently, their perspectives have been disregarded as victims and as offenders.

This male bias in criminal law extends to the defenses available to female offenders, particularly in homicide cases.<sup>288</sup> The law's content, shaped primarily by male patterns of homicide, cannot help but to be unequal in its application against female defendants.<sup>289</sup> If a woman does not commit a crime in a manner similar to a man, she might lose access to legal doctrines that could otherwise mitigate or excuse her actions—privileges a male defendant, fitting the traditional legal mold, would typically receive.<sup>290</sup>

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<sup>284</sup> Stephen J. Schulhofer, *The Feminist Challenge in Criminal Law*, 143 U. Pa. L. Rev. 2151, 2154 (1995); LARRAURI, *supra* note 281, at 41 (Discussing how the laws, written as neutral, are applied according to a masculine perspective and use as reference men. Therefore, criminal law is masculine); LARRAURI AND VARONA, *supra* note 281, at 11.

<sup>285</sup> Schulhofer, *supra* note 284, at 2157.

<sup>286</sup> Schulhofer, *supra* note 284, at 2154. See also: LARRAURI, *supra* note 281, at 41 (The problem is that the law fails in its application, even when applied “objectively,” it tends to reproduce the dominant social vision); Stephen Schulhofer, *The Gender Question in Criminal Law*, 7 SOCIAL PHILOSOPHY AND POLICY 2 105, 106 (1990); LARRAURI AND VARONA, *supra* note 281, at 11.

<sup>287</sup> Schulhofer, *supra* note 284, at 2157.

<sup>288</sup> Laura E. Reece, *Women's Defenses to Criminal Homicide and the Right to Effective Assistance of Counsel: The Need for Relocation of Difference*, 1 UCLA Women's L. J. 53, 56 (1991).

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

Elena Larrauri provides a good example of this problem. She explains that courts typically infer a defendant's intent to kill by examining the targeted body part and the type of weapon used.<sup>291</sup> This rationale might be appropriate in the case of two men fighting, but it is less accurate when a woman faces a man.<sup>292</sup> The main reason is that it forfeits the fact that, for the woman, it is impossible to kill a stronger counterpart with her own hands.<sup>293</sup> Even if a woman's primary intention is to inflict harm rather than to kill, she may have no alternative but to use a larger or more lethal weapon (such as a sizable knife) to compensate for her relative lack of physical strength.<sup>294</sup> Whereas a man might opt for using his fists in a similar scenario, where the available method of attack naturally differs.<sup>295</sup> Therefore, courts should consider this inference of the criminal intent from the size of the weapon to be less accurate in the case of women because, for her, there is no alternative between injuring with her hands and killing with a weapon.<sup>296</sup>

Due to the male bias in criminal law defenses, female offenders in homicide cases are forced to align their experiences with a male-centric framework, leading to a misfit that undermines their legal position.<sup>297</sup> As a result, in some cases of intimate partner homicide perpetrated by women, the experiences and perspectives of the defendants as victims of domestic violence are overlooked in the judicial assessment of the requirements of their

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<sup>291</sup>Elena Larrauri, *Violencia Doméstica y Legítima Defensa: Una Aplicación Masculina del Derecho Penal*, Jueces Para La Democracia No. 23, at 22–23 (1994).

<sup>292</sup> LARRAURI, *supra* note 281, at 47; Larrauri, *supra* note 291 at 22–23; LARRAURI AND VARONA, *supra* note 281, at 9.

<sup>293</sup> LARRAURI, *supra* note 281, at 47; LARRAURI AND VARONA, *supra* note 281, at 9.

<sup>294</sup> Larrauri, *supra* note 291 at 22–23.

<sup>295</sup> *Id.*

<sup>296</sup> LARRAURI, *supra* note 281, at 47; LARRAURI AND VARONA, *supra* note 281, at 9.

<sup>297</sup> Reece, *supra* note 288, at 57 (“A female homicide defendant must attempt to collapse her experience into the male homicide structure. But the forced fit is inadequate and awkward.”).

defenses. This oversight results in the dismissal of these women's defenses, perpetuating a cycle of injustice and abuse.

In Argentina, Chile, and Mexico, it is not uncommon for women who have killed their intimate partners to face incarceration due to judges' failure to acknowledge the context of domestic violence that shaped these women's experiences and perspectives. In the following section, I will provide examples of cases in which the domestic violence history has not been taken into account, and in the subsequent sections, I will provide an analysis on the different problems that affect these cases.

### **2.1.1 Examples of cases in which the history of abuse was not taken into account by courts**

#### **2.1.1.1 Claudia Moya's case**

The first example is the Argentinian case of Claudia Moya, who was convicted of aggravated homicide of her intimate partner by the Criminal and Correctional Court of San Juan. Later, this ruling was confirmed by the Court of Justice of San Juan. In both decisions, the courts disregarded the context of domestic violence in which Claudia Moya was embedded and how this context would have shed light on the requirements of the defense claimed at trial.

According to the court, Claudia and Alfredo's relationship was unstable and characterized by mutual physical, verbal, and psychological violence.<sup>298</sup> According to Claudia, the violence against her started one month after they got married when he ran her over with a car, leaving her bruised.<sup>299</sup> The abuse consisted of him hitting her anywhere else but her face, grabbing her by her hair, twisting her wrists, throwing her on the floor, and hitting her head against the floor while she tried to defend herself by scratching him.<sup>300</sup> Alfredo's mother, sibling, and coworkers were witnesses in this case and reported seeing Alfredo bruised and scratched.<sup>301</sup>

On the day of the fatal incident, Alfredo, along with his father, then-pregnant Claudia, and her daughter, were returning home from his sister's house.<sup>302</sup> During the drive, Claudia and Alfredo began a violent argument that continued until they reached their home, where they both got out of the vehicle amidst mutual recriminations.<sup>303</sup> Once inside, the dispute escalated, and Claudia took a kitchen knife and inflicted three wounds on Alfredo, resulting in his death.<sup>304</sup>

According to the defense, Alfredo attacked her first, and in an effort to defend herself and protect the baby she was carrying, she took a knife and mortally wounded

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<sup>298</sup> Cámara en lo Penal y Correccional of San Juan [CApel. Penal SJn] [Criminal and Correctional Court of San Juan], 24/8/2018, "C/ Moya, Claudia Antonella- Por homicidio agravado en perjuicio de Alfredo Turcumán," 35, available at Poder Judicial San Juan, <https://www.jussanjuan.gov.ar/wp-content/uploads/2018/08/Fallo-Claudia-Moya.pdf> (Last visited March 15, 2025) (Argentina).

<sup>299</sup> *Id.* at 24.

<sup>300</sup> *Id.* at 25.

<sup>301</sup> *Id.* at 36-39.

<sup>302</sup> *Id.* at 23.

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

him.<sup>305</sup> However, instead of arguing self-defense, the defense claimed that Claudia suffered from a temporary mental disorder, seeking her acquittal on the grounds that at the time of the fatal incident, she was incapable of controlling her actions due to a reflexive and unreflective response.<sup>306</sup> According to the defense, this would be subsumed under the insanity provision Art. 34 n° 1 of the Argentinian Penal Code.<sup>307</sup> This provision states that a person is not punishable if, at the time of the act, due to insufficient mental faculties, morbid alteration of these faculties, or a state of unconsciousness, error, or ignorance not attributable to them, they were unable to understand the criminal nature of the act or to direct their actions.<sup>308</sup>

The Criminal and Correctional Court of San Juan dismissed the defense, asserting that the Penal Code applies a legal psychiatric-psychological criterion to determine non-imputability (non-criminally responsible).<sup>309</sup> It requires not only a psychological anomaly but also that this anomaly significantly affects the individual's discernment or ability to understand the criminal nature of their actions or to control their behavior.<sup>310</sup>

In Claudia's case, the court determined she was fully capable of understanding the criminal nature of her actions and controlling her behavior, concluding that her personality does not render her non-imputable in terms defined in art. 34 n° 1 of de Penal Code.<sup>311</sup> Furthermore, the court explained that for a transitory mental disorder to excuse from

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<sup>305</sup> *Id.* at 15.

<sup>306</sup> *Id.* at 17.

<sup>307</sup> *Id.*

<sup>308</sup> Art. 34 n° 1, Código Penal [Cód. Pen.] (Argentina).

<sup>309</sup> *Id.* at 19.

<sup>310</sup> *Id.*

<sup>311</sup> *Id.* at 21.

criminal responsibility, it must induce a state of unconsciousness that significantly impairs one's ability to grasp the criminality of an act or to control one's actions.<sup>312</sup> Alternatively, it could stem from a severe disturbance of mental faculties that, despite the individual's awareness, prevents control over their actions due to a pathological condition.<sup>313</sup>

According to the lower court, none of the proposed scenarios substantiated that Claudia was in a non-imputable state of unconsciousness at the time of the events, nor did she suffer from a morbid alteration of her faculties as a result of her reflexive and unreflective attitude.<sup>314</sup> The detailed memory with which she recounted the incident negates the possibility of any mental disorder or severe mental disturbance.<sup>315</sup> Additionally, immediately after the fatal event, Claudia provided a false account of the facts to relatives, neighbors, and police, saying that Claudio had an accident trying to fix a door.<sup>316</sup> This fact further dismisses any mental disturbance and instead indicates behavior aimed at concealing and obstructing the investigation.<sup>317</sup>

Even though the defense did not claim self-defense in this instance, the court determined that Alfredo's death resulted not from a response to any illegitimate aggression on his part but rather from significant force exerted by the defendant on the weapon.<sup>318</sup> This conclusion was supported by the lack of evidence of illegal aggression from Alfredo towards Claudia, based on the expert testimony from a doctor who examined her after the

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<sup>312</sup> *Id.* at 21-22.

<sup>313</sup> *Id.*

<sup>314</sup> *Id.* at 22.

<sup>315</sup> *Id.*

<sup>316</sup> *Id.* at 32.

<sup>317</sup> *Id.* at 22.

<sup>318</sup> *Id.* at 32.

incident and stated that her injuries were inconsistent with having been involved in a fierce fight or having been subjected to physical aggression, suggesting instead a brief struggle.<sup>319</sup>

For these reasons, the Court rejected the claim that Claudia suffered from a transient mental disorder at the moment of killing her intimate partner, convicting her of aggravated homicide.<sup>320</sup> Subsequently, Claudia Moya's defense filed an appeal to the Court of Justice of San Juan, arguing self-defense based on a gender perspective instead of transient mental disorder -drastically changing the defense in the second instance. According to article 34 n° 6, the first incise of the National Criminal Code of Argentina, self-defense requires the following circumstances to concur: a) Illegitimate aggression; b) Rational necessity of the means used to prevent or repel it; c) Absence of sufficient provocation on the part of the one defending.<sup>321</sup> The Court of Justice of San Juan denied the appeal, confirming the Criminal and Correctional Court of San Juan's judgment.

First of all, the Court of Justice addressed the abrupt change in the defenses and the request to consider a gender perspective, indicating that these new claims unrelated to the subject of debate in the preceding instance were not admissible because of due process and detriment to procedural loyalty, congruence, and recursive limitation.<sup>322</sup>

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<sup>319</sup> *Id.* at 32-33.

<sup>320</sup> *Id.* at 50.

<sup>321</sup> Art. 34 n° 6, Código Penal [Cód. Pen.] (Argentina).

<sup>322</sup> Corte de Justicia de San Juan [CJ C.Jn.] [Court of Justice of San Juan], 6/8/2019, "C/ M.C.A. - por el delito homicidio agravado por el vínculo en perjuicio de A.T.", LIBRO DE PROTOCOLOS DE LA CORTE DE JUSTICIA DE SAN JUAN 7-8 (2019-II-388) (Argentina).



Nonetheless, to ensure that the right to appeal was not rendered entirely illusory, the court addressed the defense's new claim, concluding it lacked sufficient evidence.<sup>323</sup>

The Court of Justice of San Juan stated that Claudia and Alfredo's relationship unfolded in a context marked by acts of physical and verbal violence that were reciprocal, constant, and frequent.<sup>324</sup> In this context, Claudia's participation was active and, in some cases, even predominant.<sup>325</sup>

Then, the Court of Justice proceeded to evaluate the fatal incident, concluding that in the moments leading up to Alfredo's injury, Claudia had not suffered any form of unlawful aggression from her husband given that she only suffered minor injuries compatible with a light struggle and mutual violence, and that she had no signs of an illness that would excuse her homicidal conduct.<sup>326</sup> It also explicitly ruled out that mutual violence could give grounds to an illegitimate aggression, unfulfilling this requirement of self-defense.<sup>327</sup> In addition, the court analyzed the concept of aggression, defining it as an attack or threat of an attack that must be current.<sup>328</sup> Based on this definition, the court determined that the expert testimony that characterized the defendant as acting with no evilness, instinctively and defensively, was not enough to fulfill this requirement.<sup>329</sup> For all these reasons, the court ruled out self-defense.<sup>330</sup>

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<sup>323</sup> *Id.* at 15.

<sup>324</sup> *Id.* at 16.

<sup>325</sup> *Id.*

<sup>326</sup> *Id.* at 16-20.

<sup>327</sup> *Id.* at 20.

<sup>328</sup> *Id.* at 20.

<sup>329</sup> *Id.* at 22.

<sup>330</sup> *Id.* at 24.

Lastly, the Court of Justice of San Juan remarked that there was no breach of legislation on protection against violence towards women, highlighting that although the law provides extensive evidentiary guarantees for victims, in this case, Claudia was accused of a crime against her husband, and for this reason “she is not the victim deserving of special protection due to their situation of an asymmetrical power relationship and structural inequality.”<sup>331</sup> It also stated that merely because a woman is involved in the incident, there should not be some form of preferential treatment in criminal law verging on absolute impunity.<sup>332</sup>

#### **2.1.1.2 Karina Sepúlveda’s case**

Another example is the Chilean case of Karina Sepúlveda, in which the initial verdict of innocence delivered by the Oral Criminal Court of Puente Alto was overturned by the Appellate Court of San Miguel ruling, which ordered a retrial.<sup>333</sup> This last ruling completely disregarded the domestic violence background when assessing the criteria for her defense, judging its requirements through a lens that excluded the perspective and characteristics of a defendant who was also a victim of extreme domestic abuse.

In this case, Karina Sepulveda had an 18-year relationship with Claudio Reyes characterized by repeated episodes of serious domestic violence, considering their nature,

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<sup>331</sup> *Id.* at 25.

<sup>332</sup> *Id.*

<sup>333</sup> Corte de Apelaciones de San Miguel (C. Apel. San Miguel) (court of appeals), 27 de marzo 2013, “MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS,” Rol de la causa: 133-2013, s. parricidio (parricide), available at <https://app.vlex.com/vid/karina-carmen-sepulveda-cisternas-488434634> (Last visited February 15, 2025) (Chile).

severity, and frequency.<sup>334</sup> It was clear that the woman had endured extreme physical violence throughout the relationship, evidenced by at least three fractures and numerous scars from both blunt and sharp object attacks.<sup>335</sup> The forensic expert identified 64 visible scars on the defendant, resulting from injuries inflicted with rods, sticks, straps, and stab wounds.<sup>336</sup>

Karina had no viable options to escape the abuse. She declared that staying with her in-laws was not feasible, as she had been beaten in front of them by her abuser, yet they did nothing to help her.<sup>337</sup> Going to her parent's house was also not an option, as each time she tried to leave, Claudio would find her and subject her to more severe beatings and threaten her to kill her family if she ran away.<sup>338</sup> Turning to the police was also not an alternative, since she had witnessed them take no action against Claudio for serious crimes like armed robbery and murder, choosing not to arrest him and letting him go.<sup>339</sup>

According to the defendant's statement, he had been beating her the entire week leading up to the incident, all morning and all afternoon, to the point where she was even limping.<sup>340</sup> The day before Claudio's death, he called her on the phone, telling her that he had hit their eldest son because he had asked him for money to give a gift to a friend,

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<sup>334</sup> Tribunal de Juicio Oral en lo Penal de Puente Alto (T.J.O.P.) (criminal trial courts Puente Alto), 17 de enero de 2013, "MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS," Rol de la causa: O-166-2012, s. parricidio (parricide), Considerando Undécimo, Tirant Latam online: LTM31.725.960. (Chile).

<sup>335</sup> *Id.* at Considerando Undécimo.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.* at Considerando Quinto.

<sup>338</sup> *Id.* at Considerando Décimo Octavo.

<sup>339</sup> *Id.*

<sup>340</sup> *Id.* at Considerando Quinto.

pointing out that this was for "faggots."<sup>341</sup> Later that day, Karina met her son at the mall and saw him red-faced and beaten.<sup>342</sup>

On the next day, she left early to drop her daughters off at school and returned home, where her son and Claudio were sleeping.<sup>343</sup> She stated that as she gazed at her bruised reflection in the mirror, thoughts of her son's face bearing the marks of his father's beatings filled her mind.<sup>344</sup> She entered the bedroom, retrieved a 9-millimeter Famae pistol from beneath Claudio's bed, and shot him while he was sleeping, causing a cranial brain injury with a projectile that resulted in his death.<sup>345</sup>

Karina's defense hinged on the exculpatory state of necessity<sup>346</sup> defense outlined in article 10, number 11 of the Chilean Criminal Code. According to this legal provision, there are four essential criteria for the defense to be valid: (i) the harm to be avoided must be current or imminent; (ii) there must be no other feasible and less harmful means to prevent it; (iii) the harm caused must not be substantially greater than the one being avoided; and (iv) the sacrifice of the interest threatened by the harm cannot be reasonably expected from the person preventing it, or, where applicable, from the one from whom it's being prevented, as long as this was or could have been known by the actor.<sup>347</sup>

During the trial, an expert witness declared that the defendant suffered from learned helplessness, which explained her passivity in the face of violence due to fear of her partner

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<sup>341</sup> *Id.* at Considerando Undécimo.

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> Also called "exculpatory circumstance of criminal liability" in Chile.

<sup>347</sup> Código Penal (Criminal Code) [Cod. Pen.] art. 10 (Chile).

or for her children.<sup>348</sup> The witness explained that this situation is common among women experiencing violence, in which they endure unchangeable conditions that create a sense of powerlessness, leading them to believe that no matter what they do, abuse is inevitable.<sup>349</sup>

As already mentioned, Karina was acquitted by the lower court, incorporating the history of domestic abuse when assessing the defense's criteria. Subsequently, the prosecutor filed an appeal for annulment, and the Court of Appeals of San Miguel granted it, vacating the lower court's judgment and ordering a retrial.<sup>350</sup> In its ruling, the Court of Appeals stated four main reasons to overturn, none of which took into account the domestic violence context in which Claudio's death occurred.

First, the court stated that to apply the exculpatory state of necessity, the actions must be carried out within the individuals' conscious awareness, allowing the potential for the victim to defend themselves from the aggression being inflicted.<sup>351</sup> Therefore, it is disproportionate for the defendant, in order to prevent future violent acts by the victim, to have waited for a moment when the victim was asleep and utterly defenseless, unable to repel the attack.<sup>352</sup> In this manner, it is not feasible for the woman to have been in current

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<sup>348</sup> *Id.* at Considerando Décimo Octavo.

<sup>349</sup> *Id.*

<sup>350</sup> Corte de Apelaciones de San Miguel (C. Apel. San Miguel) (court of appeals), 27 de marzo 2013, "MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS," Rol de la causa: 133-2013, s. parricidio, available at <https://app.vlex.com/vid/karina-carmen-sepulveda-cisternas-488434634> (Last visited February 15, 2025) (Chile).

<sup>351</sup> *Id.* at Considerando Octavo.

<sup>352</sup> *Id.*

or imminent danger of her or her family being subjected to aggression, given that there was no immediate temporal proximity between the violent acts against her and the fatal act.<sup>353</sup>

Second, the Appeals Court stated that there was no situation endangering the defendant's life or her children's lives at the moment of the fatal incident; therefore, the accused's reaction does not align with the lethal outcome in a manner that justifies her actions, as she repelled one harm by causing another of greater significance.<sup>354</sup>

Third, during the previous days to the fatal incident, the defendant was not subjected to a level of mistreatment more severe than what she experienced daily that could lead her to conclude that her life was in danger.<sup>355</sup>

Fourth, the court remarked that the defendant never took alternative measures against the mistreatment she suffered, such as seeking help from her family or going to the police, and therefore, there were other feasible and less harmful means to prevent the harm she was suffering.<sup>356</sup>

Upon examining these arguments, it becomes evident that none of them took into account the perspective of the defendant—a woman who suffered domestic violence at the hands of her husband—and used the traditional -androcentric- defense requirements solely.<sup>357</sup>

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<sup>353</sup> *Id.*

<sup>354</sup> *Id.* at Considerando Noveno y Décimo Quinto.

<sup>355</sup> *Id.* at Considerando Décimo.

<sup>356</sup> *Id.* at Considerando Undécimo.

<sup>357</sup> *Id.* at Considerando Décimo.

### 2.1.1.3 Case number 56/2021

The last example is the judicial ruling in case number 56/2021 from the State of Yucatán, Mexico, where the First Control Court of the Third Judicial District of the State's Accusatory and Oral Criminal Justice System sentenced the accused for homicide committed in excess of legitimate self-defense against her husband.<sup>358</sup> In Mexico, self-defense requires real, actual, or imminent, and unlawful aggression to protect one's own or others' legal rights, provided there is a necessity for the defense and reasonable need for the means employed, and there is no sufficient and immediate intended provocation by the person being attacked or the person being defended.<sup>359</sup>

In this case, the accused opted for an abbreviated procedure, which implies that she agreed to be sentenced based on the background presented in the prosecutor's accusation.<sup>360</sup>

The alleged facts occurred on August 5, 2021, when, during a domestic dispute in her residence, the accused used a knife to inflict a fatal wound on her spouse.<sup>361</sup> The brother of the victim witnessed the fatal event, declaring that he saw his brother standing in front

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<sup>358</sup> Juzgado Primero de Control del Tercer Distrito Judicial del Sistema de Justicia Penal Acusatorio y Oral del Estado de Yucatán (First Control Court of the Third Judicial District of the Accusatory and Oral Criminal Justice System of the State of Yucatán), 20 de octubre de 2023, Expediente N° 56/2021, s. homicidio (homicide), Considerando Único, available at [https://www.cjyuc.gob.mx/?page=sentencias\\_pi](https://www.cjyuc.gob.mx/?page=sentencias_pi) (Last visited February 15, 2025) (Mexico)

<sup>359</sup> Código Penal Federal [CPF], art. 15 IV, Diario Oficial de la Federación [DOF] 12-08-1931, últimas reformas DOF 17-10-2016 (Mex.)

<sup>360</sup> *Id.* at Considerando Único.

<sup>361</sup> *Id.* at Considerando Tercero.

of the door with his left arm hanging from a wooden pole.<sup>362</sup> At that moment, the defendant approached from the left and stabbed her husband with a knife.<sup>363</sup>

During the trial, several psychological and psychiatric evaluations were presented, showing that the accused had been a victim of various types of violence by her spouse, which caused her sequelae such as post-traumatic stress, depression, acute or chronic stress, and dissociation.<sup>364</sup> These reports allowed the court to establish that the accused had been a victim of prolonged domestic violence, which exacerbated her psychological problems on the day of the incident and led her to make a "bad decision" in how to prevent abuse by her husband.<sup>365</sup>

The judge concluded that although the accused had the right to defend herself from previous acts of violence and feared for her physical and emotional integrity, the rationality of the means used for the defense was not justified, as there was no proportionality between the harm received (abuse by her spouse) and the harm inflicted by the accused, with less severe options available.<sup>366</sup>

Finally, she was declared guilty of homicide committed in excess of legitimate defense and sentenced to a term of imprisonment of 3 years, one month, and 15 days, in addition to other sanctions such as the suspension of political rights and restrictions on approaching the victim's family.<sup>367</sup>

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<sup>362</sup> *Id.*

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> *Id.*

<sup>367</sup> *Id.* at Considerando Décimo Quinto.



These three cases are just a few examples of many in Argentina,<sup>368</sup> Chile,<sup>369</sup> and Mexico,<sup>370</sup> in which the woman's defense is rejected by a court that fails to consider how

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<sup>368</sup> Examples of other cases in Argentina which the history of domestic abuse was disregarded by the court when assessing the requirements of defenses are: Superior Tribunal de Justicia de Tierra del Fuego [STJ TFg.] [Superior Court of Justice of Tierra del Fuego], 6/11/2023, "CÁRDENAS, Gina Eliana s/Homicidio agravado", available at Poder Judicial Provincia de Tierra del Fuego, at <https://juris.justierradelfuego.gov.ar/> (Last visited February 15, 2025) (Argentina); Tribunal de Impugnación Penal de Santa Rosa [TIP Santa Rosa] [Criminal Appeals Court of Santa Rosa], 7/4/2022, "P. Y. V. s/ recurso de impugnación (reenvío)", available at <https://ar.microjuris.com/docDetail?Idx=MJ-JU-M-136981-AR&links=null> (Last visited February 15, 2025) (Argentina); Tribunal de Impugnación de Tartagal [TIP Taragal] [Criminal Appeals Court of Taragal], 31/7/2018, "Recurso de casación con preso - D. G. L. por homicidio calificado por el vínculo mediando circunstancias extraordinarias de atenuación en perjuicio de B., A. de la C.", available at [https://repositorio.mpd.gov.ar/documentos/DGL%20\(causa%20N%C2%B0%2075736\).pdf](https://repositorio.mpd.gov.ar/documentos/DGL%20(causa%20N%C2%B0%2075736).pdf) (Last visited February 15, 2025) (Argentina); Cámara en lo Penal y Correccional of San Juan [CApel. Penal SJn] [Criminal and Correctional Court of San Juan], 13/5/2019, "C/ ANDRADA ESPINOSA, Guadalupe Rita S/ Homicidio Agravado por el vínculo (Arts. 80, inc 1º del Código Penal) en perjuicio de Juan Pablo Ojeda Riveros", available in Poder Judicial San Juan, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://www.jussanjuan.gov.ar/wp-content/uploads/2019/05/FUNDAMENTOS-CASO-GUADALUPE-ANDRADA-EXCESO-EN-LA-LEGITIMA-DEFENSA.pdf> (Last visited February 15, 2025) (Argentina); Infobae, *Condenaron a cadena perpetua a la mujer que mató a su novio de una puñalada en Almirante Brown*, INFOBAE (December 12, 2024), <https://www.infobae.com/sociedad/policiales/2024/12/12/condenaron-a-cadena-perpetua-a-la-mujer-que-mato-a-su-novio-de-una-punalada-en-almirante-brown/>; Santiago Tucumán, *Caso Nicolás Guevara: Versiones Cruzadas*, LOMASCONECTADO (April 04, 2023), <https://lomasconectado.com/2023/04/04/caso-nicolas-guevara-versiones-cruzadas/>.

<sup>369</sup> Examples of other cases in Chile in which the history of domestic abuse was disregarded by the court when assessing the requirements of defenses are: 5º Tribunal de Juicio Oral en lo Penal de Santiago (T.J.O.P.) (5º criminal trial courts Santiago ), 05 de noviembre de 2017, "CECILIA MARISOL GONZÁLEZ PARRAGUIRRE C/ ISKA LORENA ELGUETA MORALES", Rol de la causa: O-172-2017, s. parricidio, available at <https://oficinajudicialvirtual.pjud.cl/home/index.php> (Last visited February 16, 2025) (Chile); Corte De Apelaciones de Valdivia (C. Apel. Valdivia) (court of appeals), 04 de septiembre de 2017, "Contra: Constanza Romina Silva Arias", Rol de la causa: 482-2017, s. parricidio, available at <https://oficinajudicialvirtual.pjud.cl/home/index.php> (Last visited February 16, 2025) (Chile); Corte de Apelaciones de Iquique (C. Apel. Iquique) (court of appeals), 09 de marzo 2020, "MP AH CONTRA DANIELLA FRANCISCA BELEN QUILPATAY VIVANCO," Rol de la causa: 31-2020, available at <https://oficinajudicialvirtual.pjud.cl/home/index.php> (Last visited February 16, 2025) (Chile); 6º Tribunal de Juicio Oral en lo Penal de San Miguel (T.J.O.P.) (6º criminal trial courts San Miguel), 29 de septiembre 2008, "MINISTERIO PUBLICO C/ KARLA ANDREA RODRIGUEZ RIVERA", rol de la causa: O-439-2008, available at <https://latam-tirantonline-com.us1.proxy.openathens.net/latam/documentoLatam/show/32783612?tolgeo=LATAM> (Last visited February 16, 2025) (Chile); Tribunal Oral en lo Penal de Antofagasta (T.J.O.P.) (Criminal Trial Court of Antofagasta), 07 de junio de 2021, "Ministerio Público c/ Gabriela Mamani Anaya", rol de la causa: O-35-2021, available at <https://oficinajudicialvirtual.pjud.cl/home/index.php> (Last visited February 16, 2025) (Chile); Corte de Apelaciones de Valparaíso (C. Apel. Valparaíso) (court of appeals), 26 de septiembre de 2016, "Ministerio Público c/ Francisca Soledad Salgado Martínez", rol de la causa: 1488-2016, available at <https://app.vlex.com/vid/m-p-c-francisca-651328077> (Last visited February 16, 2025) (Chile); 7º Tribunal Oral en lo Penal de Santiago (T.J.O.P.) (7º criminal trial court Santiago), 25 de junio de 2012, "Ministerio Público c/ Inés del Carmen Fuentes Cornejo", rol de la causa: O-63-2012, available at <https://oficinajudicialvirtual.pjud.cl/indexN.php#> (Last visited February 16, 2025) (Chile).

her perspective was shaped by the history of domestic abuse. This lapse by the justice system perpetuates the abuse of these women by rendering the violence they endure invisible to society. First, society is unable to provide a solution that would meet their needs and fails to stop the relentless calvary these defendants suffered while they had a relationship with this person. These women's options are to either endure the abuse until their abuser kills them or kill their abusers. If the latter occurs, the legal system often becomes blind to the violence these women suffered by not taking into account the history

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<sup>370</sup> Castañeda, *supra* nota 2 (Yuridia Brito experienced significant emotional and physical abuse from her partner, which included continuous threats and actual physical harm. This abuse culminated on the day of the homicide when, during an intense argument, she acted in what she claimed was self-defense. Yuridia fatally stabbed her partner after he allegedly attacked her. She was subsequently arrested and tried, for murder. In her defense, Yuridia argued that she was acting in self-defense, claiming her actions were a direct response to an immediate threat to her life posed by her partner. Despite her claims and the background of abuse, the court convicted her of murder, sentencing her to 43 years in prison.); Mora, *supra* nota 2 (Natalia Laura González experienced severe violence and exploitation by her husband Rafael Pérez, who forced her into prostitution to settle his gambling debts. This abuse continued for four years, during which Rafael kept Natalia under drug influence to control her. The violence escalated tragically on January 21, 2012, when Rafael threatened to involve their three-year-old daughter in prostitution. In a violent confrontation that night, Natalia acted in self-defense when Rafael attacked her with a knife, leading to his death. Natalia was forced to sign a confession and was sentenced to 20 years and eight months in prison without proper legal representation.); La Silla Rota, *Mary, un caso de legítima defensa que llegó a la ONU* (July 9, 2018), <https://lasillarota.com/metropoli/2018/7/9/mary-un-caso-de-legitima-defensa-que-llego-la-onu-163481.html> (María Guadalupe Pereda Moreno, known as Mary, suffered from severe and continuous abuse at the hands of her partner, Carlos. He controlled and threatened her regularly, escalating to threats of severe harm and death. This persistent abuse culminated in the tragic incident where Mary felt compelled to defend herself during a life-threatening altercation. On October 14, 2015, after enduring threats of violence and control under the influence of alcohol and drugs, a critical incident occurred. Carlos threatened to harm and kill Mary if she attempted to leave him. During a confrontation, Carlos was accidentally shot twice during a struggle for a gun that Mary had initially grabbed in a bid to escape the situation. Despite her claims of self-defense and the clear threat to her safety, Mary was arrested and ultimately convicted of homicide under provocation. She was convicted to three years in prison.); El Tiempo, *supra* note 2; Zavala *supra* note 2 (An ex-police officer from Tijuana was sentenced to 45 years in prison for fatally shooting her partner, under claims of self-defense. She reported enduring prolonged abuse from her partner, who was also a police officer, leading to a confrontation where she allegedly acted to protect herself from imminent harm. Despite her defense detailing the supposed self-defense scenario, the court convicted her, emphasizing the severity of the response expected from someone with her law enforcement background.); Amézquita *supra* 2 (María Elizabeth Tanús Quiroz, the daughter of Mexican actor Tony Bravo, was sentenced to 13 years and four months in prison for the homicide of her partner, Vicente Vargas Ramírez. The incident occurred on October 1, 2017, following a dispute where Vargas reportedly threatened and assaulted Tanús, leading to her retaliating in self-defense. Despite her defense claiming the homicide was in self-defense due to the threats, including threats to her life and her daughters, the court found her criminally responsible. The trial and its outcome have generated significant media attention and discussion regarding self-defense claims in domestic violence scenarios.)

of domestic abuse in the assessment of the defenses they claim, perpetuating in this manner the violence suffered, and even, validating it.

### **2.2.2. Identification of the problems: Imminence, crossed violence, identification of harms, and availability of choices**

This section outlines some of the key issues that arise when the history of domestic violence is not considered in the assessment of a defense. These include interpreting imminence solely as an immediate threat, treating mutual violence as if both parties are equal adversaries, misidentifying the interests and harms involved in self-defense and exculpatory state of necessity defense, and assuming that these women have alternative means to escape the violence they suffer.

#### **2.2.2.1 Temporal Proximity in Imminence: A Remnant of Male-Biased Traditions**

Of all the defenses available for women who have killed their intimate partners, the concept of imminence is relevant to two criminal defenses: exculpatory state of necessity and self-defense, since both require an illegitimate aggression that is current or imminent.

Understood in its traditional meaning, the concept of imminence requires temporal proximity between the decedent's alleged threat and the response. This approach arises from scenarios that historically involved men, especially in physical confrontations, where

the threat of harm was immediate and in nonrecurring incidents.<sup>371</sup> Therefore, it is this male perspective that is ingrained in criminal law, excluding any other, such as women's, whose experience of domestic violence is cyclical and episodic.

Specifically, in self-defense, the traditional interpretation of imminence requires the danger of aggression to be sufficiently near, compelling the agent to act immediately to neutralize it.<sup>372</sup> Meanwhile, in the exculpatory state of necessity defense, imminency is commonly extrapolated from the justificatory state of necessity and self-defense, in which the harm occurs or is proximate in time.<sup>373</sup> Therefore, proof of aggression in the near future does not reach the threshold of imminence—such as one that occurs and concludes instantaneously—and fails to satisfy the requirements of this criterion.<sup>374</sup>

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<sup>371</sup> SCHNEIDER, *supra* note 160, at 116 (2000) (The author states the law of self-defense is claimed to be universally applicable. However, it is widely acknowledged that social concepts of justification have been shaped by male experiences. The situations in which women kill in self-defense are typically linked to physical and sexual abuse by an intimate partner, rather than the conventional barroom brawls or fistfights with strangers that have historically informed men's experiences with self-defense).

<sup>372</sup> CREUS, *supra* note 273, at 330.

<sup>373</sup> JAIME COUSO ET. AL., CÓDIGO PENAL COMENTADO: LIBRO PRIMERO (ARTS. 1º A 105) DOCTRINA Y JURISPRUDENCIA 269 (1st ed. 2011) (The author indicates that there is no reason to interpret the requirement of the harm to be current or imminent in the exculpatory state of necessity differently from how it is understood in the justificatory state of necessity or self-defense.); POLITOFF ET. AL., *supra* note 270, at 228 (The author states that in self-defense, aggression is considered imminent if it is logically foreseeable, allowing the defense to be exercised without waiting for the foreseeable harm, as long as there are clear indications of its proximity. On the other hand, in the justificatory state of necessity, imminency is defined as a high probability of occurrence.); GARRIDO, *supra* note 266, at 110 (Regarding Self-defense, Garrido Montt defines the imminence of aggression as immediate, emphasizing that the subject does not need to wait for the attack to materialize. Imminence occurs when the aggressor outwardly expresses their intent to initiate an attack. Regarding the justificatory state of necessity, future dangers do not fit within this context. The harm must be currently occurring or, at the very least, be in a situation of immediacy regarding its occurrence, meaning it must constitute a certain and proximate danger.); Vidal, *supra* note 274, at 245-246.

<sup>374</sup> ENRIQUE CURY URZÚA, DERECHO PENAL: PARTE GENERAL 373-374 (7th ed. 2004).

The three cases presented exemplify the traditional male-biased concept of imminence that is still present today.<sup>375</sup> For example, in Claudia's case, the defendant stated that he tried to hit her, and she grabbed a knife to defend herself. However, despite existing signs of a light struggle, the Appeals Court concluded that the absence of severe injury to Claudia was proof that there was no actual or imminent illegitimate aggression from Alfredo.<sup>376</sup> In other words, based on the absence of a messy crime scene signaling there was a fight and the defendant had only “light” injuries, the court concluded that the abuser was not currently brutally attacking her or making a gesture that he was on the verge of injuring her seriously, and therefore, there was no imminent illegitimate aggression.

In Karina's case, the Appeals Court also opted for a traditional, restrictive, androcentric interpretation of imminency, focusing solely on proximal temporality. The

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<sup>375</sup> See for example: Argentina: Superior Tribunal de Justicia de Tierra del Fuego [STJ TFg.] [Superior Court of Justice of Tierra del Fuego], 6/11/2023, “CÁRDENAS, Gina Eliana s/Homicidio agravado”, available at Poder Judicial Provincia de Tierra del Fuego, at <https://juris.justierradelfuego.gov.ar/> (Last visited February 15, 2025) (Argentina); Tribunal de Impugnación Penal de Santa Rosa [TIP Santa Rosa] [Criminal Appeals Court of Santa Rosa], 7/4/2022, “P. Y. V. s/ recurso de impugnación (reenvío)”, available at <https://ar.microjuris.com/docDetail?Idx=MJ-JU-M-136981-AR&links=null> (Last visited February 15, 2025) (Argentina). Chile: Corte de Apelaciones de Valparaíso (C. Apel. Valparaíso) (court of appeals), 26 de septiembre de 2016, “Ministerio Público c/ Francisca Soledad Salgado Martínez”, rol de la causa: 1488-2016, s. homicidio (homicide), Considerando Quinto, available at <https://app.vlex.com/vid/m-p-c-francisca-651328077> (Last visited February 16, 2025) (Chile); Corte De Apelaciones de Valdivia (C. Apel. Valdivia) (court of appeals), 04 de septiembre de 2017, “Contra: Constanza Romina Silva Arias”, Rol de la causa: 482-2017, s. parricidio (parricide), Conciserando séptimo y Décimo Tercero, available at <https://oficinajudicialvirtual.pjud.cl/home/index.php> (Last visited February 16, 2025) (Chile); 7° Tribunal Oral en lo Penal de Santiago (T.J.O.P.) (7° criminal trial court Santiago), 25 de junio de 2012, “Ministerio Público c/ Inés del Carmen Fuentes Cornejo”, rol de la causa: O-63-2012, s. homicidio (homicide), Considerando décimo, available at <https://oficinajudicialvirtual.pjud.cl/indexN.php#> (Last visited February 16, 2025) (Chile); 5° Tribunal de Juicio Oral en lo Penal de Santiago (T.J.O.P.) (5° criminal trial courts Santiago), 05 de noviembre de 2017, “CECILIA MARISOL GONZÁLEZ PARRAGUIRRE C/ ISKA LORENA ELGUETA MORALES”, Rol de la causa: O-172-2017, s. parricidio, Considerando Duodécimo, available at <https://oficinajudicialvirtual.pjud.cl/home/index.php> (Last visited February 16, 2025) (Chile). Mexico: Castañeda, *supra* nota 2; Mora, *supra* nota 2; Zavala, *supra* nota 2.

<sup>376</sup> Corte de Justicia de San Juan [CJ CJn.] [Court of Justice of San Juan], 6/8/2019, “C/ M.C.A. - por el delito homicidio agravado por el vínculo en perjuicio de A.T.”, LIBRO DE PROTOCOLOS DE LA CORTE DE JUSTICIA DE SAN JUAN, 7-8, (2019-II-388) (Argentina).

court stated it was not reasonable for Karina to believe the harm to have been current or imminent because her abuser was asleep when she killed him, and there was no immediate temporal proximity between the violent acts against her and the fatal act.<sup>377</sup>

Lastly, in the reserved self-defense case number 56/2021 from Mexico, the Court did not specify whether there was current or imminent aggression by the abuser. However, in the eyewitness account provided by the brother, he described seeing his sibling getting stabbed while standing in front of the door with his left arm hanging from a wooden pole.<sup>378</sup> For this reason, it is inferred that the defendant acted during a momentary lull in the aggression or after an argument prompted by fear of further violence.

The problem with the traditional concept of imminence is that it reflects a male-centered perspective, focusing on elements relevant to a confrontational, one-on-one scenario between strangers.<sup>379</sup> This framework fails to account for other perspectives

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<sup>377</sup> Corte de Apelaciones de San Miguel (C. Apel. San Miguel) (court of appeals), 27 de marzo 2013, “MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS,” Rol de la causa: 133-2013, s. parricidio, considerando Octavo, available at <https://app.vlex.com/vid/karina-carmen-sepulveda-cisternas-488434634> (Last visited February 15, 2025) (Chile).

<sup>378</sup> Juzgado Primero de Control del Tercer Distrito Judicial del Sistema de Justicia Penal Acusatorio y Oral del Estado de Yucatán (First Control Court of the Third Judicial District of the Accusatory and Oral Criminal Justice System of the State of Yucatán), 20 de octubre de 2023, Expediente N° 56/2021, s. homicidio (homicide), Considerando Tercero, available at [https://www.cjyuc.gob.mx/?page=sentencias\\_pi](https://www.cjyuc.gob.mx/?page=sentencias_pi) (Last visited February 15, 2025) (Mexico).

<sup>379</sup> BROWNE, *supra* note 200, at 172 (Discussing how the imminent danger component of self-defense is predicated on the one-time violent encounter most common to male adversaries or attacks by strangers.); Whitley R.P. Kaufman, *Self-Defense, Imminence, and the Battered Woman*, 10 NEW CRIMINAL LAW REVIEW: AN INTERNATIONAL AND INTERDISCIPLINARY JOURNAL (3) 342, 347 (2007) (Discussing how laws of defense, including the imminence rule, is construed with men in mind, based on the paradigm of two strangers of equal size and strength in a public place.); CAROLINE FORELL AND DONNA MATTHEWS, A LAW OF HER OWN: THE REASONABLE WOMAN AS A MEASURE OF MAN 164 (2000) (However, the law criminalizing violence typically presumes that perpetrators and victims are male strangers of approximately equal size and strength.); Laurenzo, *supra* note 8, at 18 (The concept of self-defense was developed based on a male-versus-male confrontation model, assuming individuals of comparable physical strength and similar capacity for response).

applying to cases in which women kill their intimate partners, a biased male schema that ultimately does not fit their realities, rendering it unsuitable for domestic violence cases like the ones at hand.<sup>380</sup>

Through a traditional imminence lens, the judge only focuses on the moments preceding the fatal incident, overlooking the permanent character of the threat of harm the woman is subdued, the defendant's knowledge of her abuser's behavior, and the woman's experiences as a victim of domestic abuse.<sup>381</sup> This leads to the judge to make three main mistakes.

First, the judge fails to appreciate the cyclical character of domestic violence, missing the psychological, relational, and temporal complexity of domestic violence.<sup>382</sup> The Committee of Experts from MESECVI has stated that one of the main characteristics of an imminent threat is its ongoing nature, as it can occur at any moment and be triggered by any circumstance.<sup>383</sup>

Second, the judge fails to consider these women develop an insight into the abusers' behavior that enables them to predict their actions based on subtle cues that others may not

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This framework excludes most women from the 'reference group, whose generally lower physical ability to repel a violent attack may require them to resort to alternative, less direct defensive strategies).

<sup>380</sup> Lorenzo, *supra* note 8, at 21.

<sup>381</sup> LARRAURI, *supra* note 281, at 59 (In the author's opinion, the special knowledge that a person who defends in self-defense should be considered by the court to determine if the attack is imminent or not. A woman who has suffered repeated abuse from her husband can assure the extension of her partner's threats and expressions.); LARRAURI AND VARONA, *supra* note 281, at 36; Myrna Villegas Díaz, *Homicidio de la pareja en violencia intrafamiliar: mujeres homicidas y exención de responsabilidad penal*, 23 Rev. Derecho 149, 153 (2010) (The issue lies in the requirement that the aggression be ongoing at the moment the woman kills to claim self-defense. While this interpretation appears neutral, it fails to reflect the reality of domestic violence, where women often cannot successfully defend themselves during the attack.)

<sup>382</sup> COMITÉ DE EXPERTAS DEL MESECVI, *supra* note 268, at 7-8

<sup>383</sup> *Id.*

identify.<sup>384</sup> This knowledge is acquired through a repeated cycle of violence, allowing these women to predict when an acute incident of violence is approaching through a pattern of inductive inference.<sup>385</sup> In other words, from their experience, these women recognize that violence is imminent, even if others do not notice any obvious signs of an approaching disaster.<sup>386</sup>

In the cases of Karina, Claudia, and the reserved case from Mexico 56/2021, what might have seemed insignificant to the Court served as a cue for these women, signaling the prelude to another episode of severe abuse. Because their doctrinal tools are limited by a narrow understanding of what counts as lethal danger, the courts exclude the history of domestic violence from their reasoning in assessing the defense.

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<sup>384</sup> Ripstein, *supra* note 197, at 693 (Here, the author refers to those cases in which the defendant acted based on extra knowledge as opposed to extra fears, cataloging the first as acting within the limits of reasonableness.); BROWNE, *supra* note 200, at 79 (“When angry responses can be so out of proportions to the precipitant, victims become especially attuned to the perpetrator’s moods, scanning for things that might upset the, and attempting to predict and moderate their reactions.”). See also: ELIZABETH BOCHNAK, WOMEN’S SELF-DEFENSE CASES: THEORY AND PRACTICE 45 (1981); Julie Blackman, *Potential Uses for Expert Testimony: Ideas Toward the Representation of Battered Women Who Kill*, 9 WOMEN’S RTS. L. REP. 227, 236 (1986); LARRAURI, *supra* note 281, at 52-53 (Indicating that, given the cyclical nature of the mistreatment, the woman not only lives in constant fear but also learns to anticipate violent episodes from her partner. In other words, she learns to recognize the symptoms preceding an explosion of violence.); LARRAURI AND VARONA, *supra* note 281, at 26-28.

<sup>385</sup> Robert F. Schopp et al., *Battered Woman Syndrome, Expert Testimony, and the Distinction Between Justification and Excuse*, 1994 UNIV. OF ILL. L. REV. 45, 72 (1994) (“Although individual behavior is difficult to predict, the best indicators of future violence are past violent behavior by the same person in similar circumstances.”). See also: JOHN MONAHAN, PREDICTING VIOLENT BEHAVIOR 88-92, 104-05 (1981).

<sup>386</sup> Cornia, *supra* note 253, at 104 (1997) (“Experience may enable battered women to recognize the imminence of an attack at a time when others without their prior experience would not.”); Elizabeth Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623, 634 (1980) (“Subtle motions or threats that might not signify danger to an outsider or to the trier of fact acquire added meaning for a battered woman whose survival depends on an intimate knowledge of her assailant.”); Kit Kinports, *So Much Activity, So Little Change: A Reply to the Critics of Battered Women’s Self-Defense*, 23 ST. LOUIS UNIV. PUB. L. REV. 155, 180-181 (2004).



Third, there are cases in which, in order to increase the chance of survival, women might take defensive measures to prevent future harm during a lull, when the attack has ceased, or when there is no current attack from the abuser.<sup>387</sup>

In this regard, Phyllis L. Crocker stated that women's lack of physical defense training, coupled with a socialization process that equates femininity with weakness, means that women may perceive danger sooner and more frequently than men.<sup>388</sup> Unlike men, they are not taught to defend themselves, either in schoolyard tussles or through military training, but to be physically, emotionally, and intellectually passive.<sup>389</sup>

Based on this idea, Elena Larrauri has stated that in situations of confrontation between a woman and a man with whom she lives, there is not always the possibility of

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<sup>387</sup> Shana Wallace, *Beyond Imminence: Evolving International Law and Battered Women's Right to Self-Defense*, 71 The University of Chicago Law Review (4) 1749, 1754 (2004) (Criticizing the exclusion of the defendant's history of domestic abuse in cases in which a battered woman acted in self-defense during a lull in a pattern of ongoing violence and thus was seen as not facing an imminent threat.); Richard A. Rosen, *On Self-Defense, Imminence, and Women Who Kill Their Batterers*, 71 N.C. L. REV. 371, 403 (1993) (Criticizing the Judy Norman case, and emphasizing the extreme risk she would have faced had she waited for the next attack before defending herself. By delaying her actions, Norman might have increased the likelihood of her own death. The author argues that the law should provide these women with the opportunity to argue that they acted in self-defense when they chose not to wait for another attack to protect themselves.); Kinports, *supra* note 386, at 181 (When discussing imminency in non-confrontational cases, the author states that the requirement applies to these cases because of the woman's history of domestic abuse, stating "a battered woman may reasonably come to believe that the only time she can realistically protect herself is when her abuser is, for example, asleep. She may have learned that trying to defend herself during a beating is futile and merely escalates the violence. She may have tried numerous other ways of protecting herself and escaping the relationship, only to find that the criminal justice system and social service agencies were unable or unwilling to help her and that her husband would find her, bring her back, and punish her with even more severe abuse for attempting to leave him. In fact, research shows that battered women are often attacked and even killed when they try to leave the relationship, and the batterer fears that he is losing control."); Villegas, *supra* note 381, at 157.

<sup>388</sup> Phyllis L. Crocker, *The Meaning of Equality for Battered Woman Who Kill Men in Self-Defense*, 8 HARV. WOMEN'S L.J. 121, 127 (1985).

<sup>389</sup> *Id.* See also: Schneider, *supra* note 386, at 646-647 (Discussing how jury instructions should focus the jury's attention both on the woman defendant's circumstances and on her perspective, such as past circumstances that affected the woman's appraisal of the imminence of danger or consider not only size and strength differences between the woman and her assailant but also differences in socialization and access to training.)

choosing between a more severe or a less severe means, but rather the use of the only possible form of defense.<sup>390</sup> Due to the particular characteristics of socialization, education, personal experiences, and, very often, the physical constitution of the woman, it is clear that she must defend herself when the man is caught off guard and with low defenses, unlike the man who commonly does not require such circumstances to execute his defense.<sup>391</sup>

The requirement that the attacker be fully conscious and capable of repelling the attack—as in Karina's case—or that the acute incident of battering has already commenced—as in the Mexican reserved case and Claudia's situation—reflects an androcentric perspective based only on men's size and their common patterns of behavior and socialization. In these scenarios, a man may be able to defend himself without waiting for his attacker to be off guard, and factors such as strength, physical build, socialization, or education are not necessarily decisive.

Consequently, one must question how much women should endure before being allowed to take action to protect themselves, and most importantly, how much is society willing to compromise a woman's chances of defending herself by requiring an attack to be both proximate and immediate? Clearly, the traditional concept of imminency that does not consider the history of domestic abuse the defendant has suffered is not suitable for

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<sup>390</sup> LARRAURI, *supra* note 281, at 45, 67; LARRAURI AND VARONA, *supra* note 281, at 17, 46.

<sup>391</sup> LARRAURI, *supra* note 281, at 45, 67; Di Corleto, *supra* note 9, at 861 (In order to evaluate whether the use of a weapon by a battered woman constitutes legitimate self-defense, one must reflect on the typical disadvantages women face regarding size and strength and the lack of training in physical protection compared to men. The attacker's physical superiority is a factor to consider when analyzing the rational necessity of the defense employed.)

these cases, and some courts are still using this concept without any consideration of the woman's context.

### 2.2.2.2 Misinterpreting cross-violence: Equating unequal adversaries

In some cases of intimate partner homicide, women's defenses get rejected because the women are depicted not as victims but as the perpetrators of violence themselves, considering that the existence of cross-violence is a clear indication of power symmetry in the relationship.<sup>392</sup>

A clear example of the latter is the case of Claudia and Alfredo, where the judge interpreted the mutual violence as if it were two men constantly fighting, equating the physical capabilities of a man and a pregnant woman. According to the Court of Justice of

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<sup>392</sup> See for example: Argentina: Infobae, *supra* note 368; Tucumán, *supra* note 368; Cámara en lo Penal y Correccional of San Juan [CApel. Penal SJn] [Criminal and Correctional Court of San Juan], 13/5/2019, "C/ ANDRADA ESPINOSA, Guadalupe Rita S/ Homicidio Agravado por el vínculo (Arts. 80, inc 1º del Código Penal) en perjuicio de Juan Pablo Ojeda Riveros", 24-25, available in Poder Judicial San Juan, chrome-extension://efaidnbmnnnibpcajpcgclclefindmkaj/https://www.jussanjuan.gov.ar/wp-content/uploads/2019/05/FUNDAMENTOS-CASO-GUADALUPE-ANDRADA-EXCESO-EN-LA-LEGITIMA-DEFENSA.pdf (Last visited February 15, 2025) (Argentina); Chile: Corte de Apelaciones de Valparaíso (C. Apel. Valparaíso) (court of appeals), 26 de septiembre de 2016, "Ministerio Público c/ Francisca Soledad Salgado Martínez", rol de la causa: 1488-2016, available at <https://app.vlex.com/vid/m-p-c-francisca-651328077> (Last visited February 16, 2025) (Chile); Corte De Apelaciones de Valdivia (C. Apel. Valdivia) (court of appeals), 04 de septiembre de 2017, "Contra: Constanza Romina Silva Arias", Rol de la causa: 482-2017, s. parricidio, Considerando Séptimo y Décimo tercero, available at <https://oficinajudicialvirtual.pjud.cl/home/index.php> (Last visited February 16, 2025) (Chile); 7º Tribunal Oral en lo Penal de Santiago (T.J.O.P.) (7º criminal trial court Santiago), 25 de junio de 2012, "Ministerio Público c/ Inés del Carmen Fuentes Cornejo", rol de la causa: O-63-2012, s. homicidio (homicide), Considerando Décimo, available at <https://oficinajudicialvirtual.pjud.cl/indexN.php#> (Last visited February 16, 2025) (Chile); 5º Tribunal de Juicio Oral en lo Penal de Santiago (T.J.O.P.) (5º criminal trial courts Santiago), 05 de noviembre de 2017, "CECILIA MARISOL GONZÁLEZ PARRAGUIRRE C/ ISKA LORENA ELGUETA MORALES", Rol de la causa: O-172-2017, s. parricidio, Considerando Duodécimo, available at <https://oficinajudicialvirtual.pjud.cl/home/index.php> (Last visited February 16, 2025) (Chile); Mexico: La Silla, *supra* note 370.

San Juan, Claudia and Alfredo's relationship unfolded in a context marked by acts of physical and verbal violence that were reciprocal, constant, and frequent. Indeed, the court dismissed the existence of illegitimate aggression, among other reasons, for the existence of cross-violence between Claudia and Alfredo.<sup>393</sup>

However, most of the empirical evidence demonstrates that gender symmetry<sup>394</sup> in the use of interpersonal violence is a fallacy.<sup>395</sup> Gender symmetry in violence is the product of flawed studies conducted by antifeminist groups advocating for a more gender-neutral approach to intimate partner violence, arguing that women could be just as violent as men.<sup>396</sup> These groups based their assertion on the Conflict Tactics Scale (CTS), which later evolved into a revised version called CT2.<sup>397</sup> However, scholars have strongly criticized these types of studies.

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<sup>393</sup> Corte de Justicia de San Juan [CJ C.Jn.] [Court of Justice of San Juan], 6/8/2019, "C/ M.C.A. - por el delito homicidio agravado por el vínculo en perjuicio de A.T.", LIBRO DE PROTOCOLOS DE LA CORTE DE JUSTICIA DE SAN JUAN, 16-20, (2019-II-388) (Argentina).

<sup>394</sup> MS Kimmel, "Gender Symmetry" In *Domestic Violence - A Substantive and Methodological Research Review*, 8 VIOLENCE AGAINST WOMEN 1332, 1334 (2002) (Author explains that gender symmetry in interpersonal violence refers to the idea that men and women are equally likely to use violence against each other).

<sup>395</sup> SUSAN MILLER, VICTIMS AS OFFENDERS: THE PARADOX OF WOMEN'S VIOLENCE IN RELATIONSHIPS 15 (2005).

<sup>396</sup> MILLER, *supra* note 395, at 16-17. See also: Kimmel, *Supra* note 394, at 1334-1336 (discussing how the two large scale reviews of literature that demonstrate gender symmetry are undermined by several methodological flaws. Many of the studies rely solely on the Conflict Tactics Scale (CTS), which merely counts acts of violence without addressing context or severity. Moreover, a significant number of these studies focus on younger populations—such as college students or dating couples—whose patterns of conflict differ markedly from those of older, married couples. Some studies are based only on people's perceptions of violence or on reports of witnessed violence that offer little usable data, while others suffer from additional methodological issues, such as not considering homicide, lacking gender comparisons, relying on non-representative sources (like American comic strips), using clinical samples that cannot be generalized, or failing to survey men or administer the same questionnaire to them).

<sup>397</sup> MILLER, *supra* note 395, at 17.

Susan Miller points out five main flaws in these studies. First, they fail to consider contextual factors and instead count violent acts, leading to a false assumption of gender symmetry.<sup>398</sup> For example, in these studies, a punch is considered severe violence without regard to the severity of the injury it inflicts.<sup>399</sup> A man's punch might result in more severe injury than a woman's, and therefore, they should not be equated.<sup>400</sup>

In a similar line, Emerson Dobash and Russell Dobash have similarly criticized these models because the scale in this study has poor categories of violence that are not mutually exclusive, and it fails to collect any information about injuries sustained, assuming that some injuries carry a greater risk of injury than others.<sup>401</sup> These defects and the failure to develop an overall analysis of specific violent events led to fundamental problems in its use.<sup>402</sup>

Second, the CTS model simply asks respondents to check a box indicating whether they have ever committed a specific violent act, labeling them as the perpetrator regardless of the circumstances in which they acted, such as self-defense, or whether it occurred only once.<sup>403</sup>

Following this same line of argument, Michael Kimmel states that CTS is a simplified account of acts of violence that does not take into account the circumstances in

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<sup>398</sup> *Id.*

<sup>399</sup> *Id.* at 18.

<sup>400</sup> *Id.*

<sup>401</sup> R. Emerson Dobash and Russell P. Dobash, *Research as Social Action: The Struggle for Battered Women*, in FEMINIST PERSPECTIVES ON WIFE ABUSE 51, 59 (Kersti Yllö and Michele Louise Bograd eds., 1988). See also: RICHARD B. FELSON AND AM. PSYCH. ASS'N, VIOLENCE & GENDER REEXAMINED 41-42 (2002).

<sup>402</sup> *Id.*

<sup>403</sup> MILLER, *supra* note 395, at 18.

which these acts occur.<sup>404</sup> Kimmel indicated that the CTS scores do not take into account who initiates violence, the size and strength of the individuals involved, and the nature of their relationship.<sup>405</sup> For example, “if she pushes him back after being severely beaten, it would be scored 1 conflict tactic for each.”<sup>406</sup>

Kimel also notes that many studies using the CTS focus on samples of young, dating couples rather than on older, cohabiting or married populations, which can distort the true dynamics of domestic violence.<sup>407</sup>

Third, there is a reliability issue present in a large national quantitative study, as men underreport their use of violence.<sup>408</sup> In contrast, women often underreport their victimization due to fear of reprisal, shame, embarrassment, perceiving the incident as too minor to mention, or not realizing it constitutes a crime.<sup>409</sup>

Fourth, the CTS model has significant omissions, including the level of injury, sexual assault, and categories such as ex-partners and ex-spouses.<sup>410</sup> For example, mild injuries may reveal fewer gender differences in violence; however, as the severity of violence and injury increases, women are disproportionately represented as victims.<sup>411</sup> These studies also overlook the psychological issues prevalent in battered women.<sup>412</sup> Additionally, women are overrepresented as victims of sexual assault, yet this category is

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<sup>404</sup> Kimmel, *Supra* note 394, at 1341.

<sup>405</sup> *Id.*

<sup>406</sup> *Id.*

<sup>407</sup> *Id.*

<sup>408</sup> MILLER, *supra* note 395, at 19.

<sup>409</sup> *Id.*

<sup>410</sup> *Id.* See also: Kimmel, *Supra* note 394, at 1350.

<sup>411</sup> MILLER, *supra* note 395, at 19.

<sup>412</sup> *Id.*

not included in the study.<sup>413</sup> Moreover, the studies fail to consider ex-partners, despite the fact that the rate of intimate partner violence against women is eight times higher when perpetrated by ex-partners compared to rates for married women.<sup>414</sup>

The omission of homicide has also been noted by Emerson Dobash and Russell Dobash, who highlight the lack of attention given to the context in which killings occur. Men and women do not initiate similar acts of violence, as shown by the different motives behind such acts.<sup>415</sup> Evidence indicates that most spouse killings committed by wives are acts of self-defense, a circumstance that is almost never the case for those committed by husbands.<sup>416</sup> Whereas men often kill their wives after prolonged periods of physical violence, they are also more prone to commit familial massacres and to hunt down wives who leave them—behaviors that women rarely, if ever, exhibit.<sup>417</sup>

Fifth, the CTS fails to address the importance of fear and its role in battering dynamics.<sup>418</sup> Women may fear death or serious injury when their partners are violent, whereas men typically do not experience fear unless the violence is severe.<sup>419</sup> This is important, given that fear is the primary mechanism of control in violent partners.<sup>420</sup>

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<sup>413</sup> *Id.* at 20.

<sup>414</sup> *Id.* 20.

<sup>415</sup> Russell P. Dobash et al., *The Myth of Sexual Symmetry In Marital Violence*, 39 Soc. Probs., 71, 81 (1992).

<sup>416</sup> *Id.*

<sup>417</sup> *Id.*

<sup>418</sup> MILLER, *supra* note 395, at 20.

<sup>419</sup> *Id.*

<sup>420</sup> *Id.*

The reality is that women's use of force is different from men's in terms of injury and motivation.<sup>421</sup> First of all, it is worth noticing that women are the primary victims of intimate partner violence in Chile, Argentina, and Mexico, as amply developed in Chapter I. Second, several studies conducted from a feminist perspective—correcting the flaws in the CTS models—show that when women use force, it is most often to defend themselves, escape, or attempt to fight back.<sup>422</sup> The use of force is gendered. While men tend to use force to exercise power over their partners, women do it to express emotion, escape violence, or defend themselves or their children.<sup>423</sup>

Taking this information into account, it seems more likely that the so-called cross-violence between Claudia and Alfredo was actually a woman attempting to defend herself with scratches and punches, which are markedly different in magnitude and motivation from the severe abuse Alfredo inflicted on her. His punches were undeniably more damaging than hers, a critical difference the Appeals Court overlooked, treating their violence as if they were physically equals when, in fact, they never were. Thus, the presence of marks from the scratches Claudia inflicted on Alfredo should not be interpreted as evidence of symmetrical violence in their relationship but rather as a woman trying to protect herself, just as the defendant stated she did.

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<sup>421</sup> *Id.* at 22-23.

<sup>422</sup> In general: Susan L. Miller & Michelle L. Meloy, *Women's Use of Force*, 12 *Violence Against Women* (1), 89 (2006); Ola W. Barnett and Cheok Y. Lee, *Gender Differences In Attributions of Self-defense and Control In Interpartner Aggression*, 3 *Violence Against Women*, 462 (1997); Michele Cascardi and Dina Vivian, *Context for Specific Episodes of Marital Violence: Gender and Severity of Violence Differences*, 10 *J. Fam. Viol.* 265, (1995).

<sup>423</sup> MILLER, *supra* note 395, at 23.



### 2.2.2.3 Failure to identify and ponder the interests and harms involved

#### a) Misidentifying interests in self-defense and harms in exculpatory state of necessity

An error committed by some courts is that they fail to assess the proportionality between illegitimate aggression and defensive action in self-defense and to identify and ponder the harms in the exculpatory state of necessity.<sup>424</sup> This leads to the unfulfillment of the rational necessity for the means employed to prevent or repel aggression (proportionality) in self-defense, and the requirement of the harm caused must not significantly exceed the harm being avoided in an exculpatory state of necessity.

Regarding self-defense, the requirement of rational necessity demands that the means employed to defend be proportional to the aggression.<sup>425</sup> This means that the interest

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<sup>424</sup> See for example: Argentina: Tribunal de Impugnación Penal de Salta [TIP Sta.] [Criminal Appeals Court of Salta], 31/7/2018, “Recurso de casación con preso - D, G. L. por homicidio calificado por el vínculo mediando circunstancias extraordinarias de atenuación en perjuicio de B., A. de la C.”, 27, available at Repositorio Escuela de la Defensa Pública, [https://repositorio.mpd.gov.ar/documentos/DGL%20\(causa%20N%C2%B0%2075736\).pdf](https://repositorio.mpd.gov.ar/documentos/DGL%20(causa%20N%C2%B0%2075736).pdf); Cámara en lo Penal y Correccional of San Juan [CApel. Penal SJn] [Criminal and Correctional Court of San Juan], 13/5/2019, “C/ ANDRADA ESPINOSA, Guadalupe Rita S/ Homicidio Agravado por el vínculo (Arts. 80, inc 1º del Código Penal) en perjuicio de Juan Pablo Ojeda Riveros”, 29-30, available in Poder Judicial San Juan, [chrome-extension://efaidnbmninnibpcapcglcfeindmkaj/https://www.jussanjuan.gov.ar/wp-content/uploads/2019/05/FUNDAMENTOS-CASO-GUADALUPE-ANDRADA-EXCESO-EN-LA-LEGITIMA-DEFENSA.pdf](https://www.jussanjuan.gov.ar/wp-content/uploads/2019/05/FUNDAMENTOS-CASO-GUADALUPE-ANDRADA-EXCESO-EN-LA-LEGITIMA-DEFENSA.pdf) (Last visited February 15, 2025) (Argentina). Chile: Corte De Apelaciones de Valdivia (C. Apel. Valdivia) (court of appeals), 04 de septiembre de 2017, “Contra: Constanza Romina Silva Arias”, Rol de la causa: 482-2017, s. parricidio, Considerando Décimo Quinto, available at <https://oficinajudicialvirtual.pjud.cl/home/index.php> (Last visited February 16, 2025) (Chile); 5º Tribunal de Juicio Oral en lo Penal de Santiago (T.J.O.P.) (5º criminal trial courts Santiago ), 05 de noviembre de 2017, “CECILIA MARISOL GONZÁLEZ PARRAGUIRRE C/ ISKA LORENA ELGUETA MORALES”, Rol de la causa: O-172-2017, s. parricidio, Considerando Duodécimo, available at <https://oficinajudicialvirtual.pjud.cl/home/index.php> (Last visited February 16, 2025) (Chile).

<sup>425</sup> POLITOFF ET. AL., *supra* note 270, at 219-220; CREUS, *supra* note 273, at 326 (This requirement involves an assessment of the defensive act in relation to the aggression suffered, using means that are rationally necessary to prevent or repel that specific and determined aggression being endured.); CARRANCA Y TRUJILLO, *supra* note 271, at 315 (Defense against aggression is limited by rational necessity; otherwise, it

damaged by the defensive action cannot be significantly greater than the protected interest.<sup>426</sup> Additionally, the concept of rationality does not require an arithmetical proportionality but should be assessed on a case-by-case basis, considering the specific circumstances.<sup>427</sup>

The problem is that some courts consider the woman acted with excessive use of force, and therefore, failed the requirement of proportionality in self-defense.<sup>428</sup> However, this consideration ignores that less harmful means are not available to women.<sup>429</sup> To defend herself, a woman must necessarily use a method of greater intensity than a man.<sup>430</sup>

Similarly, the committee of experts of MESECVI, in an attempt to incorporate a gender perspective to the defenses of women who have killed their intimate partners, has stated that the proportionality of the response is linked to the ongoing nature of the

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would be considered disproportionate or excessive. The disproportionality of the defense used, as well as that of the damage, turns the reaction into an excessive one).

<sup>426</sup> POLITOFF ET. AL., *supra* note 270, at 220; CREUS, *supra* note 273, at 326-330; CARRANCA Y TRUJILLO, *supra* note 271, at 315.

<sup>427</sup> RICARDO NUÑEZ, DERECHO PENAL ARGENTINO, PARTE GENERAL, TOMO I, 366-367 (1959); CURY, *supra* note 271, at 375; POLITOFF ET. AL., *supra* note 270, at 219; MALO, *supra* note 266, at 418; CARRANCA Y TRUJILLO, *supra* note 271, at 315.

<sup>428</sup> LARRAURI, *supra* note 281, at 78 (These cases are what the author calls defense cases committed with excess in intensity, given that by definition, there is a necessity to defend, but the response has been excessive. This gives rise to a mitigating circumstance of punishment called "exceso en legítima defensa" (excess in self-defense)); LARRAURI AND VARONA, *supra* note 281, at 60.

<sup>429</sup> LARRAURI, *supra* note 281, at 67. See also: COMITÉ DE EXPERTAS DEL MESECVI, *supra* note 268, at 12 (With respect to the instrument analyzed, the CEVI notes that the law does not require proportionality, but rather the lack of unusual disproportion between the attack and self-defense in terms of the damage caused. It follows that an act of self-defense cannot be considered unreasonable if the physical superiority of the attacker prevents the woman victim from using the same means to defend herself); LARRAURI AND VARONA, *supra* note 281, at 37-38.

<sup>430</sup> LARRAURI, *supra* note 281, at 67; LARRAURI AND VARONA, *supra* note 281, at 46.; Villegas, *supra* note 381, at 159; María Leguizamón, *La legítima defensa. Casos particulares*, in LA SITUACIÓN ACTUAL DEL SISTEMA PENAL EN MÉXICO 143, 153-156 (Sergio García and Olga Islas Eds., 2011).

aggression suffered.<sup>431</sup> That is, the degree of response of self-defense is responding to an ongoing and permanent act of violence lived on a daily basis by the victim.<sup>432</sup> It also added that sometimes, there is an apparent disproportion between the nature of the attack and the self-defense method used, reflecting the victim's fear that her chosen method might be ineffective, allowing the attacker to recover quickly and unleash his full fury.<sup>433</sup> Consequently, the committee emphasizes a clear link between the self-defense method employed and the circumstances in which women must defend themselves.<sup>434</sup>

However, despite these reasons, women's attacks are still seen as disproportionate. This happens because the courts overlook the context of domestic abuse or the levels of danger to which the defendant is constantly subjected, focusing narrowly on the specific act of aggression by the abuser prior to the defendant's homicidal act. This narrow focus can lead to a misjudgment, erroneously concluding that the defendant's actions were excessive in comparison to the abuser's aggression. Such an approach fails to account for the cumulative impact of ongoing abuse, which can critically inform the defendant's response.<sup>435</sup>

For example, in the Mexican reserved case, the court focused its attention on the lack of rationality of the means used for the defense and concluded it was unjustified because there was no proportionality between the harm repelled (abuse by her spouse) and

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<sup>431</sup> COMITÉ DE EXPERTAS DEL MESECVI, *supra* note 268, at 10.

<sup>432</sup> *Id.*

<sup>433</sup> *Id.* at 11.

<sup>434</sup> *Id.* at 12.

<sup>435</sup> Laurenzo, *supra* note 8, at 21-22.

the harm caused by the accused (death of the abuser).<sup>436</sup> Likewise, in Claudia's case, the Court stated that the evident disproportion of the goods at stake rendered her actions irrational and unjustified.<sup>437</sup>

In the Mexican case, we can see that the woman reacted in what could be called a moment of lull between attacks. In this case, the woman stabbed her husband while he was standing in front of the door with his left arm hanging from a wooden pole after physically assaulting her.<sup>438</sup> The court deemed the rationality of the means she used for self-defense unjustified, citing a lack of proportionality between the harm inflicted upon her and the damage resulting from her method of defense.<sup>439</sup>

The problem here is that the court considered the woman's acts excessive and disproportionate because it was comparing these actions to the moments leading up to the attack rather than considering the extensive abuse she endured, according to several psychological and psychiatric reports.<sup>440</sup>

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<sup>436</sup> Juzgado Primero de Control del Tercer Distrito Judicial del Sistema de Justicia Penal Acusatorio y Oral del Estado de Yucatán (First Control Court of the Third Judicial District of the Accusatory and Oral Criminal Justice System of the State of Yucatán), 20 de octubre de 2023, Expediente N° 56/2021, s. homicidio (homicide), Considerando Tercero, available at [https://www.cjyuc.gob.mx/?page=sentencias\\_pi](https://www.cjyuc.gob.mx/?page=sentencias_pi) (Last visited February 15, 2025) (Mexico).

<sup>437</sup> Corte de Justicia de San Juan [CJ C.Jn.] [Court of Justice of San Juan], 6/8/2019, "C/ M.C.A. - por el delito homicidio agravado por el vínculo en perjuicio de A.T.", LIBRO DE PROTOCOLOS DE LA CORTE DE JUSTICIA DE SAN JUAN, 22, (2019-II-388) (Argentina).

<sup>438</sup> Juzgado Primero de Control del Tercer Distrito Judicial del Sistema de Justicia Penal Acusatorio y Oral del Estado de Yucatán (First Control Court of the Third Judicial District of the Accusatory and Oral Criminal Justice System of the State of Yucatán), 20 de octubre de 2023, Expediente N° 56/2021, s. homicidio (homicide), Considerando Tercero, available at [https://www.cjyuc.gob.mx/?page=sentencias\\_pi](https://www.cjyuc.gob.mx/?page=sentencias_pi) (Last visited February 15, 2025) (Mexico).

<sup>439</sup> *Id.*

<sup>440</sup> *Id.*

Taking the context of domestic violence into account reveals that the interests protected by women's actions in similar cases are their lives and physical integrities, given the context of severe domestic abuse in which these women live. In this manner, when these women kill as soon as the violence starts or in a lull, they are not exceeding in defending themselves but protecting themselves from severe harm to come.

Regarding exculpatory state of necessity, as previously mentioned, one of the requirements is that the harm caused must not significantly exceed the harm being avoided. This concept implies the presence of two harms: the one to be prevented or repelled and the one caused. Given that pondering harms is essential for this defense, accurately identifying and evaluating the nature of each is crucial to determining whether the defense should be granted or denied. This assessment involves not only the hierarchy of the goods affected but also factors such as the intensity of the harm, the immediacy of the danger, and the magnitude of the harm.<sup>441</sup>

However, a consequence of excluding the history of domestic abuse in the assessment of criminal defenses in the cases at hand is that courts often fail to identify these harms properly and therefore to ponder them accordingly. One harm is easily identifiable, that is, the death of the abuser. However, the problem is the identification of the repelled harm. Courts mistake this last with the actions of the abuser before the fatal incident, such as sleeping or eating. Consequently, at the moment of weighing the harms, the harm caused looks significantly greater than the harm avoided.

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<sup>441</sup> Vidal, *supra* note 274, at 246.

This error is the result of failing to consider the context of domestic violence that underlies both harms. Indeed, the harm caused is the death of the abuser. However, the harm the woman seeks to prevent with her homicidal action is her own death or severe bodily injury from the abuser.<sup>442</sup> This harm can only be identified and recognized if the judge considers the entire domestic violence context rather than focusing solely on the brief time frame surrounding the abuser's death.

For example, in Karina's case, the Court of Appeals stated that at the time of the fatal incident, there was no immediate threat to the lives of Karina and her children, and therefore, she caused harm more significant than the one she repelled.<sup>443</sup> Here, the court's analysis was confined to the time frame immediately preceding Claudio's death. Since he was asleep at that moment, as the court reasoned, there was no imminent harm.

Nevertheless, in order to fairly determine the repelled harm, courts must consider the broader context, including the ongoing abuse the defendant endured from her intimate partner. Only by accounting for the severity and continuity of the abuse can the court recognize that the harm being repelled is the constant threat of death imposed by the abuser.

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<sup>442</sup> LARRAURI, *supra* note 281, at 66, 91 (The author argues that the harm caused by the woman is not greater than the harm she is trying to avoid. Here, the legal interests involved are a woman's life, sexual freedom, freedom of movement, security, freedom of choice, physical integrity, and the abuser's life); LARRAURI AND VARONA, *supra* note 281, at 45, 77.

<sup>443</sup> Corte de Apelaciones de San Miguel (C. Apel. San Miguel) (court of appeals), 27 de marzo 2013, "MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS," Rol de la causa: 133-2013, s. parricidio, Considerando and décimo quinto, available at <https://app.vlex.com/vid/karina-carmen-sepulveda-cisternas-488434634> (Last visited February 15, 2025) (Chile).

In Karina's case, the repelled harm was Karina and her children's death. Just as the defense lawyer stated in her opening statement, this is a matter where the harms involved were the lives of both partners.<sup>444</sup> This can be inferred from the extreme physical violence she endured, evidenced by at least three fractures and numerous scars from both blunt and sharp object attacks.<sup>445</sup> The forensic expert identified 64 visible scars on the defendant, resulting from injuries inflicted with rods, sticks, straps, and stab wounds.<sup>446</sup> Cases of severe extreme violence always have attached the risk of death for obvious reasons. This ongoing danger, which they sought to escape, is the harm Karina aimed to repel when she killed Claudio, not the fact that he was sleeping.

**b) Misjudgment on the severity of violence and danger of death or severe bodily harm**

Another consequence of disregarding the history of domestic violence when evaluating the interests and harms involved is that courts fail to properly assess the severity of the violence these women endure, thus diminishing their suffering. Courts may assume that, because these women have endured abuse for so long, they are not at real risk of dying.

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<sup>444</sup> Tribunal de Juicio Oral en lo Penal de Puente Alto (T.J.O.P.) (criminal trial courts Puente Alto), 17 de enero de 2013, "MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS," Rol de la causa: O-166-2012, s. parricidio (parricide), Considerando Cuarto, Tirant Latam online: LTM31.725.960. (Chile). (In her opening argument, the defense attorney stated that the harm caused is not substantially greater than the harm that is prevented because it is not required that the legal interests be of equal value; what is required is that it is not substantially greater. In this case, it is life for life—the legal interests are identical. Moreover, her life and the lives of her children, two protected legal interests.)

<sup>445</sup> *Id.* At Considerando Undécimo.

<sup>446</sup> *Id.*

This reasoning further diminishes the severity of the abuse by treating their survival as evidence that the abuse was not as severe as they claim.

Consequently, in the case of self-defense, the protected interest is not the life of the defendant, who is reacting to an illegitimate aggression that seems minor compared to her immediate reaction. In exculpatory state of necessity, the harm the defendant seeks to repel—the abuse they suffer, rather than the risk of death—is not regarded as significant as the harm she inflicts—the death of their abuser.

However, this reasoning is shallow and absurd because it isolates the act of killing, ignoring the context in which it occurs. It is as illogical as saying that in a game of Russian roulette, because you are still alive, the next time you pull the trigger, you will not die, and surviving so far somehow eliminates the permanent danger of dying. The consequence of this reasoning is a failure to properly evaluate the severity of the danger involved in the case and, consequently, to gauge the extent of the violence these women endure.

The reason why courts end up misassessing the severity of the harm is that they are using a male perspective. According to this view, it seems inconceivable that someone could remain in a situation of prolonged mistreatment and severe abuse without leaving. The point at which many outsiders suggest the woman exit the abusive relationship – immediately after an abusive incident- is precisely when she is least able to plan such a move because she is frightened, scared, in shock, injured, and surviving is the only goal in this stage.<sup>447</sup>

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<sup>447</sup> BROWNE, *supra* note 200, at 111.



Also, this perspective assumes that when men are attacked by other men, they have the means to defend themselves—either by fighting back at the first sign of trouble or by retreating, but this view does not take into account the cases in which the abuser is someone who is supposed to love the victim. Even in the rare instances where a woman is physically stronger than her partner and becomes abusive, the social expectation is that the man will also retreat because society does socialize men to endure a state of terror inflicted by his female partner.

In addition, as mentioned, women who are victims of domestic abuse develop knowledge of the abuser's behavior that enables them to predict his actions based on subtle cues that others may not recognize. In the words of Elizabeth Schneider, "Subtle motions or threats that might not signify danger to an outsider or the trier of fact acquire added meaning for a battered woman whose survival depends on an intimate knowledge of her assailant."<sup>448</sup> In this manner, it is completely plausible, even likely, that the defendant can construe the signal that severe harm is imminent. However, some courts consider that because they are obtuse to the harm, it does not exist.

This critique is even more evident in Karina's case, where the Appeals Court stated the defendant was not subjected to a level of mistreatment more severe than what she experienced daily, which could lead her to conclude that her life was in danger.<sup>449</sup> In doing so, the court diminished the abuse suffered by Karina and her children, deeming it not

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<sup>448</sup> Schneider, *supra* note 386, at 634.

<sup>449</sup> Corte de Apelaciones de San Miguel (C. Apel. San Miguel) (court of appeals), 27 de marzo 2013, "MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS," Rol de la causa: 133-2013, s. parricidio, Considerando Décimo, available at <https://app.vlex.com/vid/karina-carmen-sepulveda-cisternas-488434634> (Last visited February 15, 2025) (Chile).

severe enough to warrant fear for their lives. This, despite the fact that in the days leading to the incident, Claudio had been hitting Karina repeatedly throughout the week, leaving her barely able to stand, and had struck his son on the head, bruising and marking his face. By considering these acts insufficient to justify Karina's actions, the Appeals Court denies the severity of the abuse she endured.

In Karina's case, the Appeals Court asserted that the danger of death did not exist because the defendant had not been subjected to a level of mistreatment different from the usual one in the days leading up to the fatal incident, thereby disregarding the cues that only Karina could perceive through her experience in the cycle of violence with Claudio. The court error is evident; just because a reasonable man might not perceive a threat does not necessarily mean that the defendant did not perceive it either.

#### **2.2.2.4 The illusion of alternative courses of action**

A typical argument that courts use to dismiss self-defense and exculpatory state of necessity is that women, particularly in cases involving domestic violence, had other alternatives less harmful than killing their intimate partner to avoid mistreatment.<sup>450</sup>

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<sup>450</sup> See for example: Argentina: Superior Tribunal de Justicia de Tierra del Fuego [STJ TFG.] [Superior Court of Justice of Tierra del Fuego], 6/11/2023, "CÁRDENAS, Gina Eliana s/Homicidio agravado", 15, available at Poder Judicial Provincia de Tierra del Fuego, at <https://juris.justierradelfuego.gov.ar/> (Last visited February 15, 2025) (Argentina); Tribunal de Impugnación Penal de Salta [TIP Sta.] [Criminal Appeals Court of Salta], 31/7/2018, "Recurso de casación con preso - D. G. L. por homicidio calificado por el vínculo mediando circunstancias extraordinarias de atenuación en perjuicio de B., A. de la C.", 21, available at Repositorio Escuela de la Defensa Pública, [https://repositorio.mpd.gov.ar/documentos/DGL%20\(causa%20N%C2%B0%2075736\).pdf](https://repositorio.mpd.gov.ar/documentos/DGL%20(causa%20N%C2%B0%2075736).pdf); Chile: Corte de Apelaciones de Valparaíso (C. Apel. Valparaíso) (court of appeals), 26 de septiembre de 2016, "Ministerio Público c/ Francisca Soledad Salgado Martínez", rol de la causa: 1488-2016, available at <https://app.vlex.com/vid/m-p-c-francisca-651328077> (Last visited February 16, 2025) (Chile); Corte De Apelaciones de Valdivia (C. Apel. Valdivia) (court of appeals), 04 de septiembre de 2017, "Contra: Constanza Romina Silva Arias", Rol de la causa: 482-2017, s. parricidio, Considerando Séptimo, available

Specifically, the apparent availability of options discards the requirements of reasonable need for the means employed to prevent or repel aggression in self-defense and that there must be no other feasible and less harmful means to avoid repelled harm in an exculpatory state of necessity.

In terms of self-defense, the rational necessity for the means employed requirement entails that the force employed must be indispensable to repel the aggression and should be limited solely to achieving that objective.<sup>451</sup> For a defense to be considered rational, it must demonstrate that the least harmful method was used from all suitable options available while taking into account the defendant's specific circumstances and personal traits.<sup>452</sup> In evaluating rational necessity, the judge must assess the defendant's circumstances from the perspective of a reasonable person placed in the same position as the defendant at the precise moment of the aggression.<sup>453</sup>

For example, in the Mexican reserved case, the court focused its attention on the lack of rationality of the means used for the defense and concluded it was unjustified, not

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at <https://oficinajudicialvirtual.pjud.cl/home/index.php> (Last visited February 16, 2025) (Chile). Mexico: Castañeda, *supra* note 2; Mora, *supra* note 2; Zavala *supra* note 2 ; Amézquita *supra* 2.

<sup>451</sup> GARRIDO, *supra* note 266, at 133; ZAFFARONI, *supra* note 266, at 475 (There has to be a necessity to respond to an aggression.); MALO, *supra* note 266, at 417 (Legitimate defense is explained as the need to respond to aggression to safeguard legal interests. Consequently, this need for the defense used must be such that the person acting has no alternative but to react as they do, learning to safeguard their right).

<sup>452</sup> GARRIDO, *supra* note 266, at 133; ZAFFARONI, *supra* note 266, at 476-477 (In Argentina, Zaffaroni has established that rationality works as a limit to necessity, excluding cases involving unusual or grossly disproportionate injuries from legitimate self-defense.); MALO, *supra* note 266, at 418 (Rationality of the defense requires that there is a certain proportionality between the reaction involving the defense and the characteristics of the aggression suffered.)

<sup>453</sup> GARRIDO, *supra* note 266, at 133.

only because there was no proportionality between the harm repelled and the harm caused by the accused but also because there were less harmful options available to the accused.<sup>454</sup>

Regarding the exculpatory state of necessity, one of the requirements is that there must be no other feasible, less harmful means to avoid the repelled harm. Some courts and part of the doctrine consider that leaving the marriage or asking officials for help is an option to stop mistreatment.<sup>455</sup> For example, in Karina's case, the Appeals Court referred to alternatives such as seeking help from her family or going to the police. Since these less harmful options to prevent mistreatment were available, the harm caused was substantially greater than the one being avoided.<sup>456</sup>

When the courts conclude that the woman had alternatives to killing their intimate partner, they are explicitly questioning why she did not leave the abusive relationship.<sup>457</sup> Unfortunately, this question is charged with judgment, misogyny, and male bias, given it

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<sup>454</sup> Juzgado Primero de Control del Tercer Distrito Judicial del Sistema de Justicia Penal Acusatorio y Oral del Estado de Yucatán (First Control Court of the Third Judicial District of the Accusatory and Oral Criminal Justice System of the State of Yucatán), 20 de octubre de 2023, Expediente N° 56/2021, s. homicidio (homicide), Considerando Tercero, available at [https://www.cjyuc.gob.mx/?page=sentencias\\_pi](https://www.cjyuc.gob.mx/?page=sentencias_pi) (Last visited February 15, 2025) (Mexico).

<sup>455</sup> Vidal, *supra* note 274, at 247 (The author discusses the requirement that “no other practicable and less harmful means exist to avoid the harm,” noting that in cases involving the ongoing danger posed by the actions of the “tyrant of the household,” it is unlikely this requirement can be met if the person could have repelled the danger by seeking help from public authorities or by leaving the shared home—except in extreme situations where such measures would have been ineffective).

<sup>456</sup> Corte de Apelaciones de San Miguel (C. Apel. San Miguel) (court of appeals), 27 de marzo 2013, “MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS,” Rol de la causa: 133-2013, s. parricidio, Considerando Undécimo, available at <https://app.vlex.com/vid/karina-carmen-sepulveda-cisternas-488434634> (Last visited February 15, 2025) (Chile).

<sup>457</sup> Di Corleto, *supra* note 9, at 865 (The author argues that a common myth about battered women is that if they truly wanted to leave their abusive homes, they could do so; thus, their staying behind is seen as either a lack of desire to leave or even an indication that they prefer being mistreated.); LARRAURI, *supra* note 281, at 66, 85 (It is often claimed that there are legitimate alternative means. However, this assertion overlooks the specific circumstances of the case where simply leaving the home is not an option due to fear of retaliation, lack of another place to go, the presence of young children, lack of economic means, among others); LARRAURI AND VARONA, *supra* note 281, at 45, 70.

blames the woman for staying and failing to avoid the harm.<sup>458</sup> Instead, we should start from the understanding that no man has the right to harm or kill his intimate partner, and the question should be what is wrong with him for committing violence, not what is wrong with her for staying.<sup>459</sup>

Nevertheless, it is necessary to answer this question, given the male bias that permeates criminal law. Otherwise, leaving this question unanswered risks judges arriving at the erroneous conclusion that these women stay because the mistreatment is not as severe as they describe or because women victims of domestic abuse are masochistic.<sup>460</sup>

When violence starts—either at the beginning of a relationship or later—women may stay due to love and commitment, shame, the belief that they can change the perpetrator by modifying their own behavior to deter the abuse, and concerns about the impact of separation on their children.<sup>461</sup> However, as the violence increases over time, other reasons appear, such as practical problems attached to separation, fear of reprisal from the abuser if they leave, and the intrinsic dangerousness of the separation.<sup>462</sup>

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<sup>458</sup> HOFF, *supra* note 177, at 46-47 (1990) (Author attacks the popular notion that women who stay in abusive relationships are either stupid or provocative of violence or cowards, arguing women stay for several reasons, ranging from cultural values on marriage and family, social and economic realities, and the threat and danger of separation. Despite these factors, people appear to be judgmental about battered women's decisions to stay, blaming them for their situation.); Mahoney, *supra* note 159, at 61 (Author criticizes the assumption that the right solution is separation and it is the woman's responsibility to achieve separation, judging the fact she did not leave).

<sup>459</sup> FORREL Y MATTHEWS, Laurenzo, *supra* note 8, at , at 162 ("Instead of asking, "Why doesn't the woman leave," we should ask, "Why do men batter," or perhaps, more significantly, "Why does society tolerate men who batter?")

<sup>460</sup> WALKER, *supra* note 115, at 18; GONDOLF AND FISHER, *supra* note 177, at 14-15; Di Corleto, *supra* note 9, at 866 (The question of why she did not leave invites speculation that by remaining in the relationship, she knowingly assumed the risk of further aggression).

<sup>461</sup> BROWNE, *supra* note 200, at 110 (1987); JONES, *supra* note 281, at 207.

<sup>462</sup> BROWNE, *supra* note 200, at 110-117 (1987).

The practical problems are related mainly to economic and social issues, such as the availability of spots in shelters, starting legal procedures against their ex-partners, such as divorce, and the need to provide for their children.<sup>463</sup> In other words, limitations such as lack of options, know-how, and financial resources heighten fears of escape, and for these reasons, the woman might focus on changing the abuser's behavior rather than leaving.<sup>464</sup>

Also, many women stay because they have tried to escape and have been beaten for it or because they believe their partner would retaliate against them if they tried to leave with further violence.<sup>465</sup> These fears are supported by their past experiences with men's violence as well as threats of further violence if they tried to leave.<sup>466</sup> In this way, the woman remains in the relationship not because she enjoys it or lacks genuine fear for her life, but because she does not have the resources or strength to leave.<sup>467</sup>

In addition, the separation point is one of the most dangerous times for women trapped in an abusive relationship, since the separation can make the men "depressed, angry, agitated, homicidal and suicidal."<sup>468</sup> These situations can get very dangerous for a woman—some men would rather kill her than see her leave.<sup>469</sup> Even in cases in which they made their way out, leaving the abusers does not guarantee their safety from further assault.<sup>470</sup>

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<sup>463</sup> BROWNE, *supra* note 200, at 111-112; Villegas, *supra* note 381, at 158-159.

<sup>464</sup> GONDOLF AND FISHER, *supra* note 177, at 12.

<sup>465</sup> BROWNE, *supra* note 200, at 113 (1987); JONES, *supra* note 281, at 207.

<sup>466</sup> BROWNE, *supra* note 200, at 114 (1987).

<sup>467</sup> Di Corleto, *supra* note 9, at 866.

<sup>468</sup> BROWNE, *supra* note 200, at 115-116.

<sup>469</sup> *Id.* at 117.

<sup>470</sup> *Id.* at 120.

Martha Mahoney explains that the escalation of violence post-separation is often a response to the perceived loss of control by the abuser over the woman.<sup>471</sup> Consequently, marital separation increases the instigation of violence by the abuser, aiming to prevent or punish the woman's autonomy.<sup>472</sup> Very often, this violence escalates to the point in which the woman ends up dead.<sup>473</sup>

Lastly, some existing theories to explain battering and its effects –such as Battered Woman Syndrome- are based on the Learned Helplessness theory. As explained in Chapter I, Lenore Walker describes it as a "research-based theory" to explain why battered women do not attempt to free themselves from abusive relationships and their circle of violence.<sup>474</sup> This theory explains that aleatory negative behavior toward a woman (or any person) –like the acts of abuse from her partner– can create the belief that the woman's efforts to stop the abuse will not succeed in ending it, and for this reason, they develop coping strategies instead of escaping skills.<sup>475</sup>

In this context, several factors shape a woman's decision to remain in an abusive relationship. Assuming otherwise reflects ignorance of the unique challenges faced by women trapped in domestic violence.<sup>476</sup> Moreover, it obeys to a failure to consider the woman's perspective and her experience with domestic violence given that judges often assume that many options are available from a male point of view, however, when all these

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<sup>471</sup> Mahoney, *supra* note 159, at 65.

<sup>472</sup> *Id.*

<sup>473</sup> *Id.*

<sup>474</sup> WALKER, *supra* note 109, at 76-77.

<sup>475</sup> WALKER, *supra* note 109, at 87.

<sup>476</sup> Di Corleto, *supra* note 9, at 866

factors are taken into account, it becomes clear that leaving is often impossible for these women, rendering the notion of available alternatives illusory.<sup>477</sup>

## **2.2 The distorted portrayal of women by Battered Woman Syndrome**

In order to incorporate the woman's perspective as a victim of domestic abuse and eliminate male bias in the assessments of the requirements of affirmative defenses, it is necessary to include expert testimony.<sup>478</sup> As stated in Chapter I, this testimony's content often refers to Battered Woman Syndrome, given it is the prevailing theory used to explain why women remain in abusive relationships and the nature of their actions.

Chile, Argentina, and Mexico are no exception, as this testimony is frequently used in order to support defenses for women who have killed their intimate partners. In these countries, expert testimony is typically presented in trial courts, where all evidence must be provided by the parties involved.<sup>479</sup> However, higher courts have also included analysis of expert testimonies presented in the first instance to justify their decisions.

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<sup>477</sup> LARRAURI, *supra* note 281, at 66, 85 (Discussing in self-defense and exculpatory state of necessity that the availability of options requires considering the circumstances of each specific case, given that many alleged available alternatives, such as leaving the house or calling the police, are often not viable. In this manner, the assumption that there were other available means exists only in the ideal realm); LARRAURI AND VARONA, *supra* note 281, at 45, 70.

<sup>478</sup> ELIZABETH M. SCHNEIDER & CLARE DALTON, DOMESTIC VIOLENCE AND THE LAW: THEORY AND PRACTICE 425 (2nd ed. 2008) (Gender pervades the entire criminal process, permeating legal standards of self-defense, and for this reason, expert testimony on battering is necessary.) See also: Di Corleto, *supra* note 9, at 866; LAURENZO ET AL, *supra* note 7, at 97.

<sup>479</sup> Código Procesal Penal (Criminal Procedure Code) [Cód. Proc. Pen.] art. 315 and following (Chile); Código Procesal Penal (Criminal Procedure Code) [Cód. Proc. Pen.] art. 181 and following (Argentina); Código Nacional de Procedimientos Penales [CNPP], Diario Oficial de la Federación [DOF], 05-03-2014, última reforma DOF 16-12-2024 art 272 and following (Mexico).



The following section provides examples of cases in which courts rely on Battered Woman Syndrome to support different defenses in trial courts and appellate courts, and the subsequent section provide an analysis of the different problems that affect these cases.

## **2.2.1 Examples of cases in which trial courts have relied on Battered Woman Syndrome to grant a defense**

### **2.2.1.1 The case of Ms. Olmedo (Argentina)**

An example is the Argentinian case of Ms. Olmedo, a woman from Cordova who suffered abuse from her partner. She began a relationship with her partner when she was 12 years old and he was 27; she experienced her first physical assault at 13,

marking the beginning of a prolonged history of physical, psychological, and economic abuse.<sup>480</sup> Also, he struggled with alcohol and drug addictions, which increased the violence towards her.<sup>481</sup> This is an important detail given that the expert witness explained that drugs and alcohol serve as cumulative risk indicators and that years of sustained violence compound these risks, escalating the danger.<sup>482</sup>

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<sup>480</sup> Cámara en lo Criminal y Correccional de Primera Nominación de la Segunda Circunscripción Judicial [Criminal and Correctional Chamber, First Division of the Second Judicial District], 27/10/2020, “OLMEDO, p.s.a. homicidio calificado por el vínculo mediando circunstancias extraordinarias de atenuación, en los términos de los artículos 45 y 80 inc. 1 último párrafo del Código Penal”, 63-64, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://repositorio.mpd.gov.ar/documentos/Olmedo%20\(ca%20N%C2%B0%207488544\).pdf](https://repositorio.mpd.gov.ar/documentos/Olmedo%20(ca%20N%C2%B0%207488544).pdf) (Last visited March 15, 2025) (Argentina).

<sup>481</sup> *Id.* at 64.

<sup>482</sup> *Id.* at 36.

On the day of the fatal event, the victim went to a party and later messaged Olmedo, asking her to come over.<sup>483</sup> The defendant arrived at the party and found him consuming cocaine, which she knocked from his hands while reprimanding him to think of their children.<sup>484</sup> As the altercation continued, they both left the party, and once outside, Olmedo grabbed a knife and stabbed him in the chest, causing his death.<sup>485</sup> She argued that transient mental disorder is regulated by art. 34 n°1 of the Argentinian Penal Code.<sup>486</sup>

During the trial, a psychologist, Dr. Dutto, declared that the defendant had suffered from prolonged violence, aligning the testimony with the core characteristics of Lenore Walker's theory: Learned Helplessness and the cycle of violence.<sup>487</sup>

First, she recounted the defendant's life of abuse to provide context for her background. She stated that she was raised in a family where her parents had mental disabilities and were surrounded by a dynamic of violence and alcoholism.<sup>488</sup> The expert witness also declared there were indicators of domestic violence in her relationship with her partner, such as sexism, extreme jealousy, and violent incidents.<sup>489</sup> In the words of the expert, "Her life was a permanent scenario of helplessness."<sup>490</sup> She lived in complete precariousness, lacking everything, with clear signs of absolute domination by her partner and total helplessness on her part."<sup>491</sup>

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<sup>483</sup> *Id.* at 64.

<sup>484</sup> *Id.*

<sup>485</sup> *Id.* at 114.

<sup>486</sup> *Id.* at 116.

<sup>487</sup> *Id.* at 33-34.

<sup>488</sup> *Id.* at 31.

<sup>489</sup> *Id.* at 32.

<sup>490</sup> *Id.*

<sup>491</sup> *Id.*

Additionally, Dr. Dutto referred to the defendant's inability to control her impulses on the day of the fatal event.<sup>492</sup> The defendant said to her psychologist, "I broke the plate where he had the drugs, and I knew he was going to kill me; I was so scared because I knew he was going to kill me."<sup>493</sup> The psychologist declared how this threat carried a sense of certainty for the defendant, rooted in the helplessness she had felt her whole life, where nothing she did could reverse her circumstances.<sup>494</sup> Later, she added that in the situation she found herself, the defendant had no other option and could only respond with an attack.<sup>495</sup> It was an impulse in which she could not engage in a reflective process that could have activated her inhibitory controls.<sup>496</sup>

She also explained how this cycle entrapped the defendant in a manner in which she accepted her helplessness.<sup>497</sup> She had no one to defend her from the beginning of her life, nor any support, and consequently, she felt there was nothing she could do to change her situation.<sup>498</sup> She suffered severe violence involving guns, and even when the police intervened, they did nothing.<sup>499</sup> The expert indicated that when there is no response, she—like any victim—believes that there is no one to help her.<sup>500</sup> This left her without any internal resources to cope, let alone an environment that could offer support.<sup>501</sup>

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<sup>492</sup> *Id.* at 33-34.

<sup>493</sup> *Id.* at 33.

<sup>494</sup> *Id.* at 34.

<sup>495</sup> *Id.*

<sup>496</sup> *Id.*

<sup>497</sup> *Id.*

<sup>498</sup> *Id.* at 35.

<sup>499</sup> *Id.*

<sup>500</sup> *Id.*

<sup>501</sup> *Id.*

Based on the testimony of the expert witness Dutto, the court concluded that the difficulty the defendant had in controlling her impulses was partly due to her age and personality development.<sup>502</sup> She grew up in extreme precariousness, not only in economic or material poverty but also in the lack of emotional bonds and affection from parental figures who could provide her with secure, loving connections.<sup>503</sup> She could not stop her reaction.<sup>504</sup> This, in addition to her regret after the stabbing, the court concluded she did not understand what happened.<sup>505</sup>

In this manner, the court granted the defense, given that it considered the defendant, at the time of the event, unable to understand the act's criminality or control of her actions, basing its reasoning in Lenore Walker's concept of Learned helplessness: the cognitive, emotional, and behavioral deficiency observed in a battered woman, which affects her negatively and traps her in an abusive relationship.<sup>506</sup> According to the Court, it incapacitated the defendant's ability to control her will, but also, unleashed the impulses that, at the end, made her escape the violence she suffered.<sup>507</sup>

#### **2.2.1.2 The case of María José Olmedo (Chile)**

Another example is the Chilean case of María José Olmedo, a woman with a history of domestic violence involving her partner, marked by frequent and severe episodes,

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<sup>502</sup> *Id.* at 118.

<sup>503</sup> *Id.* at 119.

<sup>504</sup> *Id.*

<sup>505</sup> *Id.* at 121.

<sup>506</sup> *Id.* at 125.

<sup>507</sup> *Id.*

according to witnesses.<sup>508</sup> She fatally stabbed her intimate partner during an argument that escalated to violence.<sup>509</sup> In this context, he hit her on the head, insulted her, and threatened her with a knife.<sup>510</sup> She retreated to the kitchen, but he followed her, where the accused took a knife, exiting to the dining room where González grabbed her hair, and at the moment he made a gesture to raise the hand holding the weapon, she stabbed him.<sup>511</sup> The defense argued that Olmedo acted in self-defense against physical aggression and threats from Romero.<sup>512</sup>

During the trial, two expert witnesses testified. The first one was a psychologist, who stated that the defendant suffered from psychological, sexual, and physical abuse from her partner.<sup>513</sup> She also asserted María José had Battered Woman Syndrome, as she suffered from a situation of chronic violence and fell into a state of helplessness.<sup>514</sup> Indeed, the woman showed signs of post-traumatic stress, constant fear, guilt for the abuse towards her, and self-blaming for her partner's alcohol consumption, and isolation from her family or friends.<sup>515</sup>

The second one was a social worker, who also declared that the defendant suffered from physical, psychological, and economic abuse.<sup>516</sup> She indicated that María José went

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<sup>508</sup> Tribunal de Juicio Oral en lo Penal of Talca (T.J.O.P.) (criminal trial court), 15 marzo 2016, “MP c/ María José Olmedo Olmedo”, Rol de la causa: O-306-2015, s., parricidio, Considerando Cuarto, available at Tirant Latam LTM30.705.780 (Last visited March 15, 2025) (Chile).

<sup>509</sup> *Id.* at Considerando Séptimo.

<sup>510</sup> *Id.*

<sup>511</sup> *Id.*

<sup>512</sup> *Id.*

<sup>513</sup> *Id.*

<sup>514</sup> *Id.*

<sup>515</sup> *Id.*

<sup>516</sup> *Id.*

back to her partner even after severe abuse, an action consistent with the cycle of violence.<sup>517</sup> In addition, the expert referred to behavior patterns consistent with Battered Woman Syndrome as a process of adaptation in which the woman lacked resources and support networks, finding herself in a state of learned helplessness, getting used to the abuse, and justifying it.<sup>518</sup>

The court used these expert testimonies to incorporate the history of domestic violence into the assessment of the requirements of self-defense.<sup>519</sup> Regarding the existence of illegitimate aggression, the court considered that, given the circumstances and the existence of chronic domestic violence within the framework of this relationship, the aggression was current, imminent, and effective in making the defendant believe that she was exposed to serious harm.<sup>520</sup> Concerning the absence of provocation, based on the expert testimony and defense witnesses, the court concluded that there is no indication to suggest that Olmedo initiated the argument, much less the aggression involving blows and threats.<sup>521</sup> It was reasonable to infer, given the history of violence within the relationship, that it was the actions of her partner, under the influence of alcohol, that triggered the events.<sup>522</sup>

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<sup>517</sup> *Id.*

<sup>518</sup> *Id.*

<sup>519</sup> *Id.* at Considerando Décimo Décimo Tercero.

<sup>520</sup> *Id.* at Considerando Décimo Primero.

<sup>521</sup> *Id.* at Considerando Cuarto, Décimo Primero.

<sup>522</sup> *Id.*

### 2.2.1.3 The Mexican case No. 101-2021

Finally, consider the reserved case in Mexico 101-2021, where a woman killed her intimate partner after enduring several years of physical, psychological, and sexual abuse by hitting him in the head with a blunt object.<sup>523</sup> One night, while she was resting with her son, her partner attacked and forced her to have sexual intercourse, but she fought against it.<sup>524</sup> During this struggle, the partner hit her son on the head, causing him to cry.<sup>525</sup> Her partner put his hand on her son's mouth to quiet him.<sup>526</sup> When the woman saw this, she tackled her partner and struck him twice in the head with a blunt object, resulting in his death.<sup>527</sup>

The defendant claimed she acted in self-defense. However, she was convicted of murder by the lower court and the appellate court of the state.<sup>528</sup> Subsequently, her defense filed a direct writ of amparo, and the Fourth Collegiate Court in Criminal Matters of the Second Circuit<sup>529</sup> granted it, ultimately acquitting the defendant.<sup>530</sup>

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<sup>523</sup> Cuarto Tribunal Colegiado en Materia Penal del Segundo Circuito (Fourth Collegiate Criminal Court of the Second Circuit), 26 de agosto de 2021, Amparo Directo 101/2021, s. homicidio (homicide), 64-65, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://sise.cjf.gob.mx/SVP/word1.aspx?arch=07940000280472740007006.docx&sec=Alejandro\\_\\_Vilchis\\_Robles&svp=1](https://sise.cjf.gob.mx/SVP/word1.aspx?arch=07940000280472740007006.docx&sec=Alejandro__Vilchis_Robles&svp=1)

<sup>524</sup> *Id.* at 68.

<sup>525</sup> *Id.*

<sup>526</sup> *Id.*

<sup>527</sup> *Id.*

<sup>528</sup> *Id.* at 20.

<sup>529</sup> This is a federal-level appellate court with jurisdiction over constitutional matters, such as amparo cases, where an individual challenges the constitutionality of a lower court's decision.

<sup>530</sup> Cuarto Tribunal Colegiado en Materia Penal del Segundo Circuito (Fourth Collegiate Criminal Court of the Second Circuit), 26 de agosto de 2021, Amparo Directo 101/2021, s. homicidio (homicide), 75, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://sise.cjf.gob.mx/SVP/word1.aspx?arch=07940000280472740007006.docx&sec=Alejandro\\_\\_Vilchis\\_Robles&svp=1](https://sise.cjf.gob.mx/SVP/word1.aspx?arch=07940000280472740007006.docx&sec=Alejandro__Vilchis_Robles&svp=1)

Among other arguments related to gender perspective and violence against women, the court justified its decision based on the theory of Battered Woman Syndrome. It referred extensively to the cycle of violence, detailing its stages, characteristics, and effects.<sup>531</sup> The court referred to this syndrome as a consequence of the cycle of violence, defining it as a pathological phenomenon in which the numerous and continuous episodes of physical and psychological abuse create a state of adaptation: the woman learns to live with the abuse, integrates it into her daily life, and even develops an emotional bond with her aggressor.<sup>532</sup>

Additionally, the court considered it an error from the lower court to dismiss the expert testimony evidence offered by the defense, as it provided significant data for analyzing the context of violence experienced by the defendant and the justification of her actions.<sup>533</sup> During the trial, a psychologist, a social worker, and a criminalist testified about the context of domestic violence in which the woman was immersed, and the last one went even further and stated she suffered from Battered Woman Syndrome.<sup>534</sup>

The court used expert testimony to integrate the history of domestic violence into the assessment of the requirements of self-defense. In analyzing the presence of illegitimate aggression, the court determined that her response to being forced into sexual intercourse was caused by past experiences of physical and sexual violence from her partner, causing her to fear for her physical safety and her life.<sup>535</sup> Likewise, the court deemed the aggression

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<sup>531</sup> *Id.* at 28-30.

<sup>532</sup> *Id.* at 31.

<sup>533</sup> *Id.* at 55.

<sup>534</sup> *Id.* at 59-62.

<sup>535</sup> *Id.* at 69.



imminent, as the victim was trapped in a cycle of violence, facing the risk of further aggression at any moment, justifying her actions, even after the aggression ceased.<sup>536</sup> Regarding this requirement, the court explicitly made a reference to the expert testimonies presented during the trial.<sup>537</sup>

Regarding the necessity and rational means of the defense, the court determined that her response was necessary, as it was aimed at countering permanent and continuous aggression within the context of domestic violence.<sup>538</sup> In this case, there was a continuous pattern of aggression; therefore, when faced with a new instance of aggression, the woman needed to use force to prevent potentially lethal consequences.<sup>539</sup> Also, the court referenced the expert testimonies provided during the trial on the analysis of this requirement.<sup>540</sup>

### **2.2.2 Examples of cases in which higher courts have relied on Battered Woman Syndrome to grant a defense**

In Argentina, Chile, and Mexico, expert testimony based on Battered Women Syndrome has also been recognized as essential by the higher courts in cases where the context of domestic violence was excluded from the analysis of the defense.

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<sup>536</sup> *Id.*

<sup>537</sup> *Id.*

<sup>538</sup> *Id.* at 70.

<sup>539</sup> *Id.*

<sup>540</sup> *Id.* at 71.

### 2.2.2.1 The case of María Leiva (Argentina)

Take, for example, the Argentinian case of María Leiva, in which the defendant was convicted of the crime of homicide of her intimate partner.<sup>541</sup> Both the trial and appellate courts dismissed the self-defense claim.<sup>542</sup> The Supreme Court of Justice of the Nation granted the extraordinary appeal filed by the defense, contending, among other reasons, that in this case, there had been no expert assessments on the mental faculties of the defendant, nor were there records of expert assessments to clarify essential aspects of her criminal responsibility, such as whether she suffered from Battered Woman Syndrome or was abused by her partner.<sup>543</sup>

### 2.2.2.2 The case Rol 655-2022 (Chile)

Another example is a reserved Chilean case 655-2022, where a woman killed her intimate partner during a physical confrontation.<sup>544</sup> She claimed self-defense; however, the Criminal Oral Trial Court of Talca determined that the aggression had ceased by the time she retaliated, and therefore, there was no illegitimate aggression from her partner.<sup>545</sup> Consequently, the defense filed an appeal, which was granted by the Appeals Court of Talca.<sup>546</sup> In this case, one of the arguments used by the appeals court to justify its decision

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<sup>541</sup> Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 1/11/2011, “LEIVA, MARIA CECILIA s/ Homicidio simple,” Fallos (2011-334-1204) (Argentina).

<sup>542</sup> *Id.*

<sup>543</sup> *Id.*

<sup>544</sup> Corte de Apelaciones de Talca (C. Apel. Talca) (courts of appeals of Talca), 13 de septiembre de 2022, “MP c/reservado,” Rol de la causa: 655-2022, s., parricidio (parricide), Considerando Cuarto, available at Tirant Latam LTM30.347.193 (Last visited February 15, 2025) (Chile).

<sup>545</sup> *Id.* at Considerando Cuarto.

<sup>546</sup> *Id.* at Considerando duodécimo.

was the severe and continuous violence this woman faced from her partner.<sup>547</sup> The Appeals Court stated that to comprehend the behavior of these women, two theories become crucial: Battered Woman Syndrome and learned helplessness.<sup>548</sup> These theories are relevant to understanding the cycle of violence and its impact on women at the moment to assess the requirements of a justification or excuse defense.<sup>549</sup> The court further emphasized that it is not feasible to assess the requirements of these defenses from the perspective of an average man nor through traditional or chronological viewpoints.<sup>550</sup>

### 2.2.2.3 The case No. 6181/2016 (Mexico)

Finally, take, for example, the reserved Mexican case 6181/2016, in which a woman was found guilty of murdering her intimate partner while he was sleeping.<sup>551</sup> She filed a motion for a new trial, arguing, among other things, that the ad quo court had not adequately considered the context of domestic violence when weighing her state of necessity defense.<sup>552</sup> The Supreme Court of Mexico explicitly recognized that women in violent relationships are trapped in a cycle of violence, commonly called the Battered Woman Syndrome.<sup>553</sup> After explaining the main characteristics of this syndrome, the court emphasized that due to the distinct nature of domestic violence and its effects on women,

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<sup>547</sup> *Id.*

<sup>548</sup> *Id.*

<sup>549</sup> *Id.*

<sup>550</sup> *Id.* at Considerando Noveno y Décimo.

<sup>551</sup> Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), 07 de marzo de 2018, Amparo Directo En Revisión 6181/2016, s. homicidio cometido con ventaja (homicide committed with undue advantage), 8, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.scjn.gob.mx/sites/default/files/listas/documento\\_dos/2018-02/ADR-6181-2016-180208.pdf](https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2018-02/ADR-6181-2016-180208.pdf) (Last visited February 15, 2025) (Mexico).

<sup>552</sup> *Id.* at 4-11.

<sup>553</sup> *Id.* at 23

when battered women are on trial for assaulting or killing their aggressors, judges must take into account the context of the domestic violence they endured from their partners.<sup>554</sup> Ultimately, the Supreme Court granted the motion.<sup>555</sup>

### **2.2.3 The dark side of Battered Woman Syndrome: Impairing nomenclature, inadequate explanation of women's actions and mental state, and the perpetuation of stereotypes**

The integration of Battered Woman Syndrome as a foundation for the criminal defense of abused women who have killed their attackers has faced criticism from different angles, especially from feminist perspectives. The following sections outline the key issues that arise from the use of Battered Woman Syndrome as a foundation of criminal defenses for women who have killed their intimate partners: impairing women by nomenclature, providing an inadequate explanation of women's actions and mental state, and the perpetuation of stereotypes.

#### **2.2.3.1 Impaired by nomenclature**

The first problem arises from the terminology used in this theory. Syndrome is defined as “a combination of medical problems that shows the existence of a particular disease or mental condition.”<sup>556</sup> Consequently, the very nomenclature of Battered Woman

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<sup>554</sup> *Id.* at 26.

<sup>555</sup> *Id.* at 54.

<sup>556</sup> *Syndrome*, Cambridge Dictionary, [https://dictionary.cambridge.org/us/dictionary/english/syndrome#google\\_vignette](https://dictionary.cambridge.org/us/dictionary/english/syndrome#google_vignette) (last visited Sept. 19, 2024). See also: *Syndrome*, NCI Dictionary of Cancer Terms, Nat'l Cancer Inst., <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/syndrome> (last visited Sept. 19, 2024)

Syndrome portrays women who experience domestic abuse as mentally ill or impaired.<sup>557</sup> Indeed, the term “syndrome” attached to the psychological description of these women conjures up images of a psychological defense that is a separate defense and/or an impaired mental state defense.<sup>558</sup>

Furthermore, the portrayal of mental impairment does not arise only from its nomenclature but also from its symptomatology. As Anne Coughlin stated, the problem here is the heart of the defense, which centers on a psychological diagnosis of battered women that construes them as suffering from emotional, cognitive, and behavioral deficits.<sup>559</sup>

Indeed, Battered Woman Syndrome shares four criteria that correspond to the criteria for Post-Traumatic Stress Disorder (PTSD), and three criteria of intimate partner violence (IPV).<sup>560</sup> The four criteria are intrusive recollections of the trauma event, hyperarousal and high levels of anxiety, avoidance behavior, and emotional numbing, usually expressed as depression, dissociation, minimization, repression, and denial, and negative alterations in mood and cognition.<sup>561</sup> Therefore, Battered Woman Syndrome has

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(“A set of symptoms or conditions that occur together and suggest the presence of a certain disease or an increased chance of developing the disease.”); *Syndrome*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/syndrome> (last visited Sept. 19, 2024) (“1: a group of signs and symptoms that occur together and characterize a particular abnormality or condition. 2: a set of concurrent things (such as emotions or actions) that usually form an identifiable pattern.”).

<sup>557</sup> Russell, *supra* note 103, at 98 (The term Battered Woman Syndrome conveys that battered women are all the same and suffer from a psychological disability which prevents them to act normally).

<sup>558</sup> Schneider, *supra* note 194, at 199. See also: Kinports, *supra* note 386, at 177 (2004) (Arguing that the terminology “battering and its effects” minimizes the confusion generated by the term “Battered Woman Syndrome” by avoiding any suggestion that the woman suffers from a “syndrome” or mental impairment or that there is some sort of profile applicable to all battered women.)

<sup>559</sup> Anne Coughlin, *Excusing women*, 82 California Law Review 1, 54 (1994).

<sup>560</sup> WALKER, *supra* note 109, at 55.

<sup>561</sup> *Id.*

been characterized as a subcategory of PTSD,<sup>562</sup> a diagnostic category enumerated in the Diagnostic and Statistical Manual of Mental Disorders V (DSM-5).

In this manner, it is not difficult to perceive the aura of mental illness surrounding Battered Woman Syndrome since half of its symptomatology aligns with the criteria of a disorder in the Diagnostic and Statistical Manual of Mental Disorders (DSM).

### **2.2.3.2 Battered Woman Syndrome and its impossibility to explain the actions and mental state of women who kill their intimate partners**

Another problem arises when applying this theory to support justification defenses. As previously mentioned, this syndrome is not an affirmative defense by itself, but a theory that supports affirmative defenses to explain the woman's behavior and to incorporate the history of domestic abuse into the assessment of the defenses. However, it is difficult to reconcile how Battered Woman Syndrome can simultaneously support a justification defense while implying that the woman's actions are a result of a mental impairment.

This problem has been heavily criticized in U.S. legal doctrine, particularly regarding self-defense. In the cases at hand, the primary objective of this defense is to know if the woman's actions were justified.<sup>563</sup> In this manner, it is worth wondering if the expert testimony on Battered Woman Syndrome provides evidence that the defendant was mentally incapacitated at the moment of killing and, therefore, her reaction was a

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<sup>562</sup> *Id.* at 77.

<sup>563</sup> Russell, *supra* note 103, at 204.

reasonable response to abuse (justified) or whether not responsible for her actions (excused).<sup>564</sup>

In a comment on the *State v. Kelly* case, Elizabeth Schneider noted that the judge focused the rationale for overturning the trial ruling on the defendant's psychological paralysis and entrapment in fear, along with practical difficulties such as a lack of material and social resources to support herself and her children.<sup>565</sup> The author highlighted how putting all these factors together sets attention to the internal factors, not the external ones.<sup>566</sup> This, in addition to the use of the term “syndrome,” calls into question whether the defendant’s state of mind is reasonable, and therefore, she is justified in her actions, or if her state of mind is disordered and, therefore, excused for what she has done.<sup>567</sup> Referring to the case in question, the judge stated that the expert testimony bolstered the reasonableness of the defendant’s actions.<sup>568</sup> However, it is easy to see how others interpreting the testimony have been led in the opposite direction, viewing the defendant as a damaged woman rather than a rational actor.<sup>569</sup>

The core problem is that viewing the defendant's actions as proper is difficult when the syndrome focuses entirely on the actor's state of mind rather than on the act itself.<sup>570</sup> In the United States, in most cases where the testimony has been admitted, the focus has been on the defendant's mental state at the time of the crime, treating this theory as a support for

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<sup>564</sup> Russell, *supra* note 103, at 205.

<sup>565</sup> SCHNEIDER AND DALTON, *supra* note 478, at 443.

<sup>566</sup> *Id.*

<sup>567</sup> *Id.*

<sup>568</sup> *Id.*

<sup>569</sup> *Id.* at 444.

<sup>570</sup> Dressler, *supra* note 202, at 463.

an excuse and not a justification.<sup>571</sup> Ultimately, the syndrome helps sustain why we should treat this actor differently than others and not blame her when we hold others accountable for committing the same act.<sup>572</sup>

Beyond being a theoretical problem, this issue has practical consequences. A study has shown that depicting women as mentally impaired as Battered Woman Syndrome does - whether on its own or within the framework of PTSD- proves to be counterproductive because it fails to persuade the jurors to see the woman's actions from the perspective of a "reasonable person," making very difficult to catalog their actions as justified.<sup>573</sup>

Given that in Mexico, Chile, and Argentina, the use of Battered Woman Syndrome is common to support a defense, the same criticisms apply and get even more exacerbated by the fact that in these countries, expert testimony is used to support a wide range of defenses; justifications such as self-defense and excuses as exculpatory state of necessity or transient mental disorder. Setting this problem aside for now (because it will be developed in the next section), the problem with the expert testimony lies in the ambiguity

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<sup>571</sup> Russell, *supra* note 103, at 205. See also: Dressler, *supra* note 202, at 461-464 (Discussing how Battered Woman Syndrome evidence essentially converts the battered woman's claim from the justification of self-defense to a mental incapacity defense, such as insanity or diminished capacity.)

<sup>572</sup> Dressler, *supra* note 202, at 463 (Author states that BWS has been used by the judiciary to explain why society should excuse women who have behaved irrationally. Ignoring the complexities of Walker's explanation, they focused on BWS. Not only does this interpretation limit the effectiveness of BWS in defending women who kill, it has negative consequences for every woman in society by painting women as irrational, flawed creatures for whom special allowances must be made."); Cornia, *supra* note 253, at 106.

<sup>573</sup> C. Terrance & K. Matheson, *Undermining Reasonableness: Expert Testimony in a Case Involving a Battered Woman Who Kills*, 27 PSYCH. OF WOMEN Q. 37, 43 (2003) (The author conducted an experiment to assess the effectiveness of expert testimony on Battered Woman Syndrome in cases where women killed their intimate partner cases. The testimony, whether focused solely on BWS or in conjunction with PTSD, did not prove to influence the juries. Following the deliberation, the verdicts were "overwhelmingly guilty". Thus, the expert witness did not persuade jurors to view the actions of the woman as reasonable, and therefore, justifiable.); SCHNEIDER, *supra* note 160, at 81 (The way Battered Woman Syndrome is used puts emphasis on victimization, which prevents legal actors from understanding the reasonableness of the woman's act.); ANN JONES, NEXT TIME SHE'LL BE DEAD: BATTERING AND HOW TO STOP IT 133 (1994).



of the syndrome's purpose. Is it meant to prove that the woman was rational and her actions were legally justified, or that her state of mind was disturbed, and therefore her actions should be excused? More importantly, how can this syndrome simultaneously support justification and excuse defenses in Latin American countries?

Thus, the portrayal of mental impairment through the Battered Woman Syndrome serves multiple, often contradictory purposes. On one hand, it is used to argue that the woman acted rationally in self-defense when killing her intimate partner. On the other hand, it suggests she was mentally impaired, suffering from a transient mental disorder or exculpatory state of necessity. This inherent contradiction within the theory underlying the defense ultimately weakens the defendant's position by undermining both the justification and excuse arguments presented in court.

For example, this contradiction is evident when we consider that in exculpatory state of necessity the assessment of the defendant's circumstances must be conducted from an *ex ante* and from an objective perspective, but the concept of learned helplessness appears more compatible with a subjective perspective, such as the one used to assess insurmountable fear.<sup>574</sup> This critique can also be applied to self-defense—which similarly requires an examination of the circumstances in which the defendant found themselves to assess imminence—and to transient mental disorder—which also assesses the state of mind of the defendant.

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<sup>574</sup> Rodrigo Guerra, *Estado de necesidad exculpante: A propósito de actos de defensa por efectos del maltrato a partir de un caso emblemático*, 20 Rev. Derecho U. San Sebastián 16, 66-67 (2014).

In addition, the use of Battered Woman Syndrome to support any defense—whether as an excuse or a justification—reveals an inherent inconsistency regarding the woman's level of proactivity at the moment of the fatal incident. Indeed, the mere action of committing a crime or homicide is incompatible with the traits of a woman who suffers from the syndrome.<sup>575</sup>

As Anne Coughlin noticed, the homicidal act against an intimate partner cannot be explained by learned helplessness.<sup>576</sup> If a woman is psychologically paralyzed—as Battered Woman Syndrome would suggest—it is not likely for her to resort to extreme measures to stop the abuse, such as killing the intimate partner.<sup>577</sup> Coughlin based her observation on Seligman's experiment on dogs, where the dogs exposed to inescapable shock passively surrendered to the electroshocks with less and less resistance and reactions.<sup>578</sup> None of the dogs attacked the experimenter or even made attempts to escape, even when they opened the door for them to get out.<sup>579</sup>

In this manner, the fact that the woman defended herself is not compatible with the core of the syndrome, which depicts her as dormant and helpless. In Latin countries, even

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<sup>575</sup> Russell, *supra* note 103, at 188. See also A. Renee Callahan, *Will the Real Battered Woman Please Stand Up--In Search of a Realistic Legal Definition of Battered Woman Syndrome*, 3 AM. U. J. OF GENDER & THE L. 117, 123 (1994) (It is difficult to explain why woman who exhibit traits of learned helplessness would suddenly take such a drastic step to defend themselves).

<sup>576</sup> Coughlin, *supra* note 559, at 81,

<sup>577</sup> *Id.*

<sup>578</sup> J. Bruce Overmier and Martin E. Seligman, *supra* note 117, at 30 (A dog exposed to inescapable shock initially barked, yelped, ran, and jumped until it escaped. However, it soon stopped doing these responses and would remain silent until shock terminated. Eventually, the dog would passively "accept" the shock).

<sup>579</sup> Coughlin, *supra* note 559, at 81 (no register of an attack from the dogs to the experimenter). See also: Peter Margulies, *Identity on Trial: Subordination, Social Science Evidence, and Criminal Defense*, 51 Rutgers L. Rev. 45, 63-64 (1998).

when this syndrome may disperse questions like why she would not leave an abusive relationship or why seeking help might not produce the desired results, the image of a woman trapped is not compatible with the woman who defended herself, creating a contradiction that might render the syndrome useless to support any defense, especially a justification defense.

### **2.2.3.3 The perpetuation of stereotypes by Battered Woman Syndrome**

Lastly, despite the fact that expert testimony on Battered Woman Syndrome was developed to eliminate stereotypes and explain the common experiences and impact of repeated abuse on battered women, it has had the opposite effect, depicting them as helpless victims and resonating with old stereotypes of incapacity.<sup>580</sup> In this manner, women are portrayed as passive, dependent, damaged, and helpless, as opposed to as rational survivors.<sup>581</sup> This is what Phyllis Crocker has called “the battered woman stereotype,”

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<sup>580</sup> Schneider, *supra* note 194, at 198. See also: FORREL Y MATTHEWS, *supra* note 379, at 203 (Author discussing the troublesome implications of using battered woman syndrome as a defense. In practice, the battered woman syndrome defense echoes the old incapacity defense, implying the woman was acting out of learned helplessness rather than necessity. As a consequence, it fails to consider these women's experiences and choices adequately and pathologizes battered women who kill.); Cornia, *supra* note 253, at 105 (“By emphasizing that battered women suffer from “learned helplessness” and by portraying BWS as a form of Posttraumatic Stress Disorder, defenses which rest on BWS reinforce a patriarchal view of society. According to this viewpoint, women are impaired, and courts must accommodate them by using special rules which pander to women's defects.”); Coughlin, *supra* note 559, at 50-51 (Given that, although it was created to refute misogynist stereotypes and show how the lethal act was reasonable, it did completely the opposite, given the defense is designed to accommodate women’s psychological inclination for submission to men, embracing the stereotypes the defense was supposed to dispel, endorsing the assumption that all women are incapable of rational self-governance).

<sup>581</sup> SCHNEIDER AND DALTON, *supra* note 478, at 444. See also: GONDOLF AND FISHER, *supra* note 177, at 14-20 (1988) (maintaining that labelling a woman as “helpless” reinforces sexist stereotypes and borders on victim-blaming); JUAN VERA, VALORACIÓN PROBATORIA: EXIGENCIAS LEGALES, JURISPRUDENCIALES Y DOCTRINALES 234 (2022) (According to the author, this syndrome perpetuates the stereotype of the “passionate woman” or “woman with a psychiatric disorder,” as it suggests that only a woman facing a situation of domestic violence could respond with such a violent and cruel act as killing her abuser without

characterized by “a woman who never left her husband, never sought assistance and never fought back.”<sup>582</sup>

These stereotypes are especially problematic for women who do not conform to them given that they determine a standard to which women need to accommodate to base their defense on the expert testimony on Battered Woman Syndrome.<sup>583</sup> Women must meet a “character expectation,” which serves those who are passive rather than women who do not have characteristics of victimhood.<sup>584</sup>

Unless the defendant fits the “rigidly-defined and narrowly-applied definition” of a battered woman, she is prevented from benefiting from Battered Woman Syndrome testimony.<sup>585</sup> Moreover, judges are less inclined to recognize the need for expert testimony in those cases where the woman's actions significantly depart from both the traditional “male” model of self-defense and the passive “battered woman” model.<sup>586</sup> Therefore, the overall effect of the Battered Woman Syndrome stereotype limits, rather than expands, the legal options of women who cannot conform to these molds.<sup>587</sup>

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first turning to the police); Catalina de los Angeles Sierra Campos, *Aproximación a la defensa preventiva en el caso del tirano familiar: ¿necesitamos una teoría del control coercitivo?*, 28 REV. IUS ET PRAXIS 160, 165 (2022); Luciana Ramos Lira, *Reflexiones para la comprensión de la salud mental de la mujer maltratada por su pareja íntima*, 16 REV. ESTUD. DE GÉNERO: LA VENTANA 130, 157-158 (2002); Evan Stark, *Representing Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 1000 (1995).

<sup>582</sup> Crocker, *supra* note 388, at 144.

<sup>583</sup> *Id.*

<sup>584</sup> DOWNS, *supra* note 202, at 166.

<sup>585</sup> Crocker, *supra* note 388, at 144.

<sup>586</sup> Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice In Work On Woman-Abuse*, 67 N.Y.U. L. Rev. 520, 561 (1992).

<sup>587</sup> *Id.*

This problem gets even more acute when we add to the formula the use of excuse defenses that reinforce this image, presenting the actor as lacking the ability to understand or control her actions, projecting an image of a mentally impaired battered woman, reinforcing stereotypes linked to an assumed inability for self-governance.<sup>588</sup>

The consequence is a monolithic image of defendants that does not resonate with every woman who has endured a history of abuse but also creates the idea of a “perfect victim of domestic violence.” This mold excludes the woman who fights back, the woman who tries to run away, and the tough woman, among many others. Some authors go a little further, suggesting that a successful defense case based on Battered Woman Syndrome is regarding a woman who meets specific standards: white, straight, and passive.<sup>589</sup>

### 2.3 Granting justification and excuse defenses

In Argentina, Chile, and Mexico, there is no consistent legal defense for women who kill their intimate partners as a consequence of enduring physical abuse from them. The history of domestic violence and its effects on the woman have been used to support and, ultimately, grant justification defenses – such as self-defense<sup>590</sup> and excuse defenses

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<sup>588</sup> Coughlin, *supra* note 559, at 50-51.

<sup>589</sup> Leigh Goodmark, *When is a Battered Woman Not a Battered Woman - When She Fights Back*, 20 Yale J.L. & Feminism 75, 82 (2008).

<sup>590</sup> Argentina: Tribunal en lo Criminal N° 1 Pergamino [T.C. Pergamino] [criminal trial court], 16/06/2022, “MP c/ Mafalda Beatriz Secreto”, available at [https://www.scba.gov.ar/violenciafamiliar/Ver%20veredicto%20\(causa%20744-2020\).pdf](https://www.scba.gov.ar/violenciafamiliar/Ver%20veredicto%20(causa%20744-2020).pdf) (Last visited March 16, 2025) (Argentina); Corte Suprema de Justicia de San Miguel de Tucumán [C.S.J. Tucumán] [supreme court], 28/04/2014, “MP c/ XXX,” s., homicidio agravado por el vínculo, available at [https://repositorio.mpd.gov.ar/documentos/xxx%20\(causa%20N%C2%B0%20329\).pdf](https://repositorio.mpd.gov.ar/documentos/xxx%20(causa%20N%C2%B0%20329).pdf) (Last visited March 16, 2025) (Argentina); Tribunal de Casación Penal de la Provincia de Buenos Aires [T.C.P. Buenos Aires] [criminal appeal court], 16/08/2005, “MP c/ N. H. M.”, s., homicidio calificado por el vínculo, available at <https://www.mpba.gov.ar/files/documents/TC-10406.pdf> (Last visited March 16, 2025) (Argentina). Chile: Tribunal de Juicio Oral en lo Penal of Talca (T.J.O.P.) (criminal trial court), 15 de marzo 2016, “MP c/ María

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José Olmedo Olmedo”, Rol de la causa: O-306-2015, s., homicidio calificado (aggravated homicide), Tirant Latam online: LTM30.705.780 (Chile); Corte de Apelaciones de Antofagasta (C.A. Antofagasta) (appellate court), 22 de noviembre 2019, “MP c/ Fannery Díaz Viveros”, Rol de la causa: 409-2019, s., parricidio (parricide), available at [https://app.vlex.com/search/jurisdiction:CL+content\\_type:2/o-253-2019/vid/839012127](https://app.vlex.com/search/jurisdiction:CL+content_type:2/o-253-2019/vid/839012127) (Last visited March 16, 2025) (Chile); Corte de Apelaciones de Antofagasta (C.A. Antofagasta) (appellate court), 24 de julio 2021, “MP c/ Gabriela Mamani Anaya”, Rol de la causa: 648-2021, s., homicidio (homicide), available at <https://oficinajudicialvirtual.pjud.cl/indexN.php> (Last visited March 16, 2025) (Chile); María José Olmedo Olmedo Case: Corte de Apelaciones de Talca (C.A. Talca) (appellate court) 10 mayo 2016, “MP c/ María José Olmedo Olmedo”, Rol de la causa: 246-2016, s., parricidio (parricide), available at <https://oficinajudicialvirtual.pjud.cl/indexN.php> (Last visited March 16, 2025) (Chile). Mexico: Cuarto Tribunal Colegiado en Materia Penal del Segundo Circuito (Fourth Collegiate Criminal Court of the Second Circuit), 26 de agosto de 2021, Amparo Directo 101/2021, s. homicidio (homicide), available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://sise.cjf.gob.mx/SVP/word1.aspx?arch=07940000280472740007006.docx&sec=Alejandro\\_\\_Vilchis\\_Robles&svp=1](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://sise.cjf.gob.mx/SVP/word1.aspx?arch=07940000280472740007006.docx&sec=Alejandro__Vilchis_Robles&svp=1) (Last visited March 16, 2025) (Mexico); Tribunal Superior de Justicia de Baja California (Superior Court of Justice of Baja California), 24 de mayo de 2023, recurso de apelación 3778/2019, s. homicidio cometido con ventaja (omicide committed with undue advantage), available at <https://versionespublicas.pjbc.gob.mx/Sentencia> (Last visited March 16, 2025) (Mexico); Tribunal Superior de Justicia del Estado de Yucatán (Superior Court of Justice of the State of Yucatán), 07 de junio de 2024, recurso de apelación 152/2023, s. homicidio en razón de la relación (aggravated homicide because of kinship), available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://transparencia.poderjudicialyucatan.gob.mx/Transparencia/TSJ/Transparencia/2024/07/12/007/152-2023-SADSOSDdp\\_2024\\_07\\_09\\_13\\_22\\_19.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://transparencia.poderjudicialyucatan.gob.mx/Transparencia/TSJ/Transparencia/2024/07/12/007/152-2023-SADSOSDdp_2024_07_09_13_22_19.pdf) (Last visited March 16, 2025) (Mexico).

—such as transient mental state disorder,<sup>591</sup> exculpatory state of necessity,<sup>592</sup> or insurmountable fear.<sup>593</sup> Furthermore, in Argentina and Mexico, justification and excuse defenses have been claimed subsidiarily from one to the other in the same case.<sup>594</sup>

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<sup>591</sup> Argentina: Cámara en lo Criminal y Correccional de Primera Nominación de la Segunda Circunscripción Judicial [Criminal and Correctional Chamber, First Division of the Second Judicial District], 27/10/2020, “OLMEDO, p.s.a. homicidio calificado por el vínculo mediando circunstancias extraordinarias de atenuación, en los términos de los artículos 45 y 80 inc. 1 último párrafo del Código Penal”, 63-64, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://repositorio.mpd.gov.ar/documentos/Olmedo%20\(ca%20usa%20N%C2%B0%207488544\).pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://repositorio.mpd.gov.ar/documentos/Olmedo%20(ca%20usa%20N%C2%B0%207488544).pdf) (Last visited March 15, 2025) (Argentina).

<sup>592</sup> Chile: Tribunal de Juicio Oral en lo Penal de Puente Alto (T.J.O.P.) (criminal trial courts Puente Alto), 17 de enero de 2013, “MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS,” Rol de la causa: O-166-2012, s. parricidio, Considerando Undécimo, Tirant Latam online: LTM31.725.960. (Chile). Mexico: Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation) 07 de marzo de 2018, Amparo Directo En Revisión 6181/2016, s. homicidio cometido con ventaja (homicide committed with undue advantage), 8, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.scjn.gob.mx/sites/default/files/listas/documento\\_o\\_dos/2018-02/ADR-6181-2016-180208.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://www.scjn.gob.mx/sites/default/files/listas/documento_o_dos/2018-02/ADR-6181-2016-180208.pdf) (Last visited February 15, 2025) (Mexico). Argentina: Juzgado de Garantías en lo Penal N° 4 del Dep. Judicial de Gral. San Martín [Juzg. Garant. Penal Gral. San Martín] [Court of Guarantees in Criminal Matters, General San Martín], 28/5/2021, “Homicidio calificado por vínculo y ensañamiento – imputadas Paula Milagros Naiaretti c. Paola Elvira Córdoba”, available at <https://www.pensamientopenal.com.ar/fallos89166-buenos-aires-perspectiva-genero-sobreseimiento-madre-e-hija-estado-necesidad.pdf> (Last visited March 16, 2025) (Argentina).

<sup>593</sup> Supremo Tribunal de Justicia del Estado de Michoacán (Supreme Court of Justice of the State of Michoacán), 26 de noviembre de 2012, I-443/2012, s. homicidio calificado (aggravated homicide), available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.poderjudicialmichoacan.gob.mx/ContenidosWeb/transparencia/sentencias/genero/20121126\\_MORE3SP\\_Apelacion\\_homicidio.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://www.poderjudicialmichoacan.gob.mx/ContenidosWeb/transparencia/sentencias/genero/20121126_MORE3SP_Apelacion_homicidio.pdf) (Last visited March 16, 2025) (Mexico).

<sup>594</sup> Argentina: Tribunal de Casación Penal de la Provincia de Buenos Aires [TCP BA] [Court of Cassation of Buenos Aires], 24/6/2016, “LÓPEZ, SUSANA BEATRIZ S/ RECURSO DE CASACIÓN INTERPUESTO POR PARTICULAR DAMNIFICADO”, available at Revista de Pensamiento Penal <https://www.pensamientopenal.com.ar/system/files/2016/03/fallos43080.pdf> (Last visited March 15, 2025) (Argentina) (Primary defense: Transient mental disorder, and subsidiarily, self defense.); Corte de Justicia de San Juan [CJ CJn.] [Court of Justice of San Juan], 6/8/2019, “C/ M.C.A. - por el delito homicidio agravado por el vínculo en perjuicio de A.T.”, LIBRO DE PROTOCOLOS DE LA CORTE DE JUSTICIA DE SAN JUAN (2019-II-388) (Argentina) (Primary defense: Transient mental disorder, and subsidiarily, self defense.) Mexico: Supremo Tribunal de Justicia del Estado de Michoacán (Supreme Court of Justice of the State of Michoacán), 26 de noviembre de 2012, I-443/2012, s. homicidio calificado (aggravated homicide), 6, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.poderjudicialmichoacan.gob.mx/ContenidosWeb/transparencia/sentencias/genero/20121126\\_MORE3SP\\_Apelacion\\_homicidio.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://www.poderjudicialmichoacan.gob.mx/ContenidosWeb/transparencia/sentencias/genero/20121126_MORE3SP_Apelacion_homicidio.pdf) (Last visited March 16, 2025) (Mexico) (Primary defense: self-defense, and subsidiarily, insurmountable fear.)

This shifting between one type of defense granted and another is not random. It is shaped by whether the defendant's actions conform to the male-centered framework underlying a given defense. Thus, if the woman's actions can be framed to mirror a typical male self-defense scenario, she is more likely to be granted justification. If not, the court may instead apply an excuse defense.

### **2.3.1 The pervasive shifting between justifications and excuses in Argentina, Chile, and Mexico**

Homicides committed by women against their abusive intimate partners can take place in either confrontational or non-confrontational scenarios. The first ones involve cases where the woman kills her abuser while being attacked, whereas non-confrontational scenarios occur when the woman kills her abuser during a lull in the violence.<sup>595</sup> Depending on whether the homicide took place in one setting or the other, the defense strategy can vary significantly, shifting from justification to excuse.

Killings perpetrated by women against their intimate partners mostly occur in confrontational scenarios. Holly Maguigan conducted a study that dispelled the long-standing myth that women often attack their abusive partners while they are off guard.<sup>596</sup>

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<sup>595</sup> Erin Masson, *Admissibility of Expert or Opinion Evidence of Battered Woman Syndrome on Issue of Self Defense*, 58 A.L.R. 5<sup>th</sup> 749 2 (a) (2005). (Self-defense claims have arisen in both categories of cases, however, this defense is more accepted when it is claimed in the first scenario than in the second) See also: Emily C. Hodell et al., *Factors Impacting Juror Perceptions of Battered Women Who Kill Their Abuser: Delay and Sleeping Status*, 18 PSYCHOL. PUB. POL'Y & L. 338, 353-354 (2012); Kinports, *supra* note 386, at 156.

<sup>596</sup> Kinports, *supra* note 259, at 409 ("The battered woman who kills her husband often does so in a non-confrontational setting. Instead of striking back while her husband abuses her, she waits until he has finished attacking her, until he threatens her with further abuse, or even until he is asleep."). See also: Crocker, *supra* note 388, at 139-140.



In fact, 75% of abused women who killed their intimate partner did so in confrontational settings.<sup>597</sup> Only 20% of the homicides took place in nonconfrontational scenarios (4% "contract killings," 8% sleeping-man cases, and 8% defendant as the initial aggressor during a lull in the violence), while in the remaining 5%, the appellate opinions did not include a discussion of the facts introduced at trial.<sup>598</sup>

In these cases, the women's response mirrors what would conventionally be considered a rational defensive act from a male perspective—a one-on-one confrontation.<sup>599</sup> Thus, when a woman acts similarly to a man in a confrontational scenario, the male parameters of self-defense apply to her, and the requirements for the defense are met.

This reality is also present in Argentina, Chile, and Mexico, where women often commit homicide against their intimate partners in confrontational settings, claiming self-defense. For example, in the Argentinian case of Teresa Seco, the defendant endured a long history of domestic violence from her husband, who repeatedly subjected both her and her 13-year-old son to mistreatment.<sup>600</sup> On the night of the fatal event, the couple had a big

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<sup>597</sup> Maguigan, *supra* note 104, at 395.

<sup>598</sup> Maguigan, *supra* note 104, at 395.

<sup>599</sup> SCHNEIDER, *supra* note 160, at 116 (2000) (The law of self-defense is purportedly universally applicable, it is widely recognized that social concepts of justification have been shaped by male experience. The circumstances in which women kill in self-defense are usually related to physical and sexual abuse by an intimate, not to the conventional bar room brawl or fist fight with a stranger that shapes male experience with self-defense.); Hope Keating, *Battered Women in Florida: Will Justice Be Served?* 20 FLA. ST. U. L. Rnv. 679, 694 (1993) (Because of male-oriented legal values, the law takes self-defense into account for a person in a bar fight but not for a person in an intimate relationship who is too afraid to leave and resorts to shooting her sleeping partner).

<sup>600</sup> Corte Suprema de Justicia de Tucuman [CSJ Tucuman] [Supreme Court of Justice Tucuman], 28/4/2014, "SECO TERESA MALVINA S/ HOMICIDIO AGRAVADO POR EL VINCULO", 5, available at <https://www.mpf.gob.ar/direccion-general-de-politicas-de-genero/files/2019/12/4.-Seco-Teresa-Malvina.pdf> (Last visited March 15, 2025) (Argentina).

argument, and she asked him to leave the house.<sup>601</sup> Afterward, he violently forced his way back in, intending to harm her and her son. In response, the boy grabbed a knife to defend himself, but she took it from him.<sup>602</sup> They both ran outside, but her husband caught up with them, and as he turned her around, she pushed him away with the knife in her hand, wounding him and resulting in his death.<sup>603</sup> The defendant argued self-defense, and the Appeals Court granted her claim, annulling the lower court's guilty verdict by granting the defendant's appeal.<sup>604</sup>

Another example is the Chilean case of Fannery Diaz, who also had a tortuous relationship with her partner.<sup>605</sup> The night of the homicide, she arrived home after a party, and her partner, who was drunk and enraged by jealousy because she had decided to stay longer at the celebration where other men were present, physically assaulted her, grabbed her by the hair, threw her to the ground, and hit her in the face with his hands.<sup>606</sup> In this scenario, the defendant, in an attempt to repel the attack, took a knife that was stored in a piece of furniture and stabbed her partner causing his death.<sup>607</sup> In this case, the defendant claimed self-defense, and the Appeals Court upheld this claim by granting the defendant's appeal for annulment of the lower court's verdict, which had found her guilty.<sup>608</sup>

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<sup>601</sup> *Id.* at 18.

<sup>602</sup> *Id.*

<sup>603</sup> *Id.* at 19.

<sup>604</sup> *Id.*

<sup>605</sup> Corte de Apelaciones de Antofagasta (C.A. Antofagasta) (appellate court), 22 de noviembre 2019, “MP c/ Fannery Díaz Viveros”, Rol de la causa: 409-2019, s., parricidio (parricide), Considerando Octavo y Noveno, available at [https://app.vlex.com/search/jurisdiction:CL+content\\_type:2/o-253-2019/vid/839012127](https://app.vlex.com/search/jurisdiction:CL+content_type:2/o-253-2019/vid/839012127) (Last visited March 16, 2025) (Chile).

<sup>606</sup> *Id.* at Considerando Quinto.

<sup>607</sup> *Id.*

<sup>608</sup> *Id.* at Considerando Décimo.

A Mexican example is María Guadalupe Pereda, who, at 19, began dating a 35-year-old lawyer named Carlos in a relationship marked by his repeated abuse toward her.<sup>609</sup> One day, she decided to end her relationship with Carlos, who, in a rage, physically assaulted her.<sup>610</sup> Carlos hit her, pulled her hair, and struck her with slaps and punches to the head. He then threatened her with a gun, left the bedroom, and locked her inside her own home.<sup>611</sup> Upon his return, they struggled, and the weapon discharged, resulting in his death.<sup>612</sup> The defendant claimed self-defense, and the Appeals Court accepted this argument, overturning the lower court's guilty verdict by granting the appeal for annulment.<sup>613</sup>

In these cases, the women defended themselves within a traditional self-defense scenario and aligned their acts with the male-centric framework of self-defense, where the history of domestic abuse serves as a supplement—more like a bolster—to the woman's testimony. Thus, courts focus on the frame of the situation as one where an aggressor attacks and the other person defends herself, granting self-defense and justifying these women's homicide against their intimate partners.<sup>614</sup>

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<sup>609</sup> La Silla, *supra* note 370.

<sup>610</sup> *Id.* See also: RED MESA DE MUJERES DE CIUDAD JUÁREZ, INFORME SOMBRA DE CIUDAD JUÁREZ, CHIHUAHUA, EN SEGUIMIENTO AL INFORME PRODUCIDO POR EL COMITÉ CEDAW BAJO EL ARTÍCULO 8° [Isabel Torreshttps://catedraunescodh.unam.mx/catedra/Papiit2017/microcj/35informesom.html](https://catedraunescodh.unam.mx/catedra/Papiit2017/microcj/35informesom.html).

<sup>611</sup> La Silla, *supra* note 370.

<sup>612</sup> La Silla, *supra* note 370.

<sup>613</sup> Rocío Gallegos, *En legítima defensa, Mary recupera su libertad*, LA VERDAD JUÁREZ (July 21, 2018), <https://laverdadjuarez.com/2018/07/21/en-legitima-defensa-mary-recupera-su-libertad/>.

<sup>614</sup> Schneider, *supra* note 386, at 636 (1980) (Sex bias in the law of self-defense has two effects. First, sex-stereotyped attitudes and the sex bias inherent in the legal rules of self-defense often cause the judge to exclude evidence of an individual woman's circumstances and perceptions. The woman is thus unable to present her case fully and is denied a fair trial. Second, sex-stereotyped attitudes make it more likely that the

However, the defenses change in non-confrontational scenarios. These settings refer to the cases in which the confrontational scenario deescalates, such as in a lull or hiatus in violence, or cases in which the women kill their intimate partners when they are sleeping or off guard.<sup>615</sup> In these cases, courts are more likely to grant an excuse, such as an exculpatory state of necessity or insurmountable fear, rather than a justification, like self-defense, regardless of whether the defendant's intention was to defend themselves from further injuries from their abuser.<sup>616</sup>

One example of the first set of cases in which the confrontational scenario deescalates is the Argentinian case of Vanesa Ruiz, whose relationship with Gustavo Galván was characterized by ongoing violence.<sup>617</sup> On the day of the fatal incident, the defendant was watching TV, which caused her partner to get angry, yell at her, and hit a light switch with his foot, causing the power to go out.<sup>618</sup> In this scenario, she took a knife and stabbed him on the left side of his chest, ultimately leading to his death.<sup>619</sup>

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trier of fact will excuse the woman on grounds of incapacity rather than declare her act of self-defense justified.)

<sup>615</sup> See *supra* note 595.

<sup>616</sup> BROWNE, *supra* note 200, at 135-136 (Even though these killings are typically unplanned and occur in the midst of an attack from their abusers—this being a confrontational scenario—in some cases, women wait until their intimate partner is off guard. These delayed homicides are often tied to explicit threats made by the abuser, either against the woman or her child. Women kill the abuser to prevent the threatened outcome.)

<sup>617</sup> Suprema Corte de Justicia de Mendoza [SCJ Mza.] [Supreme Court of Justice of Mendoza], 7/9/2017, “F C/ RUIZ CASAS, VANESA YANINA P/ HOMICIDIO AGRAVADO POR SER LA VICTIMA PERSONA QUE MANTENIA RELACION DE PAREJA CON EL AUTOR MED. CONVIV. (44503) P/ RECURSO EXT.DE CASACIÓN”, 13, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://av.jus.mendoza.gov.ar/moodle/pluginfile.php/33337/mod\\_resource/content/0/13-03696013-7%20-%20Ruiz%20Casas.pdf](http://chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://av.jus.mendoza.gov.ar/moodle/pluginfile.php/33337/mod_resource/content/0/13-03696013-7%20-%20Ruiz%20Casas.pdf) (Argentina).

<sup>618</sup> *Id.*

<sup>619</sup> *Id.*

The court considered that the fact that Galván kicked the light switch during a heated argument cannot be seen as an instance of unlawful aggression that would give the defendant the right to repel by attacking the deceased's life, as Galván's actions lacked the material aspect of aggression.<sup>620</sup> The existence of a situation of gender-based violence cannot, in this context, substitute for the material element of aggression—that is, the actual attack by the victim against the perpetrator that is repelled in self-defense.<sup>621</sup>

Although the defendant's acts did not satisfy the requirements of self-defense, the court determined the defendant's conduct fell under an exculpatory state of necessity given the constant inherent danger that posed a potential risk of harm to her life or physical integrity.<sup>622</sup> This danger increased when an argument began between the couple and when the victim, in a violent impulse, plunged the place into darkness by hitting the respective cable.<sup>623</sup> Thus, the defendant was declared not guilty, not on the grounds of self-defense, but on the exculpatory state of necessity.<sup>624</sup>

Another example is the Chilean case of Daniella Quilipay Vivanco, who killed her intimate partner in a small hiatus in violence. Both the defendant and her intimate partner were under the influence of alcohol when they began an argument that lasted for nearly an hour.<sup>625</sup> During this incident, he assaulted her with punches, threatened and injured her

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<sup>620</sup> *Id.* at 17.

<sup>621</sup> *Id.* at 18.

<sup>622</sup> *Id.* at 25.

<sup>623</sup> *Id.*

<sup>624</sup> *Id.*

<sup>625</sup> Corte de Apelaciones de Iquique (C. Apel. Iquique) (court of appeals), 09 de marzo 2020, “MP AH CONTRA DANIELLA FRANCISCA BELEN QUILPATAY VIVANCO,” Rol de la causa: 31-2020, s.

with a knife.<sup>626</sup> Subsequently, she wrestled the knife from him and delivered two thrusts directly to his chest, one of which pierced his heart, ultimately resulting in his death.<sup>627</sup>

In this case, the trial court rejected the self-defense claim, reasoning that after the defendant retrieved the weapon, her partner was unarmed and intoxicated, with his faculties severely impaired.<sup>628</sup> In the trial court's view, the defendant could have chosen an alternative action to repel the deceased's actions, which meant that she violated the proportionality requirement.<sup>629</sup> The Court of Appeals upheld this interpretation and added it was not reasonable to accept that the accused was in fear of the deceased, especially as she fatally assaulted him after disarming him instead of leaving the scene.<sup>630</sup> Therefore, the lower court and the Appeals Court dismissed the claim of self-defense.<sup>631</sup>

Lastly, consider the reserved Mexican case number I-443/2012, in which the defendant was a woman who was married to an abusive man who subjected her to physical and psychological violence.<sup>632</sup> He threatened her with raping her daughter if she did not have sexual intercourse with him and with killing her son while he slept.<sup>633</sup> The night of

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homicidio (homicide), Considerando Noveno, available at <https://oficinajudicialvirtual.pjud.cl/home/index.php> (Last visited February 16, 2025) (Chile).

<sup>626</sup> *Id.*

<sup>627</sup> *Id.*

<sup>628</sup> *Id.*

<sup>629</sup> *Id.*

<sup>630</sup> *Id.* at Décimo Sexto.

<sup>631</sup> *Id.*

<sup>632</sup> Supremo Tribunal de Justicia del Estado de Michoacán (Supreme Court of Justice of the State of Michoacán), 26 de noviembre de 2012, I-443/2012, s. homicidio calificado (aggravated homicide), 6, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.poderjudicialmichoacan.gob.mx/ContenidosWeb/transparencia/sentencias/genero/20121126\\_MORE3SP\\_Apelacion\\_homicidio.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://www.poderjudicialmichoacan.gob.mx/ContenidosWeb/transparencia/sentencias/genero/20121126_MORE3SP_Apelacion_homicidio.pdf) (Last visited March 16, 2025) (Mexico).

<sup>633</sup> *Id.*

the fatal event, he pushed her down the stairs.<sup>634</sup> Subsequently, the defendant put a tranquilizer in her husband's coffee, injected him with the substance, and then asphyxiated him.<sup>635</sup>

The court did not consider this behavior as acting in self-defense, as the lower court did, given that her husband's aggression had already ceased; this is, it was not current nor imminent.<sup>636</sup> After pushing her down the stairs, he prepared himself a burger, indicating that once the aggression ceased, the imminence of another attack also ended, as he was engaged in other activities, ruling out the possibility of new aggression.<sup>637</sup> Also, the Court established that psychological aggression does not exist under the law of self-defense because the state's penal code only contemplates physical aggression, which was not present in this case.<sup>638</sup>

Nevertheless, the court considered the woman to have acted under an excuse defense called insurmountable fear, defining it as “an anguished disturbance of the mind due to a real or imagined threat or danger—that is, a specific emotional state that is insurmountable for the individual, preventing them from acting in another way,” in accordance to article 15 of the Federal Penal Code and article 12, fraction X, of the State Penal Code.<sup>639</sup>

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<sup>634</sup> *Id.*

<sup>635</sup> *Id.* at 10.

<sup>636</sup> *Id.*

<sup>637</sup> *Id.* at 11.

<sup>638</sup> *Id.*

<sup>639</sup> *Id.* at 15-18.

In insurmountable fear defense, the perpetrator acts under the threat of a serious, imminent, or current danger that is not caused by the defendant but may or may not be provoked by the actions of a third party, and it is unreasonable to expect a different course of action, due to the presence of severe fear that impaired their intellectual faculties (a reduction or disturbance in the capacity to understand and exercise will).<sup>640</sup>

According to the Court, it was proved in this case that the defendant acted under the threat of serious and imminent danger because she was constantly subjected to physical and psychological violence due to the deceased's aggressiveness, which caused her to live under the constant threat that at any moment, whenever he was with her, he would physically and/or psychologically abuse her.<sup>641</sup> The court also considered that the defendant did not cause this dangerous situation. Rather, the deceased did since he was the one who exercised violence against the defendant.<sup>642</sup> Likewise, the Court ruled that it was not reasonable to expect the defendant to act otherwise because she suffered an insurmountable fear that impaired her intellectual faculties (a reduction or disturbance in the capacity to will and understand), as evidenced by the psychiatric expert testimony presented at trial.<sup>643</sup> Thus, the defendant was declared not guilty, not on the grounds of self-defense, but on the insurmountable fear defense.<sup>644</sup>

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<sup>640</sup> *Id.* at 18.

<sup>641</sup> *Id.* at 47.

<sup>642</sup> *Id.* at 48.

<sup>643</sup> *Id.* at 48-52.

<sup>644</sup> *Id.* at 58.



Some examples of neat non-confrontational scenarios are also present in Argentina, Chile, and Mexico.

For example, in the Argentinian case of Paola Cordoba, a woman was married to an abusive man who subjected her and her children to physical and psychological violence.<sup>645</sup> On the night of the fatal incident, he threatened to kill her if she fell asleep.<sup>646</sup> When he eventually fell asleep, she went to the kitchen, grabbed two knives, and stabbed him.<sup>647</sup>

The defense argued an exculpatory state of necessity, which was granted by the court.<sup>648</sup> The Court established that the defendant and her family were in a situation of extreme vulnerability, and due to systemic and cultural issues, she could not react in the way society would have expected from her.<sup>649</sup> Ultimately, this placed her in a situation where her life and that of her children were threatened.<sup>650</sup>

The basis for the exculpatory state of necessity has been the significant reduction of the defendant's ability for self-determination, which, in the court's view, neutralizes the

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<sup>645</sup> Juzgado de Garantías en lo Penal N° 4 del Dep. Judicial de Gral. San Martín [Juzg. Garant. Penal Gral. San Martín] [Court of Guarantees in Criminal Matters, General San Martín], 28/5/2021, “Homicidio calificado por vínculo y ensañamiento – imputadas Paula Milagros Naiaretti c. Paola Elvira Córdoba”, 23-28. available at <https://www.pensamientopenal.com.ar/fallos89166-buenos-aires-perspectiva-genero-sobreseimiento-madre-e-hija-estado-necesidad.pdf> (Last visited March 16, 2025) (Argentina).

<sup>646</sup> *Id.* at 13-15.

<sup>647</sup> *Id.*

<sup>648</sup> *Id.* at 13.

<sup>649</sup> *Id.* at 111.

<sup>650</sup> *Id.*

possibility of blame.<sup>651</sup> Therefore, the defendant's culpability is null, as she acted to preserve her life and that of her children.<sup>652</sup>

A similar case is the one of Karina Sepulveda, discussed above, who killed her abusive intimate partner while he was sleeping. Despite the Appeals Court's decision to grant the appeal and dismiss the defense, the Criminal Oral Court of Puente Alto reaffirmed its position in her retrial, again declaring her innocent on the grounds of exculpatory state of necessity.<sup>653</sup>

First, the Criminal Oral Court determined that, on the night of the homicide, the current or imminent threat of the harm being avoided consisted of a permanent danger of death, drawing a parallel to the dormant family tyrant, who could awaken at any moment to perpetuate the abuse.<sup>654</sup> In this manner, it was feasible that when Claudio woke up, he would continue the abuse towards her, leading to the death of the accused or her children.<sup>655</sup>

Second, when assessing the absence of any other feasible, less damaging means to prevent harm, the court established that the alternatives refer to the means the agent had to avoid the threatened evil; the point is that there should not be a least harmful means in practical terms.<sup>656</sup> Given the previously established facts and their context, the defendant

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<sup>651</sup> *Id.* at 114.

<sup>652</sup> *Id.*

<sup>653</sup> Tribunal de Juicio Oral en lo Penal de Puente Alto (T.J.O.P.) (criminal trial courts Puente Alto), 17 de enero de 2013, “MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS,” Rol de la causa: O-166-2012, s. parricidio (parricide), Considerando Décimo Sexto, Tirant Latam online: LTM31.725.960. (Chile).

<sup>654</sup> *Id.* at Décimo Primero.

<sup>655</sup> *Id.*

<sup>656</sup> *Id.*

had no other feasible means to counter the nearly daily assaults from her partner.<sup>657</sup> Killing him while he was sleeping was the only practicable and least harmful means to avoid evil against her person.<sup>658</sup>

When pondering the harms, the court underscored the significance of the state-provided risk indicators, which serve as guidelines to prevent femicides and offer criteria for victim protection.<sup>659</sup> These guidelines enabled the court to determine that the lives of Karina and her children were in danger.<sup>660</sup>

Finally, regarding the last requirement, the court stated that Karina was not obliged to bear the mistreatment she suffered from Claudio.<sup>661</sup>

A last example of this type of case is the reserved Mexican case number I-443/2012, discussed in the former section, in which the defendant poisoned and then asphyxiated her husband. Ultimately, the judge acquitted the defendant on the grounds of the excuse defense of insurmountable fear.

From the analysis of these cases, it is inferred that self-defense is often not used or applied when the woman's actions deviate from the typical confrontational scenario in which the abuser is actively attacking her, despite the fact their homicidal actions are driven by the necessity of defending themselves from further abuse. In these non-confrontational

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<sup>657</sup> *Id.*

<sup>658</sup> *Id.*

<sup>659</sup> *Id.*

<sup>660</sup> *Id.*

<sup>661</sup> *Id.*

cases, women do not mimic men defending themselves, and consequently, the preferred defenses are excuses, not justifications.

### **3.2.2 Problems associated to shifting between defenses**

#### **3.2.2.1 The distortion of battering and its effects**

This shifting between justifications and excuses is pernicious because it distorts the effects of expert testimony on domestic abuse -also called battering and its effects-<sup>662</sup> making it unclear whether these women acted rationally or not. Consequently, the role of battering and its effects in supporting criminal defenses becomes weakened, given that a theory that aims to explain everything ultimately explains nothing. To understand these assertions, it is first necessary to deepen into the difference between justification and excuse defenses and the legal consequence for the actor in each case.

In countries that follow a Civil Law Tradition, such as Chile, Argentina, and Mexico, affirmative defenses are codified in a long list without being placed into distinct categories.<sup>663</sup> However, as is customary in the criminal law literature of continental Europe, scholars and judges classify them as justification and excuses, depending on whether they

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<sup>662</sup> I refer to expert testimony on battering and its effects or expert testimony on domestic abuse interchangeably. These concepts are broader than the expert testimonies based on Battered Woman Syndrome and aim to encompass other theories that might explain how the history of domestic abuse has influenced the perspective and experiences of women who have killed their intimate partners. For example, Brenda Russell established that social framework or expert testimony explaining battering and its effects would be more effective than using the terminology associated with Battered Woman Syndrome, putting the focus on the effects of battering, the survival strategies used by women, and the unique ability to predict her partner's actions rather than focusing on the woman's pathology. See: Russell, *supra* note 103, at 137-138.

<sup>663</sup> Ferrante, *supra* note 264, at 35. See also: Código Penal (Criminal Code) [Cod. Pen.] art. 10 (Chile); Art. 34, Código Penal [Cód. Pen.] (Argentina); Código Penal Federal [CPF], art. 36, Diario Oficial de la Federación [DOF] 12-08-1931, últimas reformas DOF 17-10-2016 (Mex.)

affect the unlawful nature of the behavior —that is, the wrongfulness of the criminal offense— or whether they affect the agent’s responsibility for the unlawful behavior —referring to the culpability or blameworthiness of the act.<sup>664</sup> The former are classified as justifications and the latter as excuses.

The wrongfulness or unlawfulness (*antijuridicidad*) of the act refers to the contradiction between the legal system and an act or behavior.<sup>665</sup> Verifying the unlawfulness of a behavior is achieved when it is confirmed that there is no permissive rule for that behavior; in other words, no justification exists in the specific case.<sup>666</sup> In this manner, examples of justifications are self-defense and a justificatory state of necessity.<sup>667</sup>

In common law traditions, there is a similar distinction in defenses between justifications and excuses. In a justification defense, the actor engages in conduct that is not punishable because its benefits outweigh the harm of the criminal offense.<sup>668</sup> Here, the harm caused by the justified behavior, although ideally avoided and legally recognized as harmful, becomes permissible under certain circumstances.<sup>669</sup> In these instances, the harm is outweighed by the need to prevent an even greater harm or to further a more significant societal interest.<sup>670</sup> Self-defense falls into this category.<sup>671</sup>

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<sup>664</sup> See *supra* note 264.

<sup>665</sup> GARRIDO, *supra* note 266, at 133; MALO, *supra* note 266, at 403; ZAFFARONI, *supra* note 266, at 589 (2nd ed. 2007).

<sup>666</sup> GARRIDO, *supra* note 266, at 109; MALO, *supra* note 266, at 412; ZAFFARONI, *supra* note 266, at 589 (2nd ed. 2007).

<sup>667</sup> GARRIDO, *supra* note 266, at 127-158 (3rd ed. 2003); MALO, *supra* note 266, at 415-427; ZAFFARONI, *supra* note 266, at 609-644.

<sup>668</sup> Paul H. Robinson, *Criminal Law Defenses: A Systematic Analysis*, 82 COLUM. L. REV. 199, 203 (1982).

<sup>669</sup> *Id.* at 213.

<sup>670</sup> *Id.*

<sup>671</sup> *Id.* at 236.

On the other hand, culpability or blameworthiness is a value judgment about the author of an act.<sup>672</sup> Here, the question is whether the behavior can be reproached because the individual was in a position and condition to comply with the mandates or prohibitions of the criminal law.<sup>673</sup> Thus, non-culpability refers to the inability to reproach a typical<sup>674</sup> and unlawful behavior to the person who committed it because it could not reasonably be expected for them to act otherwise.<sup>675</sup> Examples of excuses are exculpatory state of necessity and insanity.<sup>676</sup>

Similarly, in Common Law tradition, in excuse defenses, the actor admits the harm or evil but claims an absence of personal culpability.<sup>677</sup> The defendant's action might be wrong, but the actor is not to blame because circumstances indicate that the individual was not accountable for their actions.<sup>678</sup> Each excuse defense is structured around a disability that leads to an excusing condition, with this disability representing the actor's abnormal state at the time of the offense.<sup>679</sup> Examples of these defenses are exculpatory state of necessity, temporary mental disorder (insanity), and insurmountable fear.<sup>680</sup>

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<sup>672</sup> GARRIDO, *supra* note 266, at 110; MALO, *supra* note 266, at 521; ZAFFARONI, *supra* note 266, at 650.

<sup>673</sup> GARRIDO, *supra* note 266, at 110; MALO, *supra* note 266, at 521; ZAFFARONI, *supra* note 266, at 650.

<sup>674</sup> A typical act refers to a behavior or act that is defined as a criminal offense.

<sup>675</sup> GARRIDO, *supra* note 266, at 110; MALO, *supra* note 266, at 524-525.

<sup>676</sup> GARRIDO, *supra* note 266, at 214-219; MALO, *supra* note 266, at 551-571; ZAFFARONI, *supra* note 266, at 689-763.

<sup>677</sup> Robinson, *supra* note 668, at 203.

<sup>678</sup> *Id.* at 213.

<sup>679</sup> *Id.* at 221.

<sup>680</sup> *Id.* ("The disability is a real condition with a variety of observable manifestations apart from the conduct constituting the offense. It may be a long term or even permanent condition, such as subnormality, or it may be a temporary state like intoxication, somnambulism, automatism, or hypnotism. Its cause may be internal, as in insanity, or external, as in duress.")

Either from a Civil Law or Common Law perspective, it is bewildering how battering and its effects serve to fulfill the criteria for a justification defense where the harm is deemed permissible and, at the same time, fulfill the criteria for excuse defenses in which the harm is not considered allowed, but excused because of the mental state –or better said, disability– of the defendant.

In this manner, the defendant's history of abuse becomes like a magician's hat, accommodating all types of defenses, even if they aim for different — and even opposing — objectives: justifying or excusing the defendant. This apparent elasticity of the expert testimony on battering and its effects ultimately weakens the legal strategy and the defense used, given that it remains unclear whether the history of domestic abuse demonstrates that the defendant's actions were rational, thereby justifying her behavior, or if it portrays her as mentally impaired, rendering her actions irrational but excusable.

### **3.2.2.2 Undermining agency, and portraying women as impaired and incapable of self-governance**

The distinction between using one or the other may be irrelevant for criminal practitioners focused on securing an acquittal.<sup>681</sup> Any potential cost an excuse defense might bear pales in comparison to the consequences of a guilty verdict and its punishment.<sup>682</sup> However, as will be explained in depth, the distinction between an excuse

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<sup>681</sup> Coughlin, *supra* note 559, at 25.

<sup>682</sup> *Id.*

and a justification is relevant because the typology of defense impacts these women's agency and moral character as rational actors and, ultimately, as human beings.

Anne Coughlin used the model responsible actor theory to demonstrate that the pernicious effects of the Battered Woman Syndrome defense extend beyond merely stereotyping battered women.<sup>683</sup> Excusing women—as this defense seeks to do—denies their ability to abide by criminal prohibitions and, in turn, denies them the same capacity for self-governance that is attributed to men.<sup>684</sup>

The model responsible actor theory holds that punishment is applied only to rational agents capable of choosing between alternative courses of action for good and evil.<sup>685</sup> In this context, the nature of the defenses becomes relevant, as in justifications, the actor is seen as capable of making rational choices even under the most dangerous circumstances.<sup>686</sup> Whereas, in excuses, leniency is reached by demonstrating that the defendant's ability to choose between lawful and unlawful actions was compromised due to a defect of volition or a defect in cognition.<sup>687</sup> The consequence of the distinction is more than just theoretical, given that actors lacking the capacity for responsible conduct may not

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<sup>683</sup> *Id.* at 6.

<sup>684</sup> *Id.* Also, see: Leonardo Pitlevnik and Pablo Zalazar, *Eximentes de Responsabilidad Penal en los casos de Mujeres Víctimas de Violencia*, in *GENERO Y JUSTICIA PENAL* 73, 77 (Julieta Di Corleto Ed. 2017) (Arguing that the absence of blameworthiness implies a corresponding lack of criminal capacity).

<sup>685</sup> Coughlin, *supra* note 559, at 11.

<sup>686</sup> *Id.* at 14.

<sup>687</sup> *Id.* at 14-15.



be punished criminally, but the decision to excuse them from responsibility constitutes a negative statement about their moral status as lesser humans.<sup>688</sup>

Coughlin asserted that the Battered Woman Syndrome defense became the successor to the marital coercion excuse because, on the one hand, the evidence is based on the premise that her dominant husband will mentally subjugate the woman, and on the other hand, the prosecutor attempts to portray her as an active and independent woman.<sup>689</sup> In this manner, by securing leniency on the grounds that women are predisposed to lose rational choice, the Battered Woman Syndrome excuse relinquishes to men the authority to make decisions for women.<sup>690</sup>

Similar to the Battered Woman Syndrome defense, other excuse defenses —such as temporary mental disorder, insurmountable fear, or exculpatory state of necessity—are based on the premise that an abused woman who kills her intimate partner experienced an impairment in understanding or controlling her actions. While these defenses may result in acquittal, they come at the cost of denying the defendant’s capacity to make rational decisions, effectively stripping her of agency and diminishing her moral value as a human being.<sup>691</sup>

Along the same line, a study on the effects of excuse defenses performed in 2022 showed that in denying agency, an excuse defense based on a mental impairment may

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<sup>688</sup> *Id.* at 24.

<sup>689</sup> *Id.* at 57-58.

<sup>690</sup> *Id.* at 62.

<sup>691</sup> Coughlin, *supra* note 559, at 24; Melissa de Vel-Palumbo et al., *Morally Excused but Socially Excluded: Denying Agency Through the Defense of Mental Impairment*, 17 PLOS ONE 1, 21 (2022); Pitlevnik and Zalazar, *supra* note 684, at 77.

protect the defendants from criminal liability; however, this treatment can also hinder their ability to be granted a meaningful return to society in the longer term.<sup>692</sup> The results suggest that an individual's perceived threat to society is a key predictor for why rights are withheld from mentally impaired defendants; they are often denied their inherent moral worth as human beings.<sup>693</sup>

In this manner, the consequences of using excuses instead of justifications, although they might appear insignificant for practitioners, undermine agency, and portray the woman as impaired and incapable of self-governance. Furthermore, even if acquitted, their reintegration into society remains challenging.

### **3. Summary**

The chapter starts with an illustration of the most common defenses used by women who have killed their intimate partners in Argentina, Chile, and Mexico, providing an overview of their legal requirements and their counterparts in the U.S.

With this foundation established, the discussion turns to the challenges faced by criminal defenses for women who, as domestic violence victims, have killed their intimate partners. If these issues are not addressed, they could result in the dismissal of their claims, leading to the conviction of the defendants.

The first problem is that the law, created by men and for men, has historically codified masculine perspectives, systematically discriminating against women by

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<sup>692</sup> De Vel-Palumbo, *supra* note 691, at 21.

<sup>693</sup> *Id.*

disregarding their viewpoints.<sup>694</sup> This bias extends to some cases of intimate partner homicide committed by women, where the defendants' experiences and perspectives as victims of domestic violence are often overlooked in judicial assessments. This creates at once problems with the concepts of imminence, interpretation of mutual violence, identification of harms and interests at stake in self-defense, and exculpatory state of necessity and availability of opportunities.

In self-defense and the exculpatory state of necessity, imminence is tied to temporal proximity, reflecting an androcentric view rooted in confrontational scenarios. Courts often dismiss the preemptive actions of domestic violence survivors as lacking imminence because their aggressors were not actively attacking them at the time of the incident. By adhering to a traditional concept of imminence, courts fail to appreciate the complexity of domestic violence, disregarding the defendant's knowledge, experiences, and characteristics.

Courts often reject women's defenses by misinterpreting mutual violence, treating abusive relationships as symmetrical confrontations. However, research shows that studies promoting gender symmetry in violence are flawed, as men's violence tends to cause more severe harm, while women's violence is often defensive.

Another problem stemming from a male-biased perspective in criminal law is that some courts often misjudge the interests and harms at stake in intimate partner homicides perpetrated by women because they focus solely on the immediate context of the fatal

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<sup>694</sup> Hecht, *supra* note 281, at 32-33.

incident. This narrow focus neglects the broader context of violence and the constant threat victims experience. Without considering these factors, courts diminish the severity of the abuse and wrongfully conclude that the harm caused—killing the abuser—was disproportionate to the harm avoided, thus rejecting valid defenses.

Lastly, some courts assume that these women had alternative, less harmful options than killing their abusers, disregarding the realities of domestic violence. Thus, judges question why the defendant did not leave, implying she had feasible options—a perspective shaped by male bias. However, women often remain due to economic dependence, fear of retaliation, concern for their children, lack of support in their community, or love. Furthermore, separation is one of the most dangerous periods in an abusive relationship. The misconception that these women could have escaped overlooks the complexity of their circumstances, rendering the notion of alternative actions illusory. Courts must account for these factors to understand victims' limitations and dangers rather than dismissing their actions as unjustified.

In order to remove male bias from criminal defenses and incorporate the perspectives and experiences of domestic violence endured by these women, it is essential to include expert testimony. This testimony often refers to Battered Woman Syndrome in Chile, Argentina, and Mexico. However, this is a theory that faces hard criticism.

First, this syndrome portrays the defendants as mentally impaired. The terminology and psychological focus of the theory align it with mental illness, depicting these women as irrational or crazy.

A second key issue with using Battered Woman Syndrome is the difficulty of reconciling justification defenses with the implication of mental impairment. This duality creates ambiguity, complicating the determination of whether the woman's actions were rationally justified or if she should be excused due to mental impairment.

In addition, in Mexico, Chile, and Argentina, Battered Woman Syndrome supports both justifications, such as self-defense, and excuses, like exculpatory state of necessity or transient mental disorder, creating ambiguity about the syndrome's purpose in these defenses. The core issue lies in the contradiction: Battered Woman Syndrome is used to argue that the woman acted rationally and justifiably in self-defense while simultaneously implying mental impairment, thereby weakening her legal position. This dual use undermines both justification and excuse defenses, making it challenging to present a coherent argument in court.

A last problem with Battered Woman Syndrome as a theory to support criminal defenses is that, despite its original intent to eliminate stereotypes that might prejudice the defendants, it has reinforced them. Instead of portraying women as rational survivors, it depicts them as passive, dependent, and helpless, creating the "battered woman stereotype," which characterizes these women as individuals who never left, sought help, or fought back. This rigid stereotype becomes a standard that women must fit to benefit from the testimony, disadvantaging those who do not conform.

The last section treats the problematic consequences of the shifting between justification and excuse defenses when defending women who have killed their intimate partner. In Argentina, Chile, and Mexico, there is no consistent legal framework for

defending these women. Expert testimony on the history of domestic violence and its effects has been invoked to support both justification defenses, such as self-defense, and excuse defenses, like exculpatory state of necessity, transient mental disorder or insurmountable fear. In some cases, both defenses are invoked alternately, creating confusion about whether the woman's actions were rational or impaired.

This shifting is not random, but it depends on whether the woman's actions conform to the male framework of self-defense or not. If she does, she will be granted a justification defense, and if she does not, she might be granted an excuse defense.

This oscillation is problematic for two reasons. First, it weakens the role of the testimony on domestic abuse in criminal defenses because justifications assert that the act was permissible under certain circumstances. In contrast, excuses acknowledge the act as wrongful but not blameworthy due to the defendant's impaired mental state. The overlap between these defenses creates ambiguity, making it unclear whether the testimony portrays these women as rational or mentally incapacitated.

Second, the reliance on excuse defenses raises concerns about the loss of women's agency. While excuse defenses may shield women from criminal punishment by portraying them as mentally impaired or incapable of controlling their actions, they also reinforce stereotypes of helplessness, undermining their moral autonomy. This approach contrasts with justification defenses, which acknowledge women as rational actors making difficult but reasonable decisions. Thus, while excuse defenses provide legal protection, they undermine the dignity and autonomy of women, limiting their recognition as rational human beings.

### **CHAPTER III. THE GENDER PERSPECTIVE IN ARGENTINA, CHILE, AND MEXICO**

As discussed in the previous chapter, defending women who have killed their abusive partners presents significant challenges: the recurrent application of male-biased standards, relying on the "battered woman syndrome" theory to support defenses, and shifting between justification and excuse defenses upon if the woman can or cannot fit the male framework, which undermines women's status as rational actors and limits their agency.

This Chapter explores the foundation of the solution: incorporating a gender perspective in judicial decisions in Argentina, Chile, and Mexico. The gender perspective offers transformative potential, advancing the vision of a more egalitarian society using a magnified lens to understand women's unique challenges due to gender roles and stereotypes. Ultimately, this perspective is a tool to realize women's rights to equality and nondiscrimination secured by international and domestic legal frameworks.

This chapter is divided into four parts. The first section examines the origin and definition of the gender perspective, emphasizing its importance in addressing stereotypes and roles that contribute to gender inequality. The second section discusses its application in law, particularly for ensuring women's rights to equality and non-discrimination. The third section identifies binding international and national instruments in Argentina, Chile, and Mexico that require or encourage judges to apply a gender perspective in their

reasoning. Finally, the fourth section addresses when and how to apply a gender perspective in judicial decisions.

### **1. Origin, concept, and objective of the gender perspective**

The problems this dissertation addresses regarding the defenses of women who have killed their intimate partners —the neglect of domestic abuse history due to male-biased perspectives, the misrepresentation by Battered Woman Syndrome expert testimony, and the inconsistent application of justification and excuse defenses—are predicaments deeply ingrained in gender inequality in the law.

Gender inequality is a system founded on cultural beliefs about status differences between men and women.<sup>695</sup> The material structure for these gender differences and inequality in society is rooted in gender stereotypes and gender roles that relegate women to an inferior position to men.<sup>696</sup>

Gender role is defined as “a culturally and socially determined set of expected behaviors, attitudes, and characteristics based on concepts of masculinity and femininity.”<sup>697</sup> These roles dictate and restrict specific behaviors and beliefs for men and women.<sup>698</sup> On the other hand, gender stereotypes are defined as generalized views or

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<sup>695</sup> RIDGEWAY, *supra* note 215, at 156.

<sup>696</sup> *Id.* at 161.

<sup>697</sup> *Gender Role*, Encyclopedia Britannica, <https://www.britannica.com/topic/gender-role> (last visited Apr. 24, 2025).

<sup>698</sup> GARCIA AND MCMANIMON, *supra* note 180, at 10 (Author points out that these prescriptions and proscriptions reach a level that if a person do not comply them, this means, do not do gender in the right way, they are not considered a good man or a good woman.)



preconceptions about attributes or characteristics or the roles that women and men possess or ought to perform.<sup>699</sup> These concepts often overlap and reinforce each other, setting gendered norms and social expectations to conform to them.

For example, the gender division of labor has its origins in the survival of small tribes of humans in which childcare was a woman's duty, given that they breastfed, and hunting big animals was a duty for men because they could travel longer distances because they were not taking care of children.<sup>700</sup> This dynamic positioned women as primary caretakers and bearers of children, eventually creating the stereotype that women are inherently nurturing. The continued reinforcement of women in caretaker roles perpetuates and strengthens this nurturing stereotype.

Both gender roles and gender stereotypes might negatively impact individuals and society, given that those who deviate from these predefined norms have their behavior constrained through "stigmatization, punishment and legal ostracism."<sup>701</sup> Consequently, these norms restrict individual choices and possibilities and perpetuate discrimination and gender-based inequality.<sup>702</sup>

For example, women who choose not to bear children are often perceived as less "feminine" than their childbearing counterparts. Such perceptions can constrain these women from pursuing ambitions and life projects outside the family sphere. Conversely,

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<sup>699</sup> *Gender Stereotyping*, Office of the High Commissioner for Human Rights, <https://www.ohchr.org/en/women/gender-stereotyping> (last visited Apr. 24, 2025).

<sup>700</sup> JUDITH LORBER, *GENDER INEQUALITY: FEMINIST THEORIES AND POLITICS* 5 (4th ed. 2010).

<sup>701</sup> *Id.* at 9.

<sup>702</sup> Naomi Ellemers, *Gender Stereotypes*, 69 *Annu. Rev. Psychol.* 275, 290 (2018).

men do not face the same societal pressures to procreate by a certain age, nor are they expected to assume primary caregiving responsibilities. This allows them greater freedom in charting their life's course.<sup>703</sup>

Thus, gender inequality –the product of gender roles and stereotypes– establishes differences in responsibilities assigned, activities undertaken, and access and control over resources and decision-making opportunities between men and women.<sup>704</sup> Consequently, an "ordinal hierarchy" is established between men and women regarding resources, power, and status.<sup>705</sup>

In the example we have been working on, the gender role and stereotype is that women predominantly serve as caregivers, directly impacting gender dynamics, especially within the household. Mothers, and not fathers, often find themselves reallocating their time towards domestic responsibilities and away from their professions, which increases earning differences and inequalities in long-term careers between men and women.<sup>706</sup>

In this context, the distinction between sex and gender acquires relevance, given that gender—and all its constructions, such as roles and stereotypes—varies among cultures and changes over time; therefore, these differences between men and women are

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<sup>703</sup> This stereotype is so ingrained in all societies that there is a derogatory word applicable to women who do not get married and do not have children by a certain age: spinster. Whereas there is not a word for men in the same situation, the closest equivalent would be a bachelor.

<sup>704</sup> UNITED NATION OFFICE ON DRUGS AND CRIMES, HANDBOOK FOR THE JUDICIARY ON EFFECTIVE CRIMINAL JUSTICE RESPONSES TO GENDER-BASED VIOLENCE AGAINST WOMEN AND GIRLS IX (2019), [https://www.unodc.org/pdf/criminal\\_justice/HB\\_for\\_the\\_Judiciary\\_on\\_Effective\\_Criminal\\_Justice\\_Women\\_and\\_Girls\\_E\\_ebook.pdf](https://www.unodc.org/pdf/criminal_justice/HB_for_the_Judiciary_on_Effective_Criminal_Justice_Women_and_Girls_E_ebook.pdf)

<sup>705</sup> RIDGEWAY, *supra* note 215, at 10.

<sup>706</sup> RIDGEWAY, *supra* note 215, at 154.

not innate and predetermined, unlike biological differences, which are fixed.<sup>707</sup> Consequently, the traits, responsibilities, and capacities assigned to males and females are socially created and can be reconceived to achieve equality.<sup>708</sup>

In the quest for gender equality, addressing and eradicating gender stereotypes acquires salience and becomes necessary to change the disadvantaged position that gender assigns to women. Within this context, a tool emerges to reshape reality focusing on egalitarianism: the gender perspective.

There are many definitions of gender perspective. For instance, the European Institute for Gender Equality defined it as the consideration of "gender-based differences when observing any social phenomenon, policy, or process."<sup>709</sup> The Interamerican Institute for Human Rights has conceptualized it as "a theoretical approach of analysis that allows rethinking the social and cultural constructions of the distribution of power between women and men and that directly affect the ways people interact in all areas."<sup>710</sup> Also, courts have defined it as a method of analysis used to assess the roles that men and women perform or are expected to perform in political, social, and cultural contexts to identify and correct the discrimination stereotyping originates.<sup>711</sup>

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<sup>707</sup> A. RANJIT B. AMERASINGHE, GENDER AND THE LAW 20 (2003).

<sup>708</sup> Genevieve Lloyd, *Woman as Other: Sex, Gender and Subjectivity*, 4 AUSTL. FEMINIST STUD. (10) 13, 13 (1989). See also: UNITED NATION OFFICE ON DRUGS AND CRIMES, *supra* note 704, at IX; See also: INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS, HERRAMIENTAS BÁSICAS PARA INTEGRAR LA PERSPECTIVA DE GÉNERO EN ORGANIZACIONES QUE TRABAJAN DERECHOS HUMANOS 12-13 (2008).

<sup>709</sup> European Institute for Gender Equality, Gender Equality, <https://eige.europa.eu/publications-resources/thesaurus/terms/1059> (last visited Feb. 24, 2025)

<sup>710</sup> INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS, *supra* note 708 at 12.

<sup>711</sup> Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), 14 de octubre de 2015, Amparo Directo en Revisión 1754/2015, s. pensión alimenticia y perspectiva de género (Alimony and gender

All these definitions highlight the same core idea—a gender perspective is an analytical tool used to assess gender-based differences in social, political, and cultural contexts. It aims to identify power imbalances, stereotypes, and discrimination, and to correct them. Thus, its objective is to reshape the interactions that, over time, have led to discrimination, lack of equity, lack of access to opportunities and development, and lack of knowledge about women's human rights.<sup>712</sup>

Consequently, the scope of the gender perspective is immense. Its implementation can redefine the historical development of society, culture, economy, and politics by enabling new analyses of reality that transform it through egalitarian relationships rather than discriminatory practices.<sup>713</sup> One of these areas of action is the law.

## 2. Gender perspective and the law

In law, a gender perspective can be applied in the creation of norms by the legislator or in their interpretation by courts.<sup>714</sup>

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perspective), 12, available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://desc.scjn.gob.mx/sites/default/files/2021-09/M%C3%89X17-Sentencia.pdf (last visited Jan. 24, 2025) (Mexico).

<sup>712</sup> INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS, *supra* note 708 at 12.

<sup>713</sup> *Id.*

<sup>714</sup> This application of the gender perspective is particularly relevant to this thesis, as it examines how courts adjudicate cases involving battered women who have killed their intimate partners.

## 2.1 Integrating the gender perspective in legislation

There are instances in which the legislature refers to a gender perspective explicitly, aiming to correct situations of gender inequality using this tool. In other cases, this aim is not openly stated but embedded in the spirit of the law.

An example of the first case is the Mexican Law for Equality between Women and Men, which aims to regulate and guarantee equality between women and men and to propose institutional mechanisms that may guide the Nation toward achieving substantive equality in both public and private spheres, promoting women's empowerment.<sup>715</sup> This law explicitly incorporates the gender perspective by defining it as “the methodology and mechanisms that make it possible to identify, question and assess the discrimination, inequality, and exclusion of women, which is intended to justify based on the biological differences between women and men, as well as the actions to be taken to act on gender factors and to create the conditions for change that will make it possible to move forward in the construction of gender equality.”<sup>716</sup>

On the other hand, an example of a law that implicitly incorporates the gender perspective is the Argentinian law number 27.412 on Gender Parity in Areas of Political Representation. This legislation mandates that candidate lists alternate between men and women for the elections of Mercosur representatives, aiming to balance the number of male

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<sup>715</sup> INSTITUTO NACIONAL DE LAS MUJERES, LEY GENERAL PARA LA IGUALDAD ENTRE MUJERES Y HOMBRES, CONÓCELA!, 11 (2007) available at [chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/http://cedoc.inmujeres.gob.mx/documentos\\_download/lgimh.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/lgimh.pdf)

<sup>716</sup> Ley General Para la Igualdad Entre Mujeres y Hombres (General Law for Equality Between Women and Men) [LGMIH], Section VI, Article 5, Diario Oficial de la Federación [DOF] August 2, 2006 (Mexico).

and female members in a legislative body historically dominated by men.<sup>717</sup> Doing so promotes women's participation and ensures their perspectives are included in legislative discussions. Here, even though the legislator does not explicitly state that this law adheres to a "gender perspective," they identified a situation of gender inequality—specifically, the disparity in political representation—and sought to correct it through a law that balances gender representation.

There are also international instruments that incorporate this perspective and aim to achieve gender equality. For example, Chile, Argentina, and Mexico have ratified international treaties with this aim, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This treaty intrinsically embodies this perspective, as it was designed to eradicate gender-based discrimination against women and girls.<sup>718</sup>

## 2.2 Integrating the gender perspective into judicial rulings

The second connection between gender perspective and law emerges in judicial decisions that integrate it into their reasoning, aiming to fulfill rights to equality and non-discrimination for gender minorities, particularly women.<sup>719</sup>

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<sup>717</sup> No. 27.412, Article 1, Boletín Oficial [B.O.] December 14, 2017, (Argentina).

<sup>718</sup> UN WOMEN, CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) FOR YOUTH 1 (2016), <https://www.unwomen.org/en/digital-library/publications/2016/12/cedaw-for-youth> (Defining the convention as an international treaty focused on the elimination of discrimination against women and girls in all areas and promotion of women's and girls' equal rights.)

<sup>719</sup> SUPREMA CORTE DE JUSTICIA DE LA NACION, PROTOCOLO PARA JUZGAR CON PERSPECTIVA DE GÉNERO 120 (2022), <https://www.scjn.gob.mx/derechos-humanos/protocolos-de-actuacion/para-juzgar-con-perspectiva-de-genero>. See also: PODER JUDICIAL, SECRETARIA TÉCNICA IGUALDAD DE GÉNERO Y NO DISCRIMINACIÓN, CUADERNO BUENAS PRÁCTICAS PARA INCORPORAR LA PERSPECTIVA GÉNERO EN LA ADMINISTRACIÓN DE JUSTICIA 18, 62-63 (2018), <https://secretariadegenero.pjud.cl/index.php/cuaderno->

### 2.2.1 Right to equality

A fundamental principle of justice underpins the concept of equality, asserting that all members of society hold equal value.<sup>720</sup> Regarding women's human rights, equality does not mean women must be identical to men.<sup>721</sup> Instead, it emphasizes that women should have equal opportunities for recognition and treatment as their male counterparts because each person's worth is the same, and all people are equal subjects of rights.<sup>722</sup> To understand the difference, the distinction between formal equality or *de jure* and material equality or *de facto* is essential.<sup>723</sup>

Formal equality has its origins in Aristotle, who stated that injustice arises when equals are treated unequally and unequals equally.<sup>724</sup> In the modern era, this concept, portrays a neutral and objective notion of equality, applicable to abstract individuals, devoid of specific needs, and detached from the concrete praxis of human beings.<sup>725</sup> This

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buenas-practicas-para-incorporar-perspectiva-genero-en-la-administracion-de-justicia; SUPREMA CORTE DE JUSTICIA PROVINCIA DE BUENOS AIRES, GUÍA DE PRÁCTICAS ACONSEJABLES PARA JUZGAR CON PERSPECTIVA DE GÉNERO 12 (2023), <https://www.scba.gov.ar/violenciafamiliar/guia%20de%20practicas%20aconsejables%20para%20juzg.pdf>.

<sup>720</sup> Isabel Torres, *Derechos políticos de las mujeres, acciones afirmativas y paridad*, 47 REV. IIDH 225, 226 (2008).

<sup>721</sup> *Id.* at 227.

<sup>722</sup> *Id.*

<sup>723</sup> Maikol J. Andrade Fernández et al., *Reflexión del principio de igualdad y no discriminación interdisciplinariamente desde una perspectiva sociológica, filosófica y jurídica. Una mirada hacia algunas problemáticas sociales y el canal de comunicación con la legitimación política*, 4 REV. SALA CONSTITUCIONAL 119, 130 (2022) (It is important to note that these two dimensions of equality are not antithetical to one another, but rather complement each other.)

<sup>724</sup> Aristotle, *The Nicomachean Ethics* 83–85 (Roger Crisp trans., rev. ed., Cambridge Univ. Press 1980) (1131a–1131b).

<sup>725</sup> José María Seco Martínez, *De la igualdad formal a la igualdad material*, 36 REV. PODER JUD. 55, 60 (2d. ser. 2017).

facet of equality aligns with the principle of equality before the law, bestowing the same legal-political standing upon all individuals.<sup>726</sup>

Conversely, material equality emerged in the latter half of the 20th century amidst social movements advocating for the acknowledgment of rights.<sup>727</sup> It aims to achieve a genuine version of equality by recognizing the social conditions in which individuals are placed.<sup>728</sup> As a relational concept, material equality addresses inequality-related socioeconomic problems through actions, goods, or services.<sup>729</sup> In other words, it allows the establishment of differentiated treatment that takes into account the factual and structural factors hindering certain groups from accessing their legally recognized rights.<sup>730</sup>

When applying these dimensions of the right to equality in a gender context, it is crucial to understand that the emphasis is not on men and women being identical or possessing the same abilities and nature; instead, the focus is on their equivalence and their inherent equal worth as human beings.<sup>731</sup> Therefore, to achieve *de facto* equality, it is essential to consider the biological, social, and culturally constructed differences between women and men.<sup>732</sup>

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<sup>726</sup> *Id.* at 63. See also: ONU MUJERES, LA IGUALDAD DE GÉNERO 6 (2018), <https://hchr.org.mx/puntal/wp/wp-content/uploads/2020/06/IGUALDAD-DE-GENERO-2018-web.pdf>

<sup>727</sup> Seco, *supra* note 725, at 60.

<sup>728</sup> See *supra* note 726.

<sup>729</sup> Seco, *supra* note 725, at 67-68.

<sup>730</sup> SUPREMA CORTE DE JUSTICIA DE LA NACION, *supra* note 719 at 219.

<sup>731</sup> Alda Facio, El derecho a la igualdad entre mujeres y hombres, *in* INTERPRETACIÓN DE LOS PRINCIPIOS DE IGUALDAD Y NO DISCRIMINACIÓN PARA LOS DERECHOS HUMANOS DE LAS MUJERES EN LOS INSTRUMENTOS DEL SISTEMA INTERAMERICANO 65, 67 (IIDH ed., 2008). See also: Torres, *supra* note 720, at 227.

<sup>732</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures, ¶4, U.N. Doc. HRI/GEN/1/Rev.7 at 282 (2004).



Thus, providing women only with formal equality – ensuring they receive identical treatment to men – proves inadequate and insufficient.<sup>733</sup> Substantive equality is crucial to ensure women's full exercise of their rights.<sup>734</sup> This means that laws and policies must go beyond paper equality; they must guarantee women the same opportunities as men in all development dimensions.<sup>735</sup> In the same line, the Committee for the Elimination of Discrimination Against Women stated in its recommendation 25 that a formal legal approach to equality is insufficient to achieve de facto equality between women and men.<sup>736</sup> Women should not only have an equal starting point but also be provided with an environment that empowers them to achieve equality of results.<sup>737</sup>

To achieve this level of equality, the Convention on the Elimination of All Forms of Discrimination against Women –ratified by Chile, Argentina, and Mexico– contains specific provisions to secure the right to equality and non-discrimination. These formulas move beyond formal equality and aim to achieve the substantive type (article 4.1 of the Convention).

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<sup>733</sup> *Id.* See also: SUPREMA CORTE DE JUSTICIA DE LA NACION, *supra* note 719 at 29.

<sup>734</sup> Torres, *supra* note 720, at 229.

<sup>735</sup> ONU MUJERES, *supra* note 725, at 77.

<sup>736</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures, U.N. Doc. HRI/GEN/1/Rev.7 at 282 (2004).

<sup>737</sup> *Id.*

Thus, gender equality is a combination of both equalities, meaning that equality in law and equal treatment of women and men —formal equality—are complemented by equality in impact, outcome, or result—material equality.<sup>738</sup>

These concepts are essential to this project, given they underscore the importance of acknowledging the differences between men and women as crucial to achieving equality across all spheres, particularly in criminal law and its interpretation.

### **2.2.2 Right to non-discrimination**

In general, discrimination is defined as a social perception characterized by the considerable discredit of a person or group of people.<sup>739</sup> Such adverse perceptions impact their treatment, affecting their opportunities, fulfillment of capacities, and exercise of their rights.<sup>740</sup>

Within the gender context, women have historically experienced unequal treatment due to a set of behavioral norms, stereotypes, and values ascribed by society solely based on their womanhood.<sup>741</sup> In this line, discrimination against women has been defined as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human

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<sup>738</sup> European Institute for Gender Equality, *substantive gender equality*, [https://eige.europa.eu/publications-resources/thesaurus/terms/1202?language\\_content\\_entity=en#:~:text=Substantive%20gender%20equality%20requires%20that,disadvantage%20in%20outcome%20or%20result](https://eige.europa.eu/publications-resources/thesaurus/terms/1202?language_content_entity=en#:~:text=Substantive%20gender%20equality%20requires%20that,disadvantage%20in%20outcome%20or%20result) (last visited Mar. 22, 2025)

<sup>739</sup> Torres, *supra* note 720, at 225.

<sup>740</sup> *Id.*

<sup>741</sup> *Id.* at 228.

rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."<sup>742</sup> Consequently, the right to non-discrimination seeks to prohibit and eradicate distinctions, exclusions, or actions rooted in sex that may adversely impact the exercise of women's rights.

Nevertheless, not every distinction or difference in treatment will amount to discrimination. The rights to equality and non-discrimination mandate the states to implement affirmative and compensatory measures to eliminate the conditions that create discrimination.<sup>743</sup> In other words, to fulfill these rights, the states must take action to transform the stereotypes supporting and legitimizing discriminatory treatment.<sup>744</sup> Therefore, not all differentiated treatment is *per se* against the law. Under certain circumstances, non-identical treatment of women and men will be required in order to address their differences and achieve real equality.<sup>745</sup>

To distinguish between distinctions and discrimination, Argentina, Chile, and Mexico follow the Inter-American Court of Human Rights criteria, given it is mandatory for this countries.<sup>746</sup> This court has clarified that the first ones refer to reasonable and

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<sup>742</sup> Convention on the Elimination of All Forms of Discrimination Against Women art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>743</sup> ALDA FACIO, LA RESPONSABILIDAD ESTATAL 33 (2016), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://piensadh.cdhcm.org.mx/images/2016\_libro\_responsabilidadestatal.pdf

<sup>744</sup> SUPREMA CORTE DE JUSTICIA DE LA NACION, *supra* note 719 at 174-176.

<sup>745</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures, U.N. Doc. HRI/GEN/1/Rev.7 at 282 (2004);

<sup>746</sup> Gelman v. Uruguay, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶ 193 (Feb. 24, 2011), available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_221\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_221_ing.pdf) (The Court has established the doctrine of "control of conventionality," which obligates judges and authorities of the state parties to interpret and apply domestic law consistently with the American Convention and the Court's jurisprudence. This principle

objective differences aligned with the American Convention, whereas the second ones refer to arbitrary differences that violate human rights.<sup>747</sup> Consequently, if the differentiated treatment is neither reasonableness nor objective, we are dealing with discriminatory treatment based on "arbitrary differences that result in harm to these rights," whereas if the treatment is reasonable and objective, we are dealing with a "distinction" and, therefore, compatible with the rights of equality and non-discrimination.<sup>748</sup> Distinctions based on categories like sex and race are subject to rigorous scrutiny, and to be considered objective and reasonable, such distinctions must serve a legitimate purpose and employ proportional means; otherwise, they are incompatible with the Convention and international law.<sup>749</sup>

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requires states to ensure their laws, actions, and decisions align with the international standards set forth by the Convention and its interpretation by the Court).

<sup>747</sup> INTER-AM. COMM'N H.R., COMPENDIUM ON EQUALITY AND NON-DISCRIMINATION: INTER-AMERICAN STANDARDS 27 (2019), <https://www.oas.org/en/iachr/reports/pdfs/compendium-equalitynondiscrimination.pdf>. See also: *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶ 285 (Nov. 28, 2012), available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_257\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf); *María Eugenia Morales de Sierra v. Guatemala*, Case 11.625, Inter-Am. Comm'n H.R., Report No. 4/01, OEA/Ser.L/V/II.111, doc. 20 rev., ¶ 31 (2001), available at [https://lawlibrary.georgetown.domains/rossrights/wp-content/uploads/2018/09/Guatemala\\_11-625\\_Merits.pdf](https://lawlibrary.georgetown.domains/rossrights/wp-content/uploads/2018/09/Guatemala_11-625_Merits.pdf)

<sup>748</sup> INTER-AM. COMM'N H.R., COMPENDIUM ON EQUALITY AND NON-DISCRIMINATION: INTER-AMERICAN STANDARDS 27 (2019), <https://www.oas.org/en/iachr/reports/pdfs/compendium-equalitynondiscrimination.pdf>; *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶ 285 (Nov. 28, 2012), available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_257\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf); *María Eugenia Morales de Sierra v. Guatemala*, Case 11.625, Inter-Am. Comm'n H.R., Report No. 4/01, OEA/Ser.L/V/II.111, doc. 20 rev., ¶ 31 (2001), available at [https://lawlibrary.georgetown.domains/rossrights/wp-content/uploads/2018/09/Guatemala\\_11-625\\_Merits.pdf](https://lawlibrary.georgetown.domains/rossrights/wp-content/uploads/2018/09/Guatemala_11-625_Merits.pdf)

<sup>749</sup> INTER-AM. COMM'N H.R., COMPENDIUM ON EQUALITY AND NON-DISCRIMINATION: INTER-AMERICAN STANDARDS 27 (2019), <https://www.oas.org/en/iachr/reports/pdfs/compendium-equalitynondiscrimination.pdf>; *María Eugenia Morales de Sierra v. Guatemala*, Case 11.625, Inter-Am. Comm'n H.R., Report No. 4/01, OEA/Ser.L/V/II.111, doc. 20 rev., ¶ 31 (2001), available at [https://lawlibrary.georgetown.domains/rossrights/wp-content/uploads/2018/09/Guatemala\\_11-625\\_Merits.pdf](https://lawlibrary.georgetown.domains/rossrights/wp-content/uploads/2018/09/Guatemala_11-625_Merits.pdf)

Also, it is essential to remark that discrimination against women normalizes gender-based violence, given that it validates and reinforces the view that they do not and should not enjoy the same rights and freedoms<sup>750</sup> as men.<sup>751</sup>

The Committee on Elimination of Discrimination against Women indicated in its 19° General recommendation that the definition of discrimination contemplated in article 1 of the CEDAW includes gender-based violence, defining it as "violence that is directed against a woman because she is a woman or that affects women disproportionately."<sup>752</sup> It includes "acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."<sup>753</sup>

This recommendation was updated by the 35° General Recommendation in 2017, which further defines violence against women, stating: "Gender-based violence affects women throughout their life cycle and, accordingly, references to women in the present document include girls. Such violence takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty. Gender-based violence against women is affected and often exacerbated by cultural, economic, ideological, technological, political, religious, social and environmental factors, as evidenced, among other things, in the contexts of

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<sup>750</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 on Violence Against Women, ¶ 7, U.N. Doc. A/47/38, (1992).

<sup>751</sup> *Id.* at ¶ 6.

<sup>752</sup> *Id.*

<sup>753</sup> *Id.*

displacement, migration, the increased globalization of economic activities, including global supply chains, the extractive and offshoring industry, militarization, foreign occupation, armed conflict, violent extremism and terrorism. Gender-based violence against women is also affected by political, economic and social crises, civil unrest, humanitarian emergencies, natural disasters and the destruction or degradation of natural resources. Harmful practices and crimes against women human rights defenders, politicians, activists or journalists are also forms of gender-based violence against women affected by such cultural, ideological and political factors.”<sup>754</sup>

In this update, the Committee also acknowledges that gender-based violence against women is one of the fundamental social, political, and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated, emphasizing that such violence presents a significant barrier to achieving material equality between women and men, as well as to women’s full enjoyment of the human rights and fundamental freedoms guaranteed by the Convention.<sup>755</sup>

Furthermore, the Inter-American Court has pronounced in the same line, stating that violence against women is a form of discrimination that violates the duty of the states to secure people's right not to be discriminated against and access to justice, both guaranteed by the Convention.<sup>756</sup> Thus, if violence is considered discrimination, its

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<sup>754</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence against Women, ¶14, U.N. Doc. E/C.12/2017/35, (2017).

<sup>755</sup> *Id.* at ¶10.

<sup>756</sup> I/A Court H.R., Case of González et al. ("Cotton Field") v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment of Nov. 16, 2009, Series C No. 205, ¶ 402.

existence contravenes women's right to equality and non-discrimination. Therefore, recognizing and eliminating violence is necessary to achieve equality, and the gender perspective serves to identify and address violence in its various forms.

### **3. Normative frameworks that provide a mandatory character to the obligation to apply a gender perspective in judicial reasoning**

Judges are obligated to incorporate a gender perspective in their rulings, as mandated by both international and domestic legal instruments. These norms impose a binding legal duty that requires judicial reasoning to incorporate gender analysis.

Given that Chile, Mexico, and Argentina share relevant international legislation, this section is divided into two parts. The first part examines the international instruments to which these three countries are signatories, which establish the rights to equality and non-discrimination and require the adoption of a gender perspective for their full realization. The second part reviews national legislation in each country that similarly mandates the application of this perspective. Each section includes binding and non-binding instruments, providing a comprehensive view of the obligation to incorporate a gender perspective.

#### **3.1 Common International Law in Argentina, Chile, and Mexico**

##### **3.1.1 History of international instruments and women's rights**

Early international treaties recognized the rights to equality and non-discrimination in various formulations, underscoring their importance. Examples include the International

Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the American Convention on Human Rights. The significance of equality and non-discrimination is such that the Inter-American Court of Human Rights has recognized them as *jus cogens*<sup>757</sup> norms in international law.<sup>758</sup>

However, the universal recognition of rights in international instruments proved insufficient to realize them for the members of certain disadvantaged groups.<sup>759</sup> The need to establish rights for concrete holders arose because rights intended for an abstract individual often overlook the unique needs of women, children, the elderly, and other vulnerable populations.<sup>760</sup>

Responding to these previously unmet needs, the human rights landscape underwent a specification process during the latter half of the last century.<sup>761</sup> This process was characterized by "a gradual but increasingly marked transition towards a further definition of the persons enjoying the rights."<sup>762</sup> This phenomenon occurred not only

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<sup>757</sup> *Jus Cogens*, Cornell Law School, [https://www.law.cornell.edu/wex/jus\\_cogens](https://www.law.cornell.edu/wex/jus_cogens) (last visited January 29, 2025) (Jus cogens, or compelling law, refers to a category of norms that govern customary international law . The Latin term is used interchangeably with the English term “peremptory norm”.)

<sup>758</sup> Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18 101 (Sept. 17, 2003) (The Inter-American Court has held that it “considers that the principle of equality before the law, equal protection before the law and non-discrimination belongs to jus cogens, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws.”)

<sup>759</sup> Gregorio Peces-Barba, *La universalidad de los derechos Humanos*, 15–16 Doxa Cuadernos de Filosofía del Derecho 613, 624 (1994), available at <https://www.cervantesvirtual.com/obra/la-universalidad-de-los-derechos-humanos-0/> (Last visited March 25, 2025); See also: Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), 06 de noviembre de 2013, Expediente N° 2655/2013, s. divorcio, custodia y pérdida de la patria potestad (divorce, custody and loss of parental rights), Considerando 48, available at <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=155099> (Last visited February 15, 2025) (Mexico).

<sup>760</sup> Peces-Barba, *supra* note 759, at 624.

<sup>761</sup> NORBERTO BOBBIO, *THE AGE OF RIGHTS* 43 (1996). See also: Peces-Barba, *supra* note 759, at 624.

<sup>762</sup> Bobbio, *supra* note 761, at 43.



regarding different states in human life, such as childhood, disabilities, or aging but also concerning other characteristics, such as gender.<sup>763</sup> This meant acknowledging the distinctions between men and women.<sup>764</sup>

There are three distinct phases in the development of international women's rights. The first stage, unfolding in the latter half of the 19th century, was characterized by human rights treaties that upheld the idea of sameness and formal equality.<sup>765</sup> These treaties aimed to accord women the same rights as men, operating under the presumption that both genders had comparable life experiences.<sup>766</sup> Yet, given the distinct realities faced by each gender, this assumption of sameness falls short in practice; women's rights were inadequately safeguarded compared to those of men.<sup>767</sup>

Although the principles of equality and non-discrimination were enshrined in mainstream international instruments, they did not necessarily guarantee the promotion and protection of everyone's human rights.<sup>768</sup> Indeed, general treaties were insufficient to secure women's rights. Due to their gender-specific conditions, women required a unique approach to international human rights norms and different mechanisms to ensure effective compliance and respect for their rights, such as administering justice with a gender perspective.<sup>769</sup>

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<sup>763</sup> *Id.* at 44.

<sup>764</sup> *Id.*

<sup>765</sup> ANNE HELLUM ET AL., WOMEN'S HUMAN RIGHTS: CEDAW IN INTERNATIONAL, REGIONAL, AND NATIONAL LAW 248 (2013).

<sup>766</sup> *Id.*

<sup>767</sup> *Id.*

<sup>768</sup> *Id.* at 248-249.

<sup>769</sup> *Id.*

For this reason, a second stage took place between the 1970s and 1990s and obeyed the idea of *difference* and a focus on the distinctions between men and women.<sup>770</sup> The international community agreed that creating treaties exclusively dedicated to women's rights was proper and fair.<sup>771</sup> In this context, several treaties were written addressing women's needs, such as the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW (1979), the Convention on the Nationality of Married Women (1957), the Convention on the Political Rights of Women (1952), the Equal Remuneration Convention (1951), and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949).

The third and current stage, beginning after the 1990s,<sup>772</sup> revolves around the realization that specific international instruments addressing women's unique issues were insufficient to safeguard their rights, since the general international guarantees still disregarded them.<sup>773</sup> Consequently, violations of women's rights were not recognized as human rights violations by mainstream monitoring bodies, leaving these issues to be resolved by specialized organs created for women's human rights protection, such as CEDAW.<sup>774</sup> It is not surprising that this situation created a "women's ghetto," in which the

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<sup>770</sup> *Id.* See also: Bobbio, *supra* note 761, at 44.

<sup>771</sup> WINSTON LANGLEY, WOMEN'S RIGHTS IN INTERNATIONAL DOCUMENTS: A SOURCEBOOK WITH COMMENTARY ix (1991). See also: HELLMUM ET AL., *supra* note 765 at 249.

<sup>772</sup> Hilary Charlesworth, *Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations*, 18 HARV. HUM Rts. J. 1, 2 (2005) (This stage and criticism is mostly related to the UN treaties. Gender mainstreaming is a technique applied not only in the U.N. human rights system, but also by many other institutions, both national and international.)

<sup>773</sup> HELLMUM ET AL., *supra* note 765 at 249.

<sup>774</sup> *Id.*

separate institutional mechanisms designed only for women had less power, resources, and priority than the general human rights bodies.<sup>775</sup>

In 1993, the Second World Conference on Human Rights acknowledged this criticism and addressed the issue by stating that "the human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women."<sup>776</sup> This event marked the beginning of the gender mainstreaming era, where gender acquires a leading role in central institutional activities and is not left marginalized to specialist women's institutions.<sup>777</sup> In the international women's human rights context, this process involved the integration of the recognition of gender differences into the interpretation and application of international mainstream human rights treaties to achieve complete protection of these rights.<sup>778</sup>

At first glance, the third phase might seem to return to the first stage, in which general treaties safeguarded women's human rights, but a more detailed examination reveals otherwise. Gender mainstreaming does not imply that treaties focusing on women's

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<sup>775</sup> HILARY CHARLESWORTH AND CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS* 219 (2000).

<sup>776</sup> World Conference on Human Rights, Vienna Declaration and Programme of Action ¶ 18, U.N. Doc. A/CONF.157/23 (July 12, 1993), <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>.

<sup>777</sup> Charlesworth, *supra* note 772, at 1 (2005) (The idea behind gender mainstreaming is that questions of gender must be taken seriously in central, mainstream, "normal" institutional activities and not simply left in a marginalized, peripheral backwater of specialist women's institutions). See also: *Gender Integration*, Office of the U.N. High Commissioner for Human Rights, <https://www.ohchr.org/en/women/gender-integration> (last visited Apr. 24, 2025) (Also called gender integration, which is defined as "the process of assessing the implications for women, men and people with diverse gender identities of any planned action—including legislation, policies or programmes—in all areas and at all levels.").

<sup>778</sup> Enzamaria Tramontana, *Hacia la consolidación de la perspectiva de género en el Sistema Interamericano: avances y desafíos a la luz de la reciente jurisprudencia de la Corte de San José*, 53 *REVISTA IIDH* 141, 144 (2011). See also: HELLUM ET AL., *supra* note 765 at 249.

rights are devoid of value. On the contrary, the two-pronged strategy adopted by the international community in recent decades is characterized by, first, the reinforcement of the women-specific human rights regime and, second, an increased focus from the general human rights activities to women's rights.<sup>779</sup> In other words, the mainstream and specific instruments complement and coexist to make women's human rights effective.

In concordance with the third stage of the women's rights era, the following section shows the treatment of the rights to equality and non-discrimination in mainstream and specific international treaties and the declarations and protocols ratified by the Latin American countries object of this investigation.

### **3.1.2 Specific and mainstream international treaties and declarations**

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<sup>779</sup> Christine Ainetter-Brautigam, *International Human Rights Law: The Relevance of Gender*, in THE HUMAN RIGHTS OF WOMEN: INTERNATIONAL INSTRUMENTS AND AFRICAN EXPERIENCES 24-25 (Wolfgang Benedek, et al. eds., 2002).

Specific and mainstream international treaties and declarations			Ratification dates		
	Treaty or Declaration	Articles on equality and nondiscrimination	Chile	Argentina	Mexico
General Human Rights Treaties	<b>International Covenant on Economic, Social and Cultural Rights</b>	<b>Article 2.1</b> Each State Party to the present	1	1	1
		Covenant undertakes to take steps, individually	9	9	9
		and through international assistance and co-	7	8	8
		operation, especially economic and technical, to	2	6	1
		the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.			
		<b>Article 3</b> The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.			

	<b>International Covenant on Civil and Political Rights</b>	<b>Article 2.1</b> Each State Party to the present	1	1	1
		Covenant undertakes to respect and to ensure to	9	9	9
		all individuals within its territory and subject to	7	8	8
		its jurisdiction the rights recognized in the present	2	6	1
		Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.			
		<b>Article 3</b> The States Parties to the present			
		Covenant undertake to ensure the equal right of			
		men and women to the enjoyment of all civil and			
		political rights set forth in the present Covenant.			
		<b>Article 26</b> All persons are equal before the law			
		and are entitled without any discrimination to the			
		equal protection of the law. In this respect, the			
		law shall prohibit any discrimination and			
		guarantee to all persons equal and effective			
		protection against discrimination on any ground			
		such as race, colour, sex, language, religion,			
		political or other opinion, national or social			
		origin, property, birth or other status.			

General Human Rights Declarations	<b>Inter-American Convention on Human Rights</b>	<p><b>Article 1 Obligation to Respect Rights.</b> The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.</p> <p><b>Article 24. Right to Equal Protection.</b> All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.</p>	1 9 9 0	1 9 8 4	1 9 8 1
	<b>American Declaration on the Rights and Duties of Man<sup>780</sup></b>	<p><b>Article 2. Right to equality before law.</b> All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.</p>	-	-	-

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<sup>780</sup> Álvaro Paúl Díaz, La génesis de la Declaración Americana de los Derechos y Deberes del Hombre y la relevancia actual de sus trabajos preparatorios, 47 Rev. Derecho (Valparaíso) 361, 381 (2016). (Regarding the mandatory character of the American Declaration on the Rights and Duties of Man, the binding value of the American Declaration on the Rights and Duties of Man is debated, however, it cannot be denied that it is more than a non-binding instrument and that it has served as a guide for the commission and the Interamerican Court of Human Rights resolutions.)



Specific Human Rights Treaties	<b>Convention on the Elimination of All Forms of Discrimination against Women</b>	<b>Article 1.</b> For the purposes of the present	1	1	1
		Convention, the term "discrimination against	9	9	9
		women" shall mean any distinction, exclusion or	8	8	8
		restriction made on the basis of sex which has the	9	5	1
		effect or purpose of impairing or nullifying the			
		recognition, enjoyment or exercise by women,			
		irrespective of their marital status, on a basis of			
		equality of men and women, of human rights and			
		fundamental freedoms in the political, economic,			
		social, cultural, civil or any other field.			
		<b>Article 2</b> States Parties condemn discrimination			
		against women in all its forms, agree to pursue by			
		all appropriate means and without delay a policy			
		of eliminating discrimination against women and,			
		to this end, undertake: (a) To embody the			
		principle of the equality of men and women in			
		their national constitutions or other appropriate			
		legislation if not yet incorporated therein and to			
		ensure, through law and other appropriate means,			
		the practical realization of this principle; (c) To			
		establish legal protection of the rights of women			
		on an equal basis with men and to ensure through			

		<p>competent national tribunals and other public institutions the effective protection of women against any act of discrimination;</p> <p><b>Article 4 1.</b> Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.</p> <p><b>Article 16.1.</b> States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations (...)</p>			
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	<b>Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)</b>	<b>Article 1</b> For the purposes of this Convention,	1	1	1
		violence against women shall be understood as	9	9	9
		any act or conduct, based on gender, which causes	9	9	9
		death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.	6	6	8
		<b>Article 4.</b> Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:			
		<b>f.</b> The right to equal protection before the law and of the law.			
		<b>Article 6.</b> The right of every woman to be free from violence includes, among others: <b>a.</b> The right of women to be free from all forms of discrimination; and			
		<b>b.</b> The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.			
		<b>Article 7</b> The States Parties condemn all forms of			

		<p>violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence (...)</p>			
Specific Human Rights Declarations	<b>Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights</b>	<b>Article 3. Obligation of nondiscrimination.</b> The	2	2	1
		State Parties to this Protocol undertake to	0	0	9
		guarantee the exercise of the rights set forth	2	0	9
		herein without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.	2	3	6

**Table 1**

### **3.1.3 The legal hierarchy of international human rights treaties in Chile, Argentina, and Mexico**

The obligation to uphold human rights as stipulated in international treaties is binding on Chile, Argentina, and Mexico not only because of the inherent mandates of international law but also because these instruments hold the highest hierarchical status granted by the constitutions of these countries.

<b>Constitution of the Argentine Nation</b>	<b>Political Constitution of the Republic of Chile</b>	<b>Political Constitution of The United Mexican States<sup>781</sup></b>
<b>Article 75, number 22, incise 2.</b> The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human	<b>Article 5° incise 2.</b> The exercise of sovereignty acknowledges as its limitation the respect	<b>Article 1 incis 1 and 2.</b> In the United Mexican States, all individuals shall enjoy the human rights

<sup>781</sup> Tesis de Jurisprudencia (Jurisprudence Thesis), 10a./P./J. 20/2014, Décima Época, Pleno, Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), Gaceta del Semanario Judicial de la Federación, libro 5, tomo I, 202 (abril 2014) (Mexico) (The supreme category of human rights contained in international treaties has been reaffirmed by the binding jurisprudential thesis dictated by the Supreme Court of the Nation, “Human rights contained in the constitution and in international treaties. They constitute the parameter of constitutional regularity control, but when in the constitution there is an express restriction to the exercise of them, it must be in compliance with what is established in the constitutional text.” This thesis states that human rights -whether they are in the Constitution or in international treaties- constitute the control parameter of constitutional regularity, according to which analyze the validity of the norms and acts that are part of the legal order. This thesis states that human rights -whether they are in the Constitution or in international treaties- constitute the control parameter of constitutional regularity, according to which analyze the validity of the norms and acts that are part of the legal order.)

<p>Rights; the International Covenant on Economic, Social, and Cultural Rights; the International Covenant on Civil and Political Rights and its Optional Protocol; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Convention on the Rights of the Child; under the terms of their validity, have constitutional hierarchy, do not repeal any article of the first part of this Constitution, and should be understood as complementary to the rights and guarantees recognized by it. They may only be denounced, where</p>	<p>for the fundamental rights emanating from human nature. It is the duty of state organs to respect and promote such rights, as guaranteed by this Constitution, as well as by international treaties ratified by Chile and currently in force.</p>	<p>recognized in this Constitution and in the international treaties to which the Mexican State is a party, as well as the guarantees for their protection. The exercise of these rights shall not be restricted or suspended, except in the cases and under the conditions established by this Constitution.</p> <p>Provisions relating to human rights shall be interpreted in accordance with this Constitution and with international treaties on the subject, always</p>
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<p>appropriate, by the national Executive Power, after approval by two-thirds of the total members of each Chamber.</p> <p>Other treaties and conventions on human rights, after being approved by Congress, will require the vote of two-thirds of the total members of each Chamber to have constitutional hierarchy.</p>		<p>favoring individuals with the broadest protection.</p>
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**Table 2**

The Argentine Constitution explicitly grants constitutional hierarchy to the treaties listed in Table 1, treating them as complementary to the rights and guarantees recognized in the Constitution. Similarly, the Supreme Court of Argentina has affirmed the primacy of international human rights treaties over domestic law.<sup>782</sup>

In Chile, Article 5 of the Constitution imply that human rights treaties—such as those listed in Table 1—serve as limits to the exercise of sovereignty, as they contain rights

<sup>782</sup> Corte Suprema de Justicia de la Nación [CSJN], 07/07/1992, “Ekmekdjian, Miguel Ángel c. Sofovich, Gerardo y otros,” Fallos (1992-315-1492)) (In this case, the Court affirmed that international human rights treaties have a hierarchy superior to domestic laws and must be applied in case of conflict with national legislation. It recognized the primacy of treaties over local laws.); (Corte Suprema de Justicia de la Nación [CSJN], 07/04/1995, “Giroldi, Horacio David y otro s/ recurso de casación,” Fallos (1995-318-514)) (The Court held that it is within its jurisdiction to apply the international treaties to which the country is bound, as previously outlined, since failure to do so could entail national liability before the international community.); Corte Suprema de Justicia de la Nación [CSJN], 13/07/2007, “Mazzeo, Julio Lilo y otros s/ recurso de casación e inconstitucionalidad,” Fallos (2007-330-3248)) (In this case, the Court continued its jurisprudential line of recognizing the supremacy of international human rights treaties, emphasizing the State's obligation to investigate and punish human rights violations in accordance with its international commitments.)

emanating from human nature. It is the duty of state organs, including judges, to promote and guarantee these rights. This has also been corroborated by the Supreme Court of Chile, stating that the rights that emanate from human nature are values superior to any norms that the authorities of the State may enact, including the Constituent Power itself—which prevents them from being disregarded.<sup>783</sup>

In Mexico, international human rights treaties hold a constitutional hierarchy and must be interpreted according to the *pro persona* principle, thereby ensuring the maximum protection of human rights in the country, in accordance with Article 1 of the Constitution. The Supreme Court of Justice of the Nation has similarly ruled that the human rights enshrined in the Constitution and in international treaties hold the same hierarchy, clarifying, however, that in the event of a conflict, the Constitution prevails.<sup>784</sup>

In this manner, the rights guaranteed in international treaties—such as substantive equality and non-discrimination—acquire the highest level in the hierarchy of norms within each legal system in Argentina, Chile and Mexico. Their realization and incorporation into judicial reasoning are necessary to comply with international instruments and

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<sup>783</sup> The Supreme Court of Chile has stated that from the history of the establishment of the constitutional norm contained in Article 5 of the Constitution, it was clearly established that the internal sovereignty of the State of Chile recognizes its limit in the rights that emanate from human nature—values that are superior to any norms that the authorities of the State may enact, including the Constituent Power itself. See: Corte Suprema de Justicia (Sup. Ct.) (Supreme Court), 09 de septiembre de 1998, Rol de la causa: 469-1998, citada en Humberto Nogueira Alcalá, *Informe sobre restablecimiento de la pena de muerte por proyecto de ley* (Boletín N° 6642-07), 15 *Ius et Praxis* 561, 569 (2009).

<sup>784</sup> Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), 14 de julio 2011, Expediente varios 912/2010, s. (control de convencionalidad y otras) conventionality control and others, available at [https://www.scjn.gob.mx/sites/default/files/estrado\\_electronico\\_notificaciones/documento/2018-08/SENTENCIA-EXP-VARIOS-912-2010-PLENO.pdf](https://www.scjn.gob.mx/sites/default/files/estrado_electronico_notificaciones/documento/2018-08/SENTENCIA-EXP-VARIOS-912-2010-PLENO.pdf) (Last visited February 15, 2025) (Mexico).



constitutional mandates. Consequently, if applying a gender perspective serves to realize these rights, its use becomes mandatory for judges.

In addition, regarding the Inter-American Convention on Human Rights, the Inter-American Court has established the "control of conventionality," whereby this treaty binds the judges of the state parties, requiring them to ensure that the internal laws are consistent with the provisions of the Convention.<sup>785</sup> For this purpose, the judges must consider the treaty itself and the interpretation the Inter-American Court has made of it.<sup>786</sup> The highest courts in Argentina, Chile, and Mexico have acknowledged this.<sup>787</sup>

Consequently, the clauses that refer to the rights to equality and non-discrimination—Articles 1 and 24—are not only binding because of international law or the hierarchy of the treaty in the legal system of these countries but also because judges, as organs of the state party, must ensure that the law and its interpretation are consistent with

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<sup>785</sup> *Almonacid Arellano et al. v. Chile*, Inter-Am. Ct. H.R. (ser. C) No. 154, ¶ 124 (Sept. 26, 2006), available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_154\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_154_esp.pdf).

<sup>786</sup> *Id.* See also: *Cabrera García and Montiel Flores v. Mexico*, Inter-Am. Ct. H.R. (ser. C) No. 220, ¶ 225 (Nov. 26, 2010), available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_220\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_220_ing.pdf) ("In its case law, this Court has acknowledged that domestic authorities are bound to respect the rule of law, and therefore, they are required to apply the provisions in force within the legal system. But when a State has ratified an international treaty such as the American Convention, all its institutions, including its judges, are also bound by such agreements, which requires them to ensure that all the effects of the provisions embodied in the Convention are not impaired by the enforcement of laws that are contrary to its purpose and end. The Judiciary, at all levels, must exercise ex officio a form of "conventionality control" between domestic legal provisions and the American Convention, obviously within the framework of their respective competences and the corresponding procedural regulations. In this task, the Judiciary must take into account not only the treaty itself, but also the interpretation thereof by the Inter-American Court, which is the ultimate interpreter of the American Convention.")

<sup>787</sup> See for example: *Julio Lilo Mazzeo y otros s/ recurso de casación e inconstitucionalidad*, Fallos (2007-330-3248); *Suprema Corte de Justicia de la Nación* (Supreme Court of Justice of the Nation), 14 de julio 2011, Expediente varios 912/2010, s. (control de convencionalidad y otras) conventionality control and others, available at [https://www.scjn.gob.mx/sites/default/files/estrado\\_electronico\\_notificaciones/documento/2018-08/SENTENCIA-EXP-VARIOS-912-2010-PLENO.pdf](https://www.scjn.gob.mx/sites/default/files/estrado_electronico_notificaciones/documento/2018-08/SENTENCIA-EXP-VARIOS-912-2010-PLENO.pdf) (Last visited February 15, 2025) (Mexico).

these clauses of the Convention. For this reason, using a gender perspective arises as an international obligation to protect people, such as women's right to equality and non-discrimination.

### **3.2. National legislation of Argentina, Chile, and Mexico**

Besides the international frame that commands the fulfillment of the rights of equality and nondiscrimination through the use of this perspective, each Latin country's legal system also explicitly or implicitly refers to these rights and the use of a gender perspective by judges.

#### **3.2.1 Argentina**

In Argentina, the formal sources of law are legislation and contracts, while judicial decisions, equity, customs, general principles of law, and doctrine serve as interpretative tools.<sup>788</sup> Thus, legislation is the primary source of law, and judges must render their rulings in accordance with it.

##### **3.2.1.1. Domestic normative**

In this country, no law explicitly mandates judges to apply a gender perspective. However, certain laws safeguard women's rights to equality and non-discrimination, which are binding upon judges and must be enforced. To effectively realize these norms in cases

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<sup>788</sup> María Daniela Marino, *The Sources of Law in the Draft Reform of the Civil and Commercial Code of the Nation*, Presentation delivered before the Bicameral Commission for the Reform, Updating, and Unification of the Civil and Commercial Codes of the Nation, Universidad de La Matanza, available at [https://ccycn.congreso.gob.ar/export/hcdn/comisiones/especiales/cbunificacioncodigos/ponencias/lamatanza/pdf/LM\\_009\\_MARIA\\_DANIELA\\_MARINO\\_Vs.pdf](https://ccycn.congreso.gob.ar/export/hcdn/comisiones/especiales/cbunificacioncodigos/ponencias/lamatanza/pdf/LM_009_MARIA_DANIELA_MARINO_Vs.pdf).

of discrimination and inequality against women, the judiciary must incorporate a gender perspective into its reasoning, making this perspective mandatory to achieve these rights.

Internal regulations	Articles on equality and nondiscrimination
<b>Constitution of the Argentine Nation</b>	<p><b>Article 16.</b> The Argentine Nation does not recognize privileges of blood or birth: no personal privileges or titles of nobility. All its inhabitants are equal before the law and eligible for employment with no other requirement than suitability. Equality is the basis for taxation and public duties.</p> <p><b>Article 75, clause 23.</b> To enact legislation and promote affirmative measures that ensure substantive equality of opportunity and treatment, and the full enjoyment and exercise of the rights recognized by this Constitution and international human rights treaties in force, particularly with respect to children, women, the elderly, and persons with disabilities.</p>
<b>Penalization of Discriminatory Acts Law (23.592)</b>	<p><b>Article 1.</b> Any person who arbitrarily prevents, obstructs, restricts, or in any way undermines the full and equal exercise of the fundamental rights and guarantees recognized in the National Constitution shall be required, upon request of the affected party, to nullify the discriminatory act or cease its performance, and to compensate for the moral and material damages caused. For the</p>

	<p>purposes of this article, discriminatory acts or omissions based on race, religion, nationality, ideology, political or trade union opinion, sex, economic position, social condition, or physical characteristics shall be particularly considered.</p>
<p><b>Comprehensive Protection Law to Prevent, Sanction, and Eradicate Violence Against Women Law (26.485)</b></p>	<p><b>Article 2.</b> Purpose. This law aims to promote and ensure:</p> <ul style="list-style-type: none"> <li>a) The elimination of discrimination between women and men in all areas of life;</li> <li>b) The right of women to live a life free from violence;</li> <li>c) The conditions necessary to raise awareness and to prevent, punish, and eradicate discrimination and violence against women in any of its forms and contexts;</li> <li>d) The development of inter-institutional public policies regarding violence against women;</li> <li>e) The removal of socio-cultural patterns that promote and sustain gender inequality and power relations over women;</li> <li>f) Access to justice for women experiencing violence;</li> <li>g) Comprehensive assistance to women experiencing violence through state and private entities that conduct programmatic activities for women and/or specialized violence services.</li> </ul> <p><b>Article 3.</b> Protected Rights. This law guarantees all rights recognized by the Convention on the Elimination of All Forms of Discrimination Against Women, the Inter-American Convention on the Prevention,</p>

	<p>Punishment, and Eradication of Violence Against Women, the Convention on the Rights of the Child, and Law 26.061 for the Comprehensive Protection of the Rights of Girls, Boys, and Adolescents, and specifically the rights to:</p> <p>a) A life free from violence and discrimination;</p> <p>b) Real equality of rights, opportunities, and treatment between men and women.</p>
<p><b>Micaela Law on Mandatory Gender Training for All Members of the Three Branches of Government (27.499)</b></p>	<p><b>Article 1.</b> Mandatory training on gender and violence against women is established for all individuals serving in public functions, at all levels and hierarchies, within the Executive, Legislative, and Judicial branches of the Nation.</p>
<p><b>Law on Protection Against Domestic Violence (24.417)</b></p>	<p><b>Article 1.</b> Any person who suffers physical or psychological harm or abuse by a member of their family group may report these incidents verbally or in writing to a family court judge and request related precautionary measures. For the purposes of this law, a family group is understood to include those formed through marriage or de facto unions.</p>

### 3.2.1.2 Guidance instruments

#### a) Previous Court decisions on the use of a gender perspective

Although previous judicial decisions (precedents) are not binding for courts in Argentina, it is becoming increasingly common to find rulings employing a gender perspective in cases involving inequality and discrimination. All these decisions serve as guidance for other judges who want to incorporate it into their reasoning.

Indeed, Argentinian courts have already applied the gender perspective to realize the rights to equality and non-discrimination in various areas, such as economic compensation,<sup>789</sup> assisted reproductive techniques,<sup>790</sup> discrimination,<sup>791</sup> sexual diversity,

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<sup>789</sup> Cámara Nacional de Apelaciones en lo Civil de la Ciudad Autónoma de Buenos Aires [National Civil Court of Appeals, City of Buenos Aires], 31/05/2019, “M. L., N. E. c/ D. B., E. A. s/ fijación de compensación”, available at <https://www.saij.gob.ar/camara-nacional-apelaciones-civil-nacional-ciudad-autonoma-buenos-aires-fijacion-compensacion-fa19020007-2019-05-31/123456789-700-0209-lots-eupmocsollaf> (last visited May 1, 2025) (Argentina); Juzgado de Familia de Paso de los Libres-Corrientes [Family Court of Paso de los Libres, Corrientes], 06/07/2017, “L. J. A. c/ L. A. M. s/ divorcio (inc. compensación económica)”, available at <https://www.mpf.gob.ar/direccion-general-de-politicas-de-genero/files/2020/02/1-CON-PERS-A2-COMPENSACION-ECONOMICA-L.-J.A.-c.-L.-A.M.-s-divorcio-inc-comp-econ.pdf> (last visited May 1, 2025) (Argentina); Cámara de Apelaciones en lo Civil, Comercial, Laboral y Minería de Neuquén [Court of Appeals in Civil, Commercial, Labor and Mining Matters of Neuquén], 06/07/2018, “M., F. C. C. C., J. L. s/ compensación económica”, available at <https://www.saij.gob.ar/camara-apel-civil-comercial-laboral-mineria-local-neuquen---compensacion-economica-fa18070001-2018-07-06/123456789-100-0708-lots-eupmocsollaf> (last visited May 1, 2025) (Argentina).

<sup>790</sup> Juzgado de Familia de 5° Nominación de Córdoba [Family Court, 5th Division of Córdoba], 25/04/2019, “V. A. B. y otros – solicita homologación”, available at <https://www.mpf.gob.ar/direccion-general-de-politicas-de-genero/files/2020/02/1-CON-PERS-B-1-TRHA-V.-A.-B.-y-OTROS-SOLICITA-HOMOLOGACI%C3%93N.pdf> (last visited May 1, 2025) (Argentina).

<sup>791</sup> Cámara Nacional de Apelaciones del Trabajo, [National Labor Court of Appeals], 11/10/2018, “B., E. c/ Estado Nacional y otros s/ acción de amparo”, available at <https://www.mpf.gob.ar/direccion-general-de-politicas-de-genero/files/2020/02/1-CON-PERS-C-4-DISCRIMINACION-B.E.-c-Estado-Nacional-y-otros.pdf> (last visited May 1, 2025) (Argentina).

<sup>792</sup> and in several cases involving gender violence.<sup>793</sup> Moreover, some courts have explicitly recognized that the use of this perspective is mandated by international treaties to which the Argentine Republic has adhered—such as CEDAW and the Convention of Belém do Pará—that oblige States to eliminate all forms of discrimination against women and all forms of violence against them, including state violence.<sup>794</sup>

### **b) Judicial Power Guidance on the use of a Gender Perspective**

Argentina has no general protocol for adjudicating cases from a gender perspective. However, several provincial Supreme Courts have enacted specific protocols to incorporate this perspective into their judicial processes and reasoning.<sup>795</sup> These protocols guide justice administrators in recognizing gender dynamics and avoiding stereotypes,

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<sup>792</sup> Juzgado N° 6 en lo Contencioso Administrativo y Tributario de Buenos Aires, Secretaría N° 11 [Administrative and Tax Trial Court No. 6 of Buenos Aires, Secretariat No. 11], 07/09/2017, “M. D. D. c/ GCBA y otros s/ amparo”, available at <https://www.mpf.gob.ar/direccion-general-de-politicas-de-genero/files/2020/02/1-CON-PERS-D-2-LGTBI-MDD-GCBA-y-otros-s-amparo.pdf> (last visited May 1, 2025) (Argentina).

<sup>793</sup> Juzgado de Familia de Cipolletti [Family Court of Cipolletti], 28/08/2018, “Ch. B. E. c/ P. G. E. s/ incidente de aumento de cuota alimentaria”, available at <https://www.mpf.gob.ar/direccion-general-de-politicas-de-genero/files/2020/02/2-CON-VIOLENCIA-C-2-VIOLENCIA-DOMESTICA-CH-B.E-c-P.G.-E-s.-Inc-de-aumen-cta-alim.pdf> (last visited May 1, 2025) (Argentina); Cámara Octava de Apelaciones en lo Civil y Comercial de Córdoba [Eighth Civil and Commercial Court of Appeals of Córdoba], 07/02/2019, “C., R. L. c/ C., M. S. – ordinario – cobro de pesos – Expte. N° 5792045”, available at <https://www.mpf.gob.ar/direccion-general-de-politicas-de-genero/files/2020/02/2-CON-VIOLENCIA-C-4-VIOLENCIA-DOMESTICA-31-C.R.L.-c.-C.M.S.-ordinario-cobro.pdf> (last visited May 1, 2025) (Argentina) Juzgado de Familia N° 5 de Cipolletti de Río Negro [Family Court No. 5 of Cipolletti of Río Negro], 07/05/2018, “P. M. B. s/ incidente denuncia por violencia de género (Ley 26.485)”, available at <https://www.mpf.gob.ar/direccion-general-de-politicas-de-genero/files/2020/02/2-CON-VIOLENCIA-C-6-VIOLENCIA-DOMESTICA-33-P.M.B.-s-inc-denun-por-viol-de-gen.pdf> (last visited May 1, 2025) (Argentina).

<sup>794</sup> Juzgado de Primera Instancia de Menores de la 4ª Nominación de Santa Fe [First Instance Juvenile Court, 4th Division of Santa Fe], 26/12/2019, “O, S. s/ homicidio simple”, available at <https://om.csjn.gov.ar/JurisprudenciaOM/consultaOM/verDoc.html?idJuri=4653> (last visited May 1, 2025) (Argentina).

<sup>795</sup> See for example: SUPREMA CORTE DE JUSTICIA PROVINCIA DE BUENOS AIRES, *supra* note 719; PODER JUDICIAL DE CORDOBA, CONCEPTOS BÁSICOS PARA JUZGAR CON PERSPECTIVA DE GÉNERO (2023), <https://www.jusentrerios.gov.ar/perspectiva-de-genero-ovg/>.

ensuring compliance with the obligation to judge with a gender perspective in line with the right to equality and non-discrimination.

### **3.2.2 Chile**

Similar to Argentina, Chilean legislation is the primary source of law in that country, whereas judicial decisions, equity, the legislative intent, customs, and general principles of law are not binding for judges, but they have an instrumental value for interpretation<sup>796</sup> and subsidiary character to clarify the legislation.<sup>797</sup>

#### **3.2.2.1 Domestic normative**

Chile lacks specific laws requiring judges to employ a gender perspective. However, there are norms that secure the rights to equality and non-discrimination for women and condemn violence against them. Therefore, to ensure women have full access to these rights, judges must incorporate a gender perspective into their reasoning.

Internal regulations	Articles on equality and nondiscrimination
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<sup>796</sup> MARIO PAPI BEYER, MANUAL DE INTRODUCCIÓN AL DERECHO 14-32 (2013).

<sup>797</sup> Código Civil (Civil Code) [Cod. Civ.] art. 14 (Chile).



<p><b>Political Constitution of Chile</b></p>	<p><b>Article 1 incise 1.</b> People are born free and equal in dignity and rights.</p> <p><b>Article 1 incise 5.</b> It is the duty of the State to safeguard national security, protect the population and the family, promote the strengthening of the latter, encourage the harmonious integration of all sectors of the Nation, and ensure the right of individuals to participate in national life with equal opportunities.</p> <p><b>Article 19 n° 2.</b> The Constitution guarantees all persons: Equality before the law. In Chile, there are no privileged persons or groups. There are no slaves in Chile, and anyone who sets foot on its territory becomes free. Men and women are equal before the law. Neither the law nor any authority may establish arbitrary distinctions.</p> <p><b>Article 19 n° 3.</b> The Constitution guarantees all persons: Equal protection of the law in the exercise of their rights.</p>
<p><b>Anti-Discriminati on Law (20.609)</b></p>	<p><b>Article 1.</b> Purpose of the Law: The fundamental purpose of this law is to establish a judicial mechanism that effectively restores the rule of law whenever an act of arbitrary discrimination is committed. Each agency within the State Administration, within the scope of its competence, shall develop and implement policies aimed at ensuring that every person, without arbitrary discrimination, enjoys and exercises the rights and freedoms recognized by the Political Constitution of the Republic, laws, and international treaties ratified by Chile and currently in force.</p>

**Article 2.** Definition of Arbitrary Discrimination: For the purposes of this law, arbitrary discrimination is understood as any distinction, exclusion, or restriction lacking reasonable justification, conducted by State agents or private individuals, that deprives, disrupts, or threatens the legitimate exercise of fundamental rights established in the Political Constitution of the Republic or in international human rights treaties ratified by Chile and currently in force. This is particularly applicable when based on grounds such as race or ethnicity, nationality, socioeconomic status, language, ideology or political opinion, religion or belief, union affiliation or participation in professional organizations or lack thereof, sex, gender, maternity, breastfeeding, nursing, sexual orientation, gender identity and expression, marital status, age, filiation, personal appearance, illness, or disability.

The categories mentioned in the previous paragraph may not, under any circumstances, be invoked to justify, validate, or excuse situations or behaviors that contravene the law or public order.

Distinctions, exclusions, or restrictions based on any of the criteria mentioned in the first paragraph will be considered reasonable if they are justified by the legitimate exercise of another fundamental right, particularly those referred to in numbers 4, 6, 11, 12, 15, 16, and 21 of

	Article 19 of the Political Constitution of the Republic, or for another constitutionally legitimate cause.
<b>Law on Equal Salary (20.348)</b>	Its first article introduces the following modification to the Chilean Labor Code: “The employer must comply with the principle of equal pay between men and women performing the same work. Objective differences in pay based on factors such as abilities, qualifications, suitability, responsibility, or productivity, among other reasons, shall not be considered arbitrary.”
<b>Domestic Violence Law (20.066)</b>	<p><b>Article 1.</b> Purpose of the Law: The purpose of this law is to prevent, sanction, and eradicate domestic violence and all forms and manifestations of violence within the domestic sphere, within families, and in intimate relationships; and to provide effective protection to those affected by it.</p> <p>In interpreting and applying this law, authorities shall consider all the rights and guarantees recognized for individuals in the Constitution, laws, the American Convention on Human Rights; the Convention on the Rights of the Child; the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women; the Convention on the Elimination of All Forms of Discrimination against Women; the Inter-American Convention on Protecting the Human Rights of Older Persons; the Convention on the Rights of</p>

	<p>Persons with Disabilities; and other international instruments ratified by Chile that are currently in force.</p> <p><b>Article 2, incise 1.</b> Duty of Protection: It is the duty of the State to adopt measures aimed at ensuring the life, personal integrity, and security of family members.</p>
<p><b>Comprehensive Law Against Gender-Based Violence Towards Women (21.675)</b></p>	<p><b>Article 1.</b> Purpose of the Law. Every woman has the right to a life free from violence.</p> <p>The purpose of this law is to prevent, sanction, and eradicate violence against every woman, on account of her gender.</p> <p>To achieve these objectives, this law regulates measures of prevention, protection, care, reparation, and access to justice for women victims of violence based on their gender, and particularly considers situations of vulnerability or multiple discriminations in which they may find themselves.</p> <p><b>Article 2.</b> Definition of the Concepts of Girl, Adolescent, Adult Woman, and Woman.</p> <p>A girl is understood to be any woman up to 14 years old; an adolescent, any woman over 14 and under 18 years old; and an adult woman, any woman over 18 years old.</p> <p>For the purposes of this law, the term "woman" shall include girls, adolescents, and adult women, without distinction.</p>

**Article 3. Principles.** This law shall be governed by the principles of equality and non-discrimination, due diligence, victim centrality, women's autonomy, universality, interdependence, indivisibility, progressivity, and prohibition of regression of human rights.

Anyone exercising a public function must give special consideration to these principles.

**Article 5. Definition of Gender-Based Violence.** Gender-based violence is any action or omission that causes death, harm, or suffering to a woman because of her gender, wherever it occurs, whether in the public or private sphere; or a threat thereof.

Gender-based violence shall also include that which is exercised against girls, boys, and adolescents with the intent to harm their mothers or caregivers. In such cases, individuals under 18 years of age shall be referred to the competent authority in accordance with the provisions of Law No. 21.430, concerning Guarantees and Comprehensive Protection of the Rights of Children and Adolescents. Failure to observe the duties that, by this law, correspond to state organs and their agents authorizes the initiation of administrative and judicial actions, as appropriate, before the respective authority, in order to restore the exercise and enjoyment of such rights through the resources and procedures contemplated in the laws.

### 3.2.2.2 Guidance instruments

#### a) Gender Equality and Nondiscrimination Policy of the Judicial Power

In 2018, the Judiciary enacted the Gender Equality and Nondiscrimination Policy, a framework designed to incorporate a gender perspective into the Judicial Branch in compliance with the equality and non-discrimination principles recognized in national and international legal instruments.<sup>798</sup> The policy seeks to promote gender equality and non-discrimination in user services and judicial functions to ensure effective access to justice for all, while fostering equitable relationships among members of the Judicial Power.<sup>799</sup>

The guiding principles of the policy are equality, gender non-discrimination, gender perspective in access to justice, gender-based violence prevention, and participation and inclusion.<sup>800</sup>

Particularly noteworthy is the promotion of gender perspective in access to justice, which involves: i) Encouraging the integration of a gender perspective in judicial administration to help judges recognize conditions that perpetuate human rights violations due to gender or other vulnerabilities, which hinder or obstruct justice access; ii) Providing judges with theoretical and practical tools for applying a gender and human rights approach, such as databases and specialized collections on gender issues and international

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<sup>798</sup> Secretaría Técnica de Igualdad de Género y No Discriminación del Poder Judicial de Chile, *Política de Igualdad de Género y No Discriminación del Poder Judicial de Chile* 25 (Feb. 2, 2018), [https://secretariadegenero.pjud.cl/images/documentos/PIGND\\_02022018C.pdf](https://secretariadegenero.pjud.cl/images/documentos/PIGND_02022018C.pdf)

<sup>799</sup> *Id.* at 31.

<sup>800</sup> *Id.* at 26-30.

human rights treaties; iii) Creating and disseminating protocols, guides, and best practice compendiums that establish criteria for case analysis, highlighting necessary contextual analysis to expose stereotypes, gender inequalities, and discrimination, supporting differentiated application of the law as appropriate.<sup>801</sup>

**b) Judicial Power Guidance: Good practices notebook to incorporate the gender perspective into judicial decisions**

In 2018, the Technical Secretary of Gender Equality and Nondiscrimination of the Chilean Judicial Power implemented a notebook to incorporate the gender perspective into judicial decisions. This document aims to provide the judiciary with an analysis matrix that will serve as a tool to include the named perspective in their rulings.<sup>802</sup> While applying this tool is not obligatory, it offers a methodology designed to help judges deliver justice with a gender perspective in concordance with mandatory international standards.<sup>803</sup>

The first part of this notebook is a conceptual framework that places equality as a central objective for the judicial system and presents the gender perspective as a tool to move that objective by deconstructing gender stereotypes that undervalue and discriminate against women.<sup>804</sup> In this sense, the gender perspective aims to materialize human rights - specifically the rights to equality and nondiscrimination- which have a mandatory character

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<sup>801</sup> *Id.* at 35.

<sup>802</sup> PODER JUDICIAL, SECRETARIA TÉCNICA IGUALDAD DE GÉNERO Y NO DISCRIMINACIÓN, *supra* note 719 at 13.

<sup>803</sup> *Id.* at 89.

<sup>804</sup> *Id.* at 17.

for the state parties to the international treaties that contain them.<sup>805</sup> Including the gender perspective in the Judiciary must be a vital axis of any policy concerning these rights, which will foster respect for women's human rights and guarantee the fulfillment of the commitments originated in international treaties.<sup>806</sup>

The second part of the notebook treats the normative frame that backs up the use of gender perspective. It states that Chile has subscribed to most of the human rights treaties from the universal and Interamerican systems, considering them part of its internal legislation.<sup>807</sup> Given the subscription of these treaties, the judges must exercise conventional control over internal law so that it accounts for and adjusts the treaties' norms.<sup>808</sup> It also establishes that case law of international jurisdictional organs emphasizes the necessity of complying with these international treaties.<sup>809</sup> The principles of equality and non-discrimination are the base of the system for protecting human rights and are enshrined in various agreements, pacts, treaties, conventions, and other documents, which have a binding character for Chile.<sup>810</sup>

The last part of the notebook provides the matrix to apply the principles of equality, non-discrimination, and gender perspective in judicial decisions. The matrix proposed is a

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<sup>805</sup> *Id.* at 25.

<sup>806</sup> *Id.* at 63.

<sup>807</sup> *Id.* at 72.

<sup>808</sup> *Id.* at 74.

<sup>809</sup> *Id.* at 78.

<sup>810</sup> *Id.*



non-binding tool destined to assist judges in delivering justice with a gender perspective in concordance with international treaties.<sup>811</sup>

If judges use the Matrix Analysis, more decisions employing the perspective of gender will emerge, and in this manner, the judicial power will contribute to honoring the commitments acquired by the State of Chile in matters of human rights -equality and nondiscrimination- and it will contribute to the construction of equality through guaranteeing full access to justice for all people without distinction.<sup>812</sup> The Matrix Analysis begins by requesting general information. A list of criteria and guidelines is organized into the following steps: case identification, case analysis and its development, analysis of evidence, normative analysis, case law analysis and sources of law, and judicial decisions.<sup>813</sup>

### **c) Previous Court decisions on the use of a gender perspective**

In this country, judicial decisions rendered by other courts are not binding on judges. This means that former judicial reasonings using a gender perspective or stating the obligation to use a gender perspective are not binding. However, the Chilean courts have already used the gender perspective to give material effect to the rights to equality and nondiscrimination in several cases and topics, such as the principle of equal

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<sup>811</sup> *Id.* at 89.

<sup>812</sup> *Id.* at 91.

<sup>813</sup> *Id.* at 92-97.

remuneration between men and women,<sup>814</sup> maternity protection,<sup>815</sup> identity discrimination,<sup>816</sup> reproductive techniques, and filiation,<sup>817</sup> and in several cases on gender violence.<sup>818</sup> Thus, judges frequently employ the gender perspective in their reasoning, suggesting the mandatory character of this perspective aiming to fulfill women's human rights. Furthermore, some Chilean courts have explicitly recognized the obligation of the judges to use a gender perspective, stating that a judge must apply it to materialize international treaties on human rights.<sup>819</sup>

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<sup>814</sup> 2° Juzgado Del Trabajo de Santiago (J.T. Santiago 2°) (labor courts), 21 de abril de 2020, “DIRECCIÓN REGIONAL METROPOLITANA PONIENTE/KOMAX S.”, s. tutela de derechos, Rol de la causa: T-1218-2019, available at [http://secretariadegenero.pjud.cl/images/documentos/fallos/repositorio/caso25/1218-2019\\_discriminacionsalarial\\_laboral\\_fallo.pdf](http://secretariadegenero.pjud.cl/images/documentos/fallos/repositorio/caso25/1218-2019_discriminacionsalarial_laboral_fallo.pdf) (Last visited February 15, 2025) (Chile).

<sup>815</sup> Juzgado de Letras del Trabajo de La Serena (J.T. La Serena) (labor courts), 12 de abril de 2021, “ARANCIBIA/CORPORACIÓN COLEGIO ALEMÁN DE ELQUI”, s. tutela de derechos, Rol de la causa: RIT: T-29-2020, available at <https://oficinajudicialvirtual.pjud.cl/indexN.php#> (Last visited February 15, 2025) (Chile).

<sup>816</sup> 9° Juzgado Civil de Santiago, (J. Civ. Santiago 9°) (civil courts), 26 de octubre de 2020, “RECURRENTE\_2/”, s. pdto. Voluntario modificación acta de nacimiento, Rol de la causa: V-9-2020, available at [http://secretariadegenero.pjud.cl/images/documentos/fallos/repositorio/caso23/V-9-2019\\_rectificacioninscripcion\\_familia\\_fallo.pdf](http://secretariadegenero.pjud.cl/images/documentos/fallos/repositorio/caso23/V-9-2019_rectificacioninscripcion_familia_fallo.pdf) (Last visited February 15, 2025) (Chile).

<sup>817</sup> 2° Juzgado De Familia de Santiago (J.F. Santiago 2°) (family courts), 08 de junio de 2020, “RESERVADO”, Rol de la causa: Reserved, s. reclamación de filiación, available at [http://secretariadegenero.pjud.cl/images/documentos/fallos/repositorio/caso20/reservada\\_familialesbomater nal\\_familia\\_fallo.pdf](http://secretariadegenero.pjud.cl/images/documentos/fallos/repositorio/caso20/reservada_familialesbomater nal_familia_fallo.pdf) (Last visited February 15, 2025) (Chile).

<sup>818</sup> Tribunal de Juicio Oral en lo Penal de La Serena (T.J.O.P.) (criminal trial courts La Serena), 21 de junio de 2019, “C/ ACUSADO”, Rol de la causa: O-66-2019, s. Lesiones menos graves y otro (assault and others), available at [http://secretariadegenero.pjud.cl/images/stignd/recursos/repositorio2022/32\\_sentencia\\_lesiones\\_menos\\_gra ves\\_anonimizada.pdf](http://secretariadegenero.pjud.cl/images/stignd/recursos/repositorio2022/32_sentencia_lesiones_menos_gra ves_anonimizada.pdf) (Last visited February 15, 2025) (Chile); Tribunal De Juicio Oral en lo penal de Temuco (T.J.O.P.) (criminal trial courts Temuco), 29 de julio de 2019, “C/ ACUSADO ”, Rol de la causa: O-89-2019, s. Desacato (Court Contempt), available at [http://secretariadegenero.pjud.cl/images/documentos/fallos/repositorio/caso21/89-2019\\_VIF\\_penal\\_fallo.pdf](http://secretariadegenero.pjud.cl/images/documentos/fallos/repositorio/caso21/89-2019_VIF_penal_fallo.pdf) (Last visited February 15, 2025) (Chile); Corte de Apelaciones de Concepción (C. Apel. Concepción) (court of appeals), 04 de septiembre de 2019, “”, Rol de la causa: 570-2019, s. lesiones (assault), available at [http://secretariadegenero.pjud.cl/images/stignd/recursos/repositorio2022/35\\_sentencia\\_violencia\\_pololeo\\_a\\_nonomizada.pdf](http://secretariadegenero.pjud.cl/images/stignd/recursos/repositorio2022/35_sentencia_violencia_pololeo_a_nonomizada.pdf) (Last visited February 15, 2025) (Chile).

<sup>819</sup> Tribunal de Juicio Oral en lo Penal de La Serena (T.J.O.P.) (criminal trial courts La Serena), 21 de junio de 2019, “C/ ACUSADO”, Rol de la causa: O-66-2019, s. Lesiones menos graves y otro (Assault and others), Considerando Décimo Tercero, available at [http://secretariadegenero.pjud.cl/images/stignd/recursos/repositorio2022/32\\_sentencia\\_lesiones\\_menos\\_gra ves\\_anonimizada.pdf](http://secretariadegenero.pjud.cl/images/stignd/recursos/repositorio2022/32_sentencia_lesiones_menos_gra ves_anonimizada.pdf) (Last visited February 15, 2025) (Chile) (“(...) that the analysis of the gender

### 3.2.3 Mexico

The Mexican legal system is more complex than that of the former countries, given that legislation is not the only direct source of law. When they satisfy specific requirements, two additional sources possess binding authority: judicial rulings and theses.

On one hand, the judicial decisions of the Mexican Supreme Court hold special significance because its jurisprudence serves as binding precedent, according to Article 94 of the Mexican Constitution and Articles 222 and 223 of the Ley de Amparo. These norms specify that the reasoning behind Supreme Court rulings, when issued by the Plenary with a majority of eight votes or by the Chambers with a majority of four votes, is obligatory for all federal and local jurisdictional authorities.<sup>820</sup>

On the other hand, a thesis is defined as "the written expression, in abstract form, of a legal criterion established when resolving a specific case."<sup>821</sup> Theses can be classified

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perspective must be applied by the sentencing party even when the parties involved in the case have not contemplated it in their allegations, and must guide the argumentative exercise of the judge, in order that international treaties on Human Rights can materialize in legal realities and generate legally effective responses.”); Tribunal De Juicio Oral en lo penal de Temuco (T.J.O.P.) (criminal trial courts Temuco), 29 de julio de 2019, “C/ ACUSADO”, Rol de la causa: O-89-2019, s. Desacato (Court Contempt), Considerando Décimo Primero, available at [http://secretariadegenero.pjud.cl/images/documentos/fallos/repositorio/caso21/89-2019\\_VIF\\_penal\\_fallo.pdf](http://secretariadegenero.pjud.cl/images/documentos/fallos/repositorio/caso21/89-2019_VIF_penal_fallo.pdf) (Last visited February 15, 2025) (Chile) (“These reflections will be, from a gender perspective, originated on international human rights regulations that are mandatory for our country, which will guide the decisions that this Tribunal will adopt, regarding determination of the sentence, form of compliance and adoption of measures of protection for the victim.”).

<sup>820</sup> Constitución Política de los Estados Unidos Mexicanos, CP, Diario Oficial de la Federación [DOF] 05-02-1917, art. 94, últimas reformas DOF 10-02-2014 (Mexico).

<sup>821</sup> Acuerdo No. 5/2003 del Tribunal Pleno de la Suprema Corte de Justicia de la Nación (Full Court of the Supreme Court of Justice of the Nation), relativo a las reglas para la elaboración, envío y publicación de las tesis que emiten los órganos del Poder Judicial de la Federación, y para la verificación de la existencia y aplicabilidad de la jurisprudencia emitida por la Suprema Corte (regarding the rules for the drafting, submission, and publication of the theses issued by the bodies of the Federal Judiciary, and for the verification of the existence and applicability of the jurisprudence issued by the Supreme Court), 25 de marzo de 2003 (Mexico).

into two types: jurisprudential and isolated. Jurisprudential theses are binding because they have become established jurisprudence, as evidenced by five consecutive final judgments of the Mexican Supreme Court of the Nation referencing them, and they have been approved by the minimum number of votes required by Ley de Amparo.<sup>822</sup> The second ones are not binding given that they are not jurisprudence, but because of their guiding character conferred by the Supreme Court and the principle of legal certainty, hierarchically inferior courts might attend to them in their resolutions.<sup>823</sup>

### 3.2.3.1 Domestic normative

Unlike Chile and Argentina, Mexico has enacted specific laws explicitly referring to and defining the gender perspective, as well as norms that safeguard women's rights to equality and non-discrimination and that condemn violence against them. Consequently, to ensure that women fully access these rights, judges must incorporate a gender perspective into their judicial reasoning.

Internal regulations	Articles on equality and nondiscrimination
<b>Political Constitution of the United Mexican States</b>	<b>Article 1, incise 5.</b> All discrimination based on ethnic or national origin, gender, age, disabilities, social status, health conditions, religion, opinions, sexual preferences, marital status, or any other factor that undermines human dignity and

<sup>822</sup> *Id.*

<sup>823</sup> Tesis De Jurisprudencia (Jurisprudential Thesis), 2a./J. 195/2016 (10a.) Segunda Sala, Suprema Corte de Justicia de la Nación, Gaceta del Semanario Judicial de la Federación. Libro 38, Tomo I, 778 (Enero de 2017).

	<p>aims to nullify or impair individuals' rights and freedoms is strictly prohibited.</p> <p><b>Article 4, incise 1.</b> Women and men are equal before the law. The law shall protect the organization and development of the family.</p>
<b>Federal Law to Prevent and Eliminate Discrimination</b>	<p><b>Article 1.</b> The provisions of this Law are of public order and social interest. Its purpose is to prevent and eliminate all forms of discrimination against any person, as outlined in Article 1 of the United Mexican States Political Constitution, and to promote equality of opportunities and treatment.</p>
<b>General Law on Women's Access to a Life Free of Violence</b>	<p><b>Article 1.</b> The purpose of this law is to establish coordination among the Federation, the states, the territorial districts of Mexico City, and municipalities to prevent, sanction, and eradicate violence against women, adolescents, and girls, as well as to set forth the principles and mechanisms for full access to a life free from violence. It also aims to guarantee the enjoyment and exercise of their human rights and to strengthen the democratic regime established in the Political Constitution of the United Mexican States.</p> <p><b>Article 4.</b> The guiding principles for ensuring that all women, adolescents, and girls have access to a life free from violence, which must be observed in the development and</p>

	<p>implementation of federal and local public policies, are as follows: I. Legal, substantive, outcome-based, and structural equality; III. Non-discrimination; V. Gender Perspective.</p> <p><b>Article 5.</b> For the purposes of this law, the following shall be understood as: IX. Gender Perspective: A scientific, analytical, and political view on women and men. It seeks to eliminate the causes of gender oppression, such as inequality, injustice, and the hierarchization of people based on gender. It promotes gender equality through equity, the advancement, and well-being of women; and contributes to building a society where women and men have equal value, equal rights, and opportunities to access economic resources and political and social representation in decision-making spheres.</p>
<p><b>General Law for Equality between Women and Men</b></p>	<p><b>Article 1.</b> The purpose of this Law is to regulate and guarantee equality of opportunities and treatment between women and men, to propose institutional guidelines and mechanisms that guide the Nation towards achieving substantive equality in both public and private spheres, promoting the empowerment of women, gender parity, and the fight against all discrimination based on sex. Its provisions are of public order,</p>

social interest, and are of general observance throughout the National Territory.

**Article 2.** The guiding principles of this Law are: equality, non-discrimination, equity, and all those principles contained in the Political Constitution of the United Mexican States.

**Article 3.** The beneficiaries of the rights established by this Law are women and men within national territory who, due to their sex, regardless of age, gender, skin color, pregnancy, marital status, profession, culture, ethnic or national origin, language, migratory status, sexual orientation, social or economic condition, family situation, family responsibilities, health, religion, opinion, or disability, face any form of disadvantage resulting from a violation of the principle of equality protected by this Law.

**Article 5 –** For the purposes of this Law, the following terms shall be understood as:

IV. Gender Equality: A situation in which women and men have equal opportunities and possibilities to access, control, and benefit from the goods, services, and resources of society, as well as participate in decision-making in all areas of social, economic, political, health, cultural, and family life; V. Substantive Equality: The equal treatment and opportunities

	<p>for the recognition, enjoyment, or exercise of human rights and fundamental freedoms;</p> <p>VI. Gender Perspective: A concept referring to the methodology and mechanisms that allow for the identification, questioning, and assessment of discrimination, inequality, and exclusion of women, often justified on the basis of biological differences between women and men. It also includes the actions needed to address gender factors and create conditions for change that foster progress toward gender equality.</p>
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### **3.2.3.2 Precedents and jurisprudential thesis of Supreme Court of Justice of the Nation on Gender Perspective**

#### **a) Jurisprudential thesis "Access to justice in equal conditions. Elements to judge with a gender perspective"**

This thesis establishes the jurisdictional organs' obligation to administer justice with a gender perspective born from the rights to equality and nondiscrimination.<sup>824</sup> This method must be implemented in all legal disputes to verify whether the case presents a situation of violence or vulnerability due to gender issues that may prevent the delivery of justice with equality.<sup>825</sup> To achieve this objective, the judge must: "i) Identify if there are

<sup>824</sup> Tesis de Jurisprudencia (Jurisprudential Thesis), 1a./J. 22/2016, Décima Época, Primera Sala, Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), Gaceta del Semanario Judicial de la Federación, libro 29, tomo II, 836 (abril 2016) (Mexico).

<sup>825</sup> *Id.*



power dynamics related to gender that indicate an imbalance between the parties in the dispute; ii) scrutinize the facts and evaluate the evidence, discarding any gender stereotypes or prejudices, in order to identify situations of disadvantage caused by sex or gender conditions; iii) if the evidence provided is not enough to clarify situations of violence, vulnerability, or discrimination due to gender reasons, order the necessary tests to highlight these situations; iv) if a disadvantage due to gender issues is detected, challenge the neutrality of the applicable law and assess the differential impact of the proposed solution to seek a fair and equal resolution in light of the context of gender-based inequality; v) in doing so, apply human rights standards for all individuals involved, especially children; and, vi) understand that the methodology requires avoiding language based on stereotypes or prejudices at all times, thus striving for inclusive language to ensure access to justice without gender-based discrimination."<sup>826</sup>

This thesis is considered jurisprudence in Mexico, given the five Amparos Directos referencing it by the Supreme Court of Mexico: 2655-2013, 1125-2014, 4909-2014, 2586-2014, and 1340-2015.

#### **b) Rulings that constitute jurisprudence (precedents)**

There are several rulings in which the Mexican Supreme Court of the Nation has affirmed the obligation to adopt a gender perspective.<sup>827</sup>

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<sup>826</sup> *Id.*

<sup>827</sup> Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), 25 de mayo de 2016, Expediente 4811/2015, s. divorcio, custodia y pensión de alimentos (divorce, custody, and child support), available at <https://www.pjecz.gob.mx/derechos-humanos-e-igualdad-de-genero/documentos-de->

For example, in Amparo Directo en Revisión 2655/2013,<sup>828</sup> the court stated that international regulations<sup>829</sup> establish the human right of women to live free from violence and discrimination, thereby underpinning the state's obligation to consider gender-based violence or gender discrimination to determine if those conditions impact the application of the law in a particular case.<sup>830</sup> The fundamental objective is to achieve legal equality, as

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interes/sentencias-relevantes-sobre-derechos-humanos-e-igualdad-de-genero/suprema-corte-de-justicia-de-la-nacion/documentos-sobre-igualdad-de-genero/amparo-directo-en-revision-4811-2015/#gsc.tab=0; (Last visited February 15, 2025) (Mexico); Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), 06 de noviembre de 2013, Expediente N° 2655/2013, s. divorcio, custodia y pérdida de la patria potestad (divorce, custody and loss of parental rights), Considerando available at <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=155099> (Last visited February 15, 2025) (Mexico); Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), 12 de junio de 2013, Expediente 12/2012, s. divorcio, custodia y paternidad (divorce, custody, filiation), available at <https://www.pjecz.gob.mx/derechos-humanos-e-igualdad-de-genero/documentos-de-interes/sentencias-relevantes-sobre-derechos-humanos-e-igualdad-de-genero/suprema-corte-de-justicia-de-la-nacion/documentos-sobre-igualdad-de-genero/amparo-directo-12-2012/#gsc.tab=0>; amparo directo en revisión 1464/2013, amparo en revisión 615/2013, amparo directo en revisión 2293/2013, amparo directo en revisión 912/2014, amparo en revisión 704/2014, amparo en revisión 554/2013 y amparo directo en revisión 1125/2014.

<sup>828</sup> Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), 06 de noviembre de 2013, Expediente N° 2655/2013, s. divorcio, custodia y pérdida de la patria potestad (divorce, custody and loss of parental rights), Considerando available at <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=155099> (Last visited February 15, 2025) (Mexico) (Even though this case concerned divorce, child custody, and the loss of *patria potestad*, the Court emphasized that a gender perspective was necessary to resolve the controversy. The appellant—a woman who had lost custody and *patria potestad* of her children due to an alleged "abandonment" of her duties—argued that the *ad quem* court removed her parental rights without considering the domestic violence she suffered at the hands of her ex-spouse. The Court agreed with her argument, finding that the *ad quem* court failed to analyze the domestic abuse she endured. It concluded that a gender-based analysis was required in this case, given that the appellant raised claims of disadvantage based on gender, which had not been considered in the family dispute.)

<sup>829</sup> Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation) 07 de marzo de 2018, Amparo Directo En Revisión 6181/2016, s. homicidio cometido con ventaja (homicide committed with undue advantage), 29-33, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.scjn.gob.mx/sites/default/files/listas/documento\\_dos/2018-02/ADR-6181-2016-180208.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2018-02/ADR-6181-2016-180208.pdf) (Last visited February 15, 2025) (Mexico) (The CEDAW and Belem do Para Convention, both subscribed by the state of Mexico, incorporate rights such as the right to live a life without discrimination and violence, the right to equality in front of the law, the obligation of states to eliminate gender stereotypes and practices originated in the roles of men and women with the objective to reach equality between men and women and gender equality.)

<sup>830</sup> Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), 06 de noviembre de 2013, Expediente N° 2655/2013, s. divorcio, custodia y pérdida de la patria potestad (divorce, custody and loss of parental rights), Considerando 41-42, available at

enshrined in Article 1 of the Constitution, by removing barriers that keep certain social groups from enjoying and exercising their rights on equal footing with others.<sup>831</sup>

Most important, the court recognized that it is essential for judges to resort to a gender-focused approach that helps to elucidate how gender-related conditions and circumstances influence the interpretation of facts and evidence in a dispute.<sup>832</sup> Subsequently, the court elaborated that the right of women to live without discrimination and violence equates to a duty for all authorities to adopt a gender perspective, including judges, who are mandated to dispense justice with an approach that recognizes gender-specific situations, and works to remove barriers and discrepancies in the law concerning the roles of either gender.<sup>833</sup>

Another example is Amparo Directo en Revisión 1754/2015, where the Court stated that the gender perspective becomes relevant as a lens through which judges must decide cases.<sup>834</sup> The Court also defined a gender perspective as an analytical method that is grounded in the differences assigned between men and women through the construction of gender regarding what is appropriate or what is "expected" of each sex, analyzing the roles that are performed or expected to be performed by men and women in political, social, and

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<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=155099> (Last visited February 15, 2025) (Mexico);

<sup>831</sup> *Id.* at 42.

<sup>832</sup> *Id.* at 27.

<sup>833</sup> *Id.* at 42-43.

<sup>834</sup> Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), 14 de octubre de 2015, Amparo Directo en Revisión 1754/2015, s. pensión alimenticia y perspectiva de género (Alimony and gender perspective), 11, available at [chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://desc.scjn.gob.mx/sites/default/files/2021-09/M%C3%89X17-Sentencia.pdf](https://desc.scjn.gob.mx/sites/default/files/2021-09/M%C3%89X17-Sentencia.pdf) (last visited Jan. 24, 2025) (Mexico).

cultural contexts.<sup>835</sup> Also, this decision is relevant because it uses several theses to apply this perspective: i) “Gender perspective in the administration of justice. Its meaning and scope”; ii) “Access to justice under equal conditions. All jurisdictional authorities in the country must deliver justice with a gender perspective”; iii) “Delivery of justice with a gender perspective. Obligations the Mexican State must comply in this subject”, and; iv) “Delivery of justice with a gender perspective. This analytical method must be applied in all cases involving asymmetric relationships, prejudices, and stereotypical patterns, regardless of the gender of the people involved,” and v) “Access to justice in equal conditions. Elements to judge with a gender perspective.”<sup>836</sup>

One of the most important judicial decisions in this investigation is the one dictated by the Supreme Court of Justice of the Nation of Mexico in Amparo directo en revisión 6181/2016, in which the Court established the obligation to use a gender perspective to solve a case in which a battered woman was convicted for the killing of her abusive intimate partner.<sup>837</sup> It declared that, in this case, the criteria for judging with a gender perspective should have been applied in order to verify if the defendant suffered from domestic violence and to take account of the effects of such violence on the defendant.<sup>838</sup> Therefore, the court declared the grievance alleged by the complainant regarding the lack of

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<sup>835</sup> *Id.* at 12.

<sup>836</sup> *Id.*

<sup>837</sup> Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation) 07 de marzo de 2018, Amparo Directo En Revisión 6181/2016, s. homicidio cometido con ventaja (homicide committed with undue advantage), 8, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.scjn.gob.mx/sites/default/files/listas/documento\\_dos/2018-02/ADR-6181-2016-180208.pdf](https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2018-02/ADR-6181-2016-180208.pdf) (Last visited February 15, 2025) (Mexico)

<sup>838</sup> *Id.* at 20.

application of a gender perspective to her case to be sufficiently founded, ultimately vacating the ruling and ordering new trial.<sup>839</sup>

In the last part of the decision, the Court elucidates the methodology of the gender perspective. First, it states that this perspective is born from the correlation between the human rights in articles 1 and 4 of the Constitution and those in international treaties, giving these last ones a constitutional status.<sup>840</sup> Particularly pertinent to this judgment are women's rights to a life free from violence and discrimination, as enshrined in both the Constitution and international treaties, such as articles 2, 6, and 7 of the Convention Belem Do Para and article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>841</sup> Second, it cites the Amparos Directo en Revisión 2655/2013 and 1754/2015, referring to the international and constitutional normative applied in the first and theses used in the second.<sup>842</sup> Finally, the Court concludes that there is an obligation to judge with the gender perspective originated in international treaties to which Mexico is a state party, and that this Court has developed these parameters widely.<sup>843</sup>

The three aforementioned judicial decisions exemplify the Supreme Court's mandate for all national judges to apply a gender perspective in cases where gender arises as an issue for its resolution. The origin of this obligation appears from constitutional and international women's rights to live a life free of violence and discrimination in accordance

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<sup>839</sup> *Id.* at 21.

<sup>840</sup> *Id.* at 28

<sup>841</sup> *Id.* at . 29

<sup>842</sup> *Id.* at 27-39

<sup>843</sup> *Id.* at 40.

with the principle of equality. Notably, the binding nature of these decisions means they are obligatory for every judge across the Mexican state.

### **3.2.3.3 Guidance instruments**

#### **a) Isolated Thesis "Gender perspective in the administration of justice. Its meaning and scope"**

This thesis acquires significance as it asserts that judicial organs must refrain from gender-based discrimination when resolving issues submitted to their consideration.<sup>844</sup> Furthermore, it posits that incorporating a gender perspective into the administration of justice compels judges to read and construe a norm considering the ideological principles that sustain it and how they affect differently to the people who claim justice, aiming to apply correctly the principles of equality and equity that recognize the differences between men and women.<sup>845</sup>

#### **b) Isolated Thesis "Access to justice under conditions of equality. All jurisdictional authorities in the country must deliver justice with a gender perspective"**

This thesis establishes that women's rights to have a life free of violence and discrimination recognized in the constitution and international treaties are interdependent

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<sup>844</sup> Tesis Aislada (Isolated Thesis) 1a. XXIII/2014, Décima Época, Primera Sala, Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), Gaceta del Semanario Judicial de la Federación, libro 3, tomo I, 677 (febrero de 2014) (Mexico).

<sup>845</sup> *Id.*

on the right to equality. From these two rights, the obligation for all jurisdictional organs to impart justice from a gender perspective is born.<sup>846</sup> This last one is a method for identifying and removing barriers and obstacles that result in discrimination based on sex or gender; this means taking into account situations of disadvantage that, due to gender issues, discriminate and obstruct equality.<sup>847</sup> It also adds that the state must ensure that in all jurisdictional disputes of violence, discrimination, or vulnerability for reasons of gender, these circumstances must be considered to visualize the problem and guarantee access to justice.<sup>848</sup>

**c) Isolated Thesis "The delivery of justice with a gender perspective. This analytical method must be applied in all cases involving asymmetric relationships, prejudices, and stereotypical patterns, regardless of the gender of the people involved"**

This thesis establishes that the rights to equality and nondiscrimination give birth to the jurisdictional organs' obligation to administrate justice from a gender perspective.<sup>849</sup> It also defines gender perspective as an analytical method that must be applied in all cases concerning asymmetric relationships, prejudices, and stereotypical patterns, regardless of

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<sup>846</sup> Tesis Aislada (Isolated Thesis) 1a. XCIX/2014, Décima Época, Primera Sala, Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), Gaceta del Semanario Judicial de la Federación, libro 4, tomo I, 524 (marzo 2014).

<sup>847</sup> *Id.*

<sup>848</sup> *Id.*

<sup>849</sup> Tesis (Thesis) 1a. LXXIX/2015, Décima Época, Primera Sala, Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), Gaceta del Semanario Judicial de la Federación, libro 15, tomo II, 1397 (febrero 2015).

the gender of the people involved, to detect and eliminate the barriers and obstacles that discriminate people because of belonging to the group of "women" or "men."<sup>850</sup>

**d) Isolated Thesis "Delivery of justice with a gender perspective. Obligations the Mexican state must comply in the matter"**

This thesis also establishes the jurisdictional organs' obligation to administrate justice with a gender perspective born from the rights to equality, nondiscrimination, and access to justice.<sup>851</sup> It also defines gender perspective as a method that aims to detect and eliminate discrimination against people by the condition of sex or gender, in other words, it means judging considering the situations of disadvantage that, due to gender issues, discriminate and impede equality.<sup>852</sup> In this regard, judges must ensure that the prevailing paradigms of discrimination do not adversely impact the delivery of justice, considering the situations o disadvantages that women have.<sup>853</sup>

**e) Isolated Thesis "Judge from a gender perspective. concept, applicability, and methodology to fulfill such obligation"**

This thesis also establishes that the obligation of justice operators to judge with a gender perspective is a duty to deliver justice based on recognition of the particular disadvantageous situation in which women have historically found themselves as a

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<sup>850</sup> *Id.*

<sup>851</sup> Tesis Aislada (Isolated Thesis) P. XX/2015, Décima Época, Primera Sala, Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), Gaceta del Semanario Judicial de la Federación, libro 22, tomo I, 235 (septiembre de 2015).

<sup>852</sup> *Id.*

<sup>853</sup> *Id.*



consequence of the social construction of their position and the role as the corollary of their sex.<sup>854</sup> The content of this obligation is the following: 1) Applicability: it is intrinsic to the jurisdictional work so that there should be no request from a party, which includes specific obligations in cases of violence against women, and is further reinforced in the context of violence against them; and, 2) Methodology: requires compliance with the six steps mentioned in the jurisprudence thesis 1a./J. 22/2016 (10th), under the heading: "Access to justice in equal conditions. elements to judge with a gender perspective."<sup>855</sup>

#### **f) Protocol for Judging with a Gender Perspective**

In 2013, the Supreme Court of the Nation implemented a protocol for judging with a gender perspective, which is a non-binding tool to guide judges in their duty to deliver justice using this perspective according to the highest standards and aiming to materialize the right to equality contained in the constitution and international treaties.<sup>856</sup> This Protocol was later updated in 2022.<sup>857</sup>

The gender perspective has reshaped law, aiming to secure that women and sexual minorities are recognized as equals to men, compelling legal institutions to consider gender implications and apply norms without ignoring diverse contexts.<sup>858</sup> Regarding the

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<sup>854</sup> Tesis (Thesis) 1a. XXVII/2017, Décima Época, Primera Sala, Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), Gaceta del Semanario Judicial de la Federación, Libro 40, Tomo I, 443 (Marzo 2017).

<sup>855</sup> *Id.*

<sup>856</sup> SUPREMA CORTE DE JUSTICIA DE LA NACION, *supra* note 719 at 10.

<sup>857</sup> *Id.*

<sup>858</sup> *Id.* at 81.

administration of justice, this analytical approach has gained significant traction, to the point that it is now a constitutional obligation for all judges in the country.<sup>859</sup>

The proposed methodology serves as a guideline for applying a gender perspective at all stages of a judicial procedure, establishing the minimum conditions judges must consider to identify the differentiated impacts of gender.<sup>860</sup> In this line, there are three main lines of obligations of judging with a gender perspective: i) Obligations prior to analyzing the substance of the dispute, ii) Specific obligations when resolving the substance of a dispute, and iii) General obligation regarding the use of language throughout the judgment.<sup>861</sup>

The first of these obligations are related to the facts of the case and may not pertain to the issue in dispute.<sup>862</sup> However, they have such an impact that they must be considered when judging from a gender perspective.<sup>863</sup> Among the obligations of this nature is the duty to identify and analyze (1) whether there are power dynamics, contexts of structural inequality, and/or contexts of violence that create an imbalance between the parties, and (2) whether the available evidence is sufficient or if additional evidence is needed to determine whether the case falls within one of the contexts described in the previous section.<sup>864</sup>

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<sup>859</sup> *Id.* at 82.

<sup>860</sup> *Id.* at 138.

<sup>861</sup> *Id.* at 139.

<sup>862</sup> *Id.*

<sup>863</sup> *Id.*

<sup>864</sup> *Id.*

The second ones refer to obligations related to the issue in dispute.<sup>865</sup> There are two types of obligations in this area:

(1) Obligations related to the examination of factual premises (assessment of facts and evaluation of evidence).<sup>866</sup> This type of obligation is subdivided into (i) The obligation to eliminate any gender stereotypes or biases to highlight situations of disadvantage caused by this category and (ii) The obligation to analyze the factual premises with sensitivity to the multiple consequences that gender has on people's lives.<sup>867</sup>

(2) Obligations related to the analysis of the normative premises (interpretation and application of legal norms), which, in turn, are subdivided into (i) The obligation to apply human rights standards to the individuals involved in the dispute, and (ii) The obligation to assess the differentiated impact of the proposed solution and the neutrality of the norm.<sup>868</sup>

(3) Obligations related to the use of language throughout the judgment.<sup>869</sup> This type of obligation is subdivided into (i) The obligation to address and provide reasoning for the inequalities identified in the dispute, using inclusive and non-erasing language; and (ii) The obligation to avoid considerations based on gender stereotypes or biases.<sup>870</sup>

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<sup>865</sup> *Id.* at 173.

<sup>866</sup> *Id.*

<sup>867</sup> *Id.*

<sup>868</sup> *Id.* at 204.

<sup>869</sup> *Id.* at 236.

<sup>870</sup> *Id.*

#### **4. Reasoning with a gender perspective in judicial decisions: When and how to apply a gender perspective**

Broadly speaking, the gender perspective is an analytical method that judges should use in all cases where gender might cause a differentiated impact.<sup>871</sup> The key element determining the application of this analytical tool is not the gender of the people involved but rather the existence of a possible power imbalance or a context of inequality based on sex, gender, or sexual orientation.<sup>872</sup> It involves identifying a situation of inequality or discrimination due to gender and developing concrete actions to address it, aiming for equality in judicial decisions.<sup>873</sup>

It is sufficient for the judge to recognize that there may be a situation of violence or vulnerability arising from gender, which could hinder the complete and equal administration of justice, to establish the obligation to adopt this method to resolve the dispute.<sup>874</sup> In this manner, this methodology must be applied even when the parties involved have not expressly requested it in their pleadings.<sup>875</sup>

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<sup>871</sup> SUPREMA CORTE DE JUSTICIA PROVINCIA DE BUENOS AIRES, *supra* note 719 at 8; SUPREMA CORTE DE JUSTICIA DE LA NACION, *supra* note 719 at 123.

<sup>872</sup> Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), 06 de noviembre de 2013, Expediente N° 2655/2013, s. divorcio, custodia y pérdida de la patria potestad (divorce, custody and loss of parental rights), Considerando 47, available at <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=155099> (Last visited February 15, 2025) (Mexico); SUPREMA CORTE DE JUSTICIA PROVINCIA DE BUENOS AIRES, *supra* note 719 at 8; PODER JUDICIAL, SECRETARIA TÉCNICA IGUALDAD DE GÉNERO Y NO DISCRIMINACIÓN, *supra* note 719 at 60.

<sup>873</sup> PODER JUDICIAL, SECRETARIA TÉCNICA IGUALDAD DE GÉNERO Y NO DISCRIMINACIÓN, *supra* note 719 at 64; SUPREMA CORTE DE JUSTICIA PROVINCIA DE BUENOS AIRES, *supra* note 719 at 8.

<sup>874</sup> SUPREMA CORTE DE JUSTICIA DE LA NACION, *supra* note 719 at 122.

<sup>875</sup> PODER JUDICIAL, SECRETARIA TÉCNICA IGUALDAD DE GÉNERO Y NO DISCRIMINACIÓN, *supra* note 719 at 89; SUPREMA CORTE DE JUSTICIA DE LA NACION, *supra* note 719 at 122.

There are three main scenarios that require judging with a gender perspective: (i) when a situation of power or gender-based asymmetry is identified or claimed, (ii) when a context of violence, discrimination, or vulnerability stemming from gender is detected or reported, and (iii) when, even without proving a power imbalance or a context of violence, there is a possibility of gender-based differential treatment or impact, often expressed through gender stereotypes or roles embedded in institutional and social norms and practices.<sup>876</sup>

With respect to the first two scenarios, first and foremost, the substance of the dispute should be analyzed to verify whether there is a situation of violence, power dynamics, or structural inequality based on sex, gender roles, or the sexual orientation of the individuals involved.<sup>877</sup> Regarding the third scenario, if the available evidence is insufficient for this purpose, the adjudicator should, *ex officio*, seek additional evidence necessary to determine whether such a context exists.<sup>878</sup>

Establishing any of these three contexts implies an obligation to apply a gender perspective—meaning that these circumstances of inequality and discrimination should be considered when assessing the facts, evaluating the evidence, and interpreting the applicable legal norms, in other words, when resolving the substance of the dispute.<sup>879</sup>

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<sup>876</sup> SUPREMA CORTE DE JUSTICIA DE LA NACION, *supra* note 719 at 128; SUPREMA CORTE DE JUSTICIA PROVINCIA DE BUENOS AIRES, *supra* note 719 at 8.

<sup>877</sup> SUPREMA CORTE DE JUSTICIA DE LA NACION, *supra* note 719 at 129; SUPREMA CORTE DE JUSTICIA PROVINCIA DE BUENOS AIRES, *supra* note 719 at 8.

<sup>878</sup> SUPREMA CORTE DE JUSTICIA DE LA NACION, *supra* note 719 at 129.

<sup>879</sup> SUPREMA CORTE DE JUSTICIA DE LA NACION, *supra* note 719 at 129; SUPREMA CORTE DE JUSTICIA PROVINCIA DE BUENOS AIRES, *supra* note 719 at 14.

Given the broad scope of the gender perspective, it can be applied in various ways. To facilitate this, certain matrices suggested by non-binding documents, such as protocols and guidelines, are available to aid in applying a gender perspective in judicial reasoning.<sup>880</sup> These analytical matrices provide supportive methodologies to guide judges in delivering justice with a gender perspective at different stages of a procedure.<sup>881</sup>

A good example of this matrix is the one suggested by the Good Practices Notebook to Incorporate a Gender Perspective into Judicial Rulings.<sup>882</sup> In the following, there is a summary of what one of this matrix look like, and, even when they have differences, they all point out to help the judiciary identify inequalities and discrimination based on gender.

Summary of the Matrix to Judge with a Gender Perspective (Good Practices Notebooks - Chile)	
<b>Step I: Case Identification</b>	<p><b>1. Analyze the context:</b> Interpret the facts within the social context, considering national, regional, and local conditions, including institutional, economic, cultural, and social factors.</p> <p><b>2. Identify parties based on "suspect categories":</b> Examine whether the individuals involved belong to historically marginalized groups, such as language, race, ethnicity, religion,</p>

<sup>880</sup> See for example: PODER JUDICIAL, SECRETARIA TÉCNICA IGUALDAD DE GÉNERO Y NO DISCRIMINACIÓN, *supra* note 719 at 91-97; SUPREMA CORTE DE JUSTICIA DE LA NACION, *supra* note 719 at 137-248; SUPREMA CORTE DE JUSTICIA PROVINCIA DE BUENOS AIRES, *supra* note 719 at 8.

<sup>881</sup> PODER JUDICIAL, SECRETARIA TÉCNICA IGUALDAD DE GÉNERO Y NO DISCRIMINACIÓN, *supra* note 719 at 89.

<sup>882</sup> *Id.* at 91-97.

	<p>political beliefs, gender, poverty, migration, disability, or detention.</p> <p><b>3. Identify rights claimed or violated:</b> Determine which rights are at stake, who is affected, and whether the claims are individual or collective. Particular attention should be given to cases involving discrimination and/or violence against women.</p> <p><b>4. Assess the need for protective measures:</b> Consider if protective measures are necessary due to imminent dangers to life or integrity, or in cases of humanitarian needs, such as for migrants requiring international protection.</p>
<b>Step II: Case Analysis and Development</b>	<p><b>1. Exercise due diligence to ensure justice access:</b> The state has an obligation to prevent, investigate, and appropriately sanction those responsible for violence, removing any obstacles that could impede justice and ensuring a fair, competent, and independent process.</p> <p><b>2. Identify power dynamics:</b> Verify if power asymmetry exists, such as in relationships involving parents and children, employers and employees, or partners. Understand decision-making structures and the impact of power imbalances.</p> <p><b>3. Identify stereotypes and biases:</b> Examine stereotypes and roles attributed to parties based on societal norms (e.g., "ideal victim of</p>

	<p>violence," "natural mother") and interpret the facts without discriminatory preconceptions.</p> <p><b>4. Identify sexist expressions:</b> Recognize language that demeans or undervalues women and use inclusive, respectful language to ensure access to justice.</p> <p><b>5. Analyze intersectionality:</b> Use an intersectional approach to examine cases involving multiple forms of discrimination (e.g., gender, race), as this helps understand compounded inequality.</p>
<p><b>Step III:</b></p> <p><b>Evidence</b></p> <p><b>Review</b></p>	<p><b>1. Careful evaluation of evidence:</b> Review evidence, especially related to discrimination or violence, for potential gender biases or stereotypes. Direct evidence may not always be available.</p> <p><b>2. Importance of first testimony:</b> The victim's initial statement often holds the most weight and may be the only account due to the private nature of incidents. This testimony should be carefully considered.</p> <p><b>3. Context of retraction:</b> Victims of gender-based violence may retract statements due to fear, reconciliation, or dependency.</p> <p><b>4. Avoid revictimization:</b> All interactions with the victim should prevent further trauma, as judicial protection or intervention might be the only opportunity to end the violence.</p>



<b>Step IV:</b>  <b>Normative Examination</b>	<p><b>1. Review and apply relevant laws:</b> Consider the broad framework of national and international human rights and anti-discrimination laws.</p> <p><b>2. Evaluate apparent neutrality of norms:</b> Assess whether laws that appear neutral may contain biases or stereotypes affecting human dignity.</p>
<b>Step V:</b>  <b>Review of Jurisprudence and Legal Sources</b>	<p><b>1. Review and use jurisprudence, legal doctrine, general legal principles, and interpretation criteria:</b> At both national and international levels, there is extensive doctrine and jurisprudence addressing cases of inequality, discrimination, and gender-based violence. Consulting these sources provides argumentative insights and legal support by aligning with international standards and understanding how internal laws are supported or complemented by international norms.</p>
<b>Step VI: The Judgment</b>	<p><b>1. Issue a decision in a reasonable time, prioritizing equality, non-discrimination, and access to justice:</b> Judicial decisions should be logical, free from stereotypes and biases, avoid revictimization, and use clear, inclusive language that considers the victim's voice when appropriate. Thorough evidence analysis and relevant norms should maximize rights protection, supported by applicable jurisprudence and doctrine.</p>

	<p><b>2. Draft the decision with rigor to create a pedagogical impact:</b></p> <p>The judgment should promote cultural change, prevent discriminatory behaviors, and ensure justice access. Its reasoning should clarify discrimination and violence by deconstructing inequalities and stereotypes, with references to relevant international standards and jurisprudence.</p> <p><b>3. Order integral reparations:</b> Include restitution, compensation, rehabilitation, satisfaction, and non-repetition guarantees to fully restore violated rights and prevent future discrimination.</p>
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The number of scenarios in which a judge can apply a gender perspective is as vast as the number of law subjects that exist in the legal realm. The following examples show how the gender perspective is incorporated into judicial reasoning, resolving each case according to gender equality and non-discrimination.

For example, in an Argentinian attempted femicide case, the prosecution established that the accused threw gasoline on his wife with the intent to set her on fire, and his attempt was thwarted when the victim and her children managed to take the lighter away from him.<sup>883</sup> However, the victim herself later refuted this account, stating that she, in a state of intoxication, poured gasoline on herself and threatened to set herself on fire.<sup>884</sup>

<sup>883</sup> Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 7/5/2024, “Recurso de hecho deducido por la Procuradora Adjunta del Poder Judicial de la Provincia de Entre Ríos en la causa Miño, Manuel Alejandro s/ lesiones graves en grado de tentativa”, 1, Fallos (2024-347-425) (Argentina).

<sup>884</sup> *Id.* at 1-2.

Despite the victim's retraction, the trial court convicted him of Attempted Aggravated Assault, a ruling later upheld by the Criminal Cassation Chamber.<sup>885</sup>

The defense filed a cassation appeal,<sup>886</sup> and the Superior Court of Justice of Entre Ríos acquitted the defendant.<sup>887</sup> The Superior Court's decision was based on the victim's retraction of her initial statement to the prosecutor and police, dismissing the statement on her children who witnessed the event.<sup>888</sup>

Subsequently, the prosecutor filed an extraordinary appeal to the Supreme Court of the Nation.<sup>889</sup> The Supreme Court ruling adhered completely to the dictamen of the Attorney General of the Nation, stating that the acquittal declared by the Superior Court of Justice of Entre Ríos was arbitrary, as it relied on the victim's retraction without considering its significance within the context of gender-based violence.<sup>890</sup> The Supreme Court of the Nation stated that evidence was assessed partially by the Superior Court of Justice of Entre Ríos, lacking a comprehensive view, and documents showing the victim's situation (e.g., family court files, professional reports) were dismissed for not providing "concrete data" to support the accusation.<sup>891</sup> The Supreme Court of the Nation upheld the trial judge's analysis, citing case law and authors who explain why women often endure abuse from their partners (e.g., lack of viable alternatives, economic dependence, fear, lack of trust)

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<sup>885</sup> *Id.* at 1.

<sup>886</sup> Equivalent to a petition for review.

<sup>887</sup> Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 7/5/2024, "Recurso de hecho deducido por la Procuradora Adjunta del Poder Judicial de la Provincia de Entre Ríos en la causa Miño, Manuel Alejandro s/ lesiones graves en grado de tentativa", 1-2, Fallos (2024-347-425) (Argentina).

<sup>888</sup> *Id.*

<sup>889</sup> *Id.* at 3.

<sup>890</sup> *Id.* at 8.

<sup>891</sup> *Id.*

and may retract accusations due to vulnerability, not seeing themselves as victims—points discussed by authors and confirmed in this case.<sup>892</sup> Experience shows that female victims of gender-based violence often retract accusations due to fear of retaliation, economic dependence (as in this case), and the cycle of violence.<sup>893</sup> It was further added that the appealed acquittal disregarded the obligation under the Belém do Pará Convention to act with due diligence in preventing, investigating, and punishing gender-based violence.<sup>894</sup> For all these reasons, the Supreme Court, adhering to the Attorney General of the Nation’s dictamen, annulled the appealed judgment and ordered the issuance of a new one in accordance with the law.<sup>895</sup>

Another example of using a gender perspective based on the principle of equality is the decision of the Chilean Supreme Court in which it revoked the trial court ruling that rejected an Amparo Action<sup>896</sup> filed by a female inmate who ostensibly was shackled to a bed for several hours during labor and gave birth in the presence of a gendarmerie officer who was on guard to prevent her from running away.<sup>897</sup> The Court concluded that both security measures were unnecessary, given that the diagnosis of preeclampsia made it very

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<sup>892</sup> *Id.* at 10.

<sup>893</sup> *Id.* at 11-12.

<sup>894</sup> *Id.* at 13

<sup>895</sup> *Id.*

<sup>896</sup> Biblioteca del Congreso Nacional de Chile, *Recurso de Amparo*, Ley Fácil, <https://www.bcn.cl/portal/leyfacil/recurso/recurso-de-amparo> (last visited Jan. 29, 2025) (That action granted by the Constitution to any person who is detained, imprisoned, or arrested in violation of the Constitution or the law, or who suffers any other deprivation, disturbance, or threat to their right to personal liberty and individual security.)

<sup>897</sup> Corte Suprema (C.S.) (Supreme Court), 01 de diciembre de 2016, “LORENZA BEATRIZ CAYUHAN LLEBUL CONTRA GENDARMERIA DE CHILE”, Rol de la causa: 92795-2016, s. Recurso de Amparo, Considerando Quinto available at <https://oficinajudicialvirtual.pjud.cl/indexN.php> (Last visited February 15, 2025) (Chile).

difficult for the inmate to escape.<sup>898</sup> Gendarmerie argued that its security measures complied with the Good Service Instructions on Hospital Services and Exits, which regulates medical treatment for inmates who require medical assistance outside the penitentiary precinct.<sup>899</sup> However, the Court determined that this regulation and the actions of the gendarmerie constituted a violation of rights contained in the CEDAW and Belem Do Para Convention.<sup>900</sup> Finally, the Court declared the actions of the gendarmerie as acts of discrimination against the woman from a gender equality perspective. The officers should have considered the woman's situation, who was experiencing the process of childbirth, and the negative impact that an undifferentiated application of prison rules and regulations could have on that woman.<sup>901</sup>

A final example is Amparo Directo En Revisión 1754/2015, dictated by the Supreme Court of de Nation in Mexico. In this case, the court used the gender perspective to affirm that women have the right to receive compensatory alimony from their ex-husbands, even if they worked their whole lives in a paid job and receive retirement compensation for it every month.<sup>902</sup> The Supreme Court established that denying compensatory alimony implied that because the complainant was a woman, she was obliged to perform domestic and care tasks and, therefore, work a double shift, and if she

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<sup>898</sup> *Id.* at Considerando Sexto.

<sup>899</sup> *Id.* at Considerando Décimo Segundo.

<sup>900</sup> *Id.* at Considerando Tercero.

<sup>901</sup> *Id.* at Considerando Cuarto.

<sup>902</sup> Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation), 14 de octubre de 2015, Amparo Directo en Revisión 1754/2015, s. pensión alimenticia y perspectiva de género (Alimony and gender perspective), available at <https://desc.scjn.gob.mx/sites/default/files/2021-09/M%C3%89X17-Sentencia.pdf> (last visited Jan. 24, 2025) (Mexico).

obtained retirement payments, it was not necessary to compensate the housework, since it was part of her role as a housewife and mother.<sup>903</sup> Applying a gender perspective, the court reversed the *ad quem* court's decision. It established that this interpretation implies discriminatory treatment because it denies a right for not having performed domestic tasks exclusively, assuming that these are imposed on women for the mere fact of being women.<sup>904</sup>

## 5. Summary

The problems this dissertation addresses arise from deeply ingrained gender inequality that is embedded in and reinforced by gender roles and stereotypes. However, gender is a mutable social construct, and the disparities it fosters can be reshaped using the right tools and reasoning.

The gender perspective is an analytical tool designed to assess and correct gender-based differences, power imbalances, stereotypes, and discrimination across social, political, and cultural contexts. Defined by institutions like the European Institute for Gender Equality and the Interamerican Institute for Human Rights, this perspective rethinks societal norms and aims to foster equitable relationships. Its wide-reaching impact can reshape society, culture, economy, and politics by promoting egalitarian interactions. Law is one critical area where the gender perspective can challenge and transform discriminatory practices.

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<sup>903</sup> *Id.* at 130.

<sup>904</sup> *Id.* at 140.

A gender perspective in law influences both legislative creation and judicial interpretation, addressing gender inequality through explicit or implicit measures. Laws like Mexico's Equality Law explicitly incorporate gender perspectives to address discrimination, while Argentina's gender parity law implicitly promotes equality by balancing political representation. Internationally, treaties like CEDAW emphasize a gender perspective as essential for combating discrimination against women.

In judicial reasoning, the gender perspective upholds equality and non-discrimination rights by addressing formal and substantive equality. Formal equality ensures identical legal status, while substantive equality recognizes social and structural inequalities, providing differential treatment where needed. This approach, supported by CEDAW, seeks not just equal starting points but equal outcomes.

Non-discrimination aims to eradicate gender-based distinctions that impair women's rights. Gender-based violence, as a form of discrimination, is addressed by the Inter-American Court, emphasizing that eliminating violence and stereotypes is essential for true equality. Courts distinguish between lawful distinctions (reasonable and objective) and unlawful discrimination (arbitrary and harmful), applying rigorous scrutiny to ensure alignment with human rights.

The obligation to apply a gender perspective in judicial decisions arises from both international and national frameworks in Argentina, Chile, and Mexico. These Latin American countries share international human rights treaties establishing the rights to equality and non-discrimination, along with non-binding instruments guiding the courts.

Additionally, national legislation and non-binding instruments across these countries reinforce the obligation to incorporate this perspective into rulings through laws addressing discrimination, gender violence, and inequality. This normative framework establishes the obligation for courts to incorporate a gender perspective as a means to uphold the rights to equality and non-discrimination.

The last questions answered by this chapter is when to apply a gender perspective and how. Answering the first one, a gender perspective is an analytical method judges should apply in cases where gender may cause a differential impact. Its application is not based on the parties' gender but on identifying potential power imbalances or gender-based inequality. Judges must address identified inequalities by incorporating this perspective even if not explicitly requested, especially when violence, discrimination, or vulnerability is involved.

Specifically, there are three main scenarios for applying a gender perspective: (i) power asymmetry or gender-based imbalance, (ii) violence or discrimination based on gender, and (iii) possible differential treatment due to embedded stereotypes or social norms. Judges may proactively seek evidence to establish these contexts and apply gender-sensitive reasoning in evaluating facts, evidence, and legal norms.

Guidance tools, such as matrices, systematically aid judges in applying a gender perspective to ensure justice free of stereotypes and biases. These matrices provide structured steps for examining cases with a gender lens, aiming to identify and address inequalities rooted in gender-based stereotypes, discrimination, and power imbalances.



Finally, given the versatility of the gender perspective, its scope of application is vast. It covers numerous topics and addresses various cases to realize the rights to equality and non-discrimination, such as domestic violence, prison conditions, and economic rights after divorce. These examples underscore the broad applicability of the gender perspective across diverse areas of law, promoting fairness and equity in judicial decisions.

#### **CHAPTER IV. APPLYING A GENDER PERSPECTIVE TO CASES IN WHICH WOMEN HAVE KILLED THEIR INTIMATE PARTNER**

As discussed in Chapter II, defending women who have killed their abusive partners presents significant challenges. These include the application of male-biased legal standards by some courts that exclude the history of domestic abuse and women's perspective from the assessment of their defenses, the reliance on Battered Woman Syndrome theory to support these women's defenses, and the use of justification and excuse defenses founded in the same predicament for these women. Chapter III outlined the fundamental characteristics and mandatory character of a gender perspective. Chapter IV is the logical progression from the previous chapters, as it builds upon the challenges previously identified and the application of a gender perspective.

In order to ground the application of this perspective in these cases, the chapter proposes incorporating U.S. standards compatible with it to enhance the criteria currently used by courts in Argentina, Chile, and Mexico.

This chapter is structured into two main sections. The first part argues that although there is an emerging trend among some courts to incorporate a gender perspective into the reasoning applied to the cases at hand, their approach is unsatisfactory and does not fully develop the potential of this perspective. The second section examines the premise of deploying United States standards<sup>905</sup> compatible with a gender perspective. This section is divided into three parts. First, it addresses the incorporation of domestic abuse history into

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<sup>905</sup> I use the concept of standards broadly to encompass doctrines, theories, and jurisprudential lines that shape legal interpretation and decision-making.

the assessment of criminal defenses, redefining key elements such as imminence, crossed violence, the identification and assessment of interests and harms in self-defense and exculpatory state of necessity, and the consideration of available options for the woman. Second, it explores the alternatives to using Battered Woman Syndrome, advocating for frameworks like the Survivor Theory to more accurately represent survivors' agency and decision-making. Third, it argues that dismantling harmful stereotypes in the selection and adjudication of defenses is essential to ensuring that women's actions are understood as rational and justifiable within the broader context of their lived experiences and domestic abuse.

### **1. The partial implementation of a gender perspective as an emerging trend among some courts**

As mentioned in Chapter III, a gender perspective should be used in cases involving a gender-based power imbalance that results in discrimination<sup>906</sup> or inequality.<sup>907</sup> Since both of these conditions are present in the cases of women who kill an intimate partner in

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<sup>906</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 on Violence Against Women, ¶ 6, U.N. Doc. A/47/38, (1992) (Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men).

<sup>907</sup> PODER JUDICIAL, SECRETARIA TÉCNICA IGUALDAD DE GÉNERO Y NO DISCRIMINACIÓN, *supra* note 719 at 25 (The gender perspective aims to materialize the rights to equality and non-discrimination, and therefore, the absence of these principles determines the need to use this perspective in order to rebalance the power dynamics between men and women.); ESTELA SERRET Y JESSICA MÉNDEZ MERCADO, SEXO, GÉNERO Y FEMINISM, 46 (2011) Available at [https://www.academia.edu/28433264/Estela\\_Serret\\_y\\_Jessica\\_M%C3%A9ndez\\_Mercado\\_Sexo\\_g%C3%A9nero\\_y\\_feminismo](https://www.academia.edu/28433264/Estela_Serret_y_Jessica_M%C3%A9ndez_Mercado_Sexo_g%C3%A9nero_y_feminismo) (Gender norms create relationships that are inherently one-sided and unjust inequality. Rather than simply distinguishing between two essential groups, the concept of gender inherently involves a hierarchy. It is precisely this inequality that the gender perspective seeks to highlight and challenge.); SUPREMA CORTE DE JUSTICIA PROVINCIA DE BUENOS AIRES, *supra* note 719 at 4 (Incorporating a gender perspective means analyzing the issue through the lens of the structural inequality among men, women, and sexual diversities, which is shaped by historical, social, cultural, and institutional factors).

a domestic violence context, the application of a gender perspective is mandatory.<sup>908</sup>

However, as shown in Chapter II, this perspective is not always applied to these cases.

Nevertheless, in recent years, we have seen an increasing trend among some courts to incorporate this perspective into the cases at hand, justifying this approach by acknowledging that gender violence is a form of discrimination<sup>909</sup> or that criminal law contains an inherent male bias, which leads inevitably to its unequal application.<sup>910</sup> However, as it now stands, this trend represents a mere token support rather than a genuine commitment to the application of a gender perspective.

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<sup>908</sup> COMITÉ DE EXPERTAS DEL MESECVI, *supra* note 268, at 4 (Similarly, the Committee of Experts on the Follow-Up Mechanism to the Belém do Pará Convention (MESECVI) has emphasized that cases in which women have killed their intimate partner require courts to apply a gender perspective. This approach involves recognizing the violent, gender-based circumstances in which these women are trapped, in alignment with their rights to life, and the respect for their physical, psychological, and moral integrity, as well as ensuring equal protection under the law).

<sup>909</sup> Cámara en lo Criminal of Formosa [CApel. Penal For] [Criminal Chamber of Formosa], 10/5/2023, “TORRES, DEBORA ESTEFANIA S/ HOMICIDIO DOBLEMENTE AGRAVADO POR EL VINCULO Y LA ALEVOSIA”, 2 available in chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://www.jusformosa.gov.ar/fx/jurisprudencia/FallosNove-dos/Penal/Violencia/Violencia%20de%20G%C3%A9nero-Homicidio%20Doblemente%20Agravado%20por%20el%20V%C3%ADnculo%20y%20Alevos%C3%ADa-Absoluci%C3%B3n%20(13.620-23%20CCII)/13620%20Con%20iniciales.pdf (Last visited Feb. 15, 2025) (Argentina); Corte de Apelaciones de Antofagasta (C.A. Antofagasta) (appellate court), 24 de julio 2021, “MP c/ Gabriela Mamani Anaya”, Rol de la causa: 648-2021, s., homicidio (homicide), Considerando Décimo Octavo, available at <https://oficinajudicialvirtual.pjud.cl/indexN.php> (Last visited March 16, 2025) (Chile); Suprema Corte de Justicia de la Nación (Supreme Court of Justice of the Nation) 07 de marzo de 2018, Amparo Directo En Revisión 6181/2016, s. homicidio cometido con ventaja (homicide committed with undue advantage), 31, available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.scjn.gob.mx/sites/default/files/listas/documento\_dos/2018-02/ADR-6181-2016-180208.pdf (Last visited February 15, 2025) (Mexico).

<sup>910</sup> Tribunal de Casación Penal de la Provincia de Buenos Aires [TCP BA] [Court of Cassation of Buenos Aires], 24/6/2016, “LÓPEZ, SUSANA BEATRIZ S/ RECURSO DE CASACIÓN INTERPUESTO POR PARTICULAR DAMNIFICADO”, available at Revista de Pensamiento Penal <https://www.pensamientopenal.com.ar/system/files/2016/03/fallos43080.pdf> (Last visited March 15, 2025) (Argentina).

Indeed, the great majority of the cases in which a gender perspective is applied are confrontational self-defense cases,<sup>911</sup> understood as the woman being under current aggression, including incessant aggression that has not formally ceased, or such an attack was imminent in the sense that it was about to happen.<sup>912 913</sup>

Of course, in these cases, the courts do not need to apply a gender perspective in order to find that the killing was justified. These cases should involve a straightforward application of self-defense doctrines. That the courts feel obliged to apply a gender perspective in these cases suggests that they do not perceive women as possessing the same capacity as men for the rational decision-making required by the traditional elements of self-defense.

Courts have not allowed women to make self-defense claims in non-confrontational scenarios in Argentina, Chile, and Mexico, though they have had ample opportunities to do so.<sup>914</sup> Courts have been presented with non-confrontational cases in which the defense's

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<sup>911</sup> Confrontational cases involve cases in which the woman is under active attack, but also under attack in the sense that it is incessant, that is, it has not formally ceased. See: LARRAURI, *supra* note 281, at 62 (It can be argued that when a woman uses a temporary pause in an assault to defend herself, the aggression remains ongoing because the struggle has not yet ended. In such cases, it is essential that the danger has completely subsided in order to consider the attack over.); Di Corleto, *supra* note 9, at 868 (Discussing the definition of ceased aggression, the author states that it is important to distinguish between a brief moment of calm amid a fierce attack and the end of the aggression. This is not easy to determine in cases of domestic abuse, given the prolonged moments of calm that the woman reasonably perceives as preceding an assault. In these scenarios, it has been suggested that past abuse be used to redefine the concept of "imminence adequately" or to evaluate the reasonableness of perceiving the aggression as imminent.)

<sup>912</sup> See cases cited *supra* note 909.

<sup>913</sup> CLAUS ROXIN, DERECHO PENAL PARTE GENERAL. FUNDAMENTOS. LA ESTRUCTURA DE LA TEORÍA DEL DELITO TOMO I 621 (1997) (This approach aligns with Roxin's concept of imminency, according to which it is also appropriate to act in self-defense against ongoing aggression that, though formally concluded, has not yet been materially exhausted).

<sup>914</sup> Tribunal de Casación Penal de la Provincia de Buenos Aires [T.C.P. Buenos Aires] [criminal appeal court], 17/10/2013, "Díaz, s/ Recurso de Casación", available <https://repositorio.mpd.gov.ar/jspui/handle/123456789/3086> (last visited Feb. 24, 2025) (Argentina) (The woman had an argument with her abusive partner during which he threatened to kill her and ordered her to

claim was self-defense based on the application of a gender perspective, and they have rejected the defense based on the traditional male-centric requirements –as shown in chapter II—or instead of granting self-defense, they have ruled that there is an excuse that excludes blameworthiness present in the case –declaring this either *ex officio* or previous petition of the defense.<sup>915</sup>

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leave their home. When she returned, he was lying in bed. Upon seeing her, he threatened to shoot her in the head. Knowing he kept a firearm in the bedside table, the woman acted quickly—she ran to the table, seized the weapon, and shot him twice. He died immediately. As a result, she was charged with homicide.); Tribunal en lo Criminal Nro 6. Lomas De Zamora [T.C. Lomas de Zamora] [Criminal Court n° 6 Lomas de Zamora], 9/12/2014, “L. S. B. s/ Recurso de casación interpuesto por Particular Damnificado y L. S. B. s/ Recurso de casación interpuesto por agente fiscal”, s. homicidio, 128, available at <https://www.saij.gob.ar/tribunal-criminal-nro-6-local-buenos-aires-lopez-susana-beatriz-fa14010145-2014-12-09/123456789-541-0104-1ots-eupmocsollaf?> But see: Di Corleto, *supra* note 7, at 126 (The author cites the case of Susana Lopez and Diaz as an example of an acquittal in a nonconfrontational scenario. However, in neither instance did the violence subside to the point where the woman killed her intimate partner while he was not actively attacking her. On the first case, the woman’s husband battered Susana López for hours: He insulted her, hit her, pulled her hair, raped her with the police baton, suffocated her with blankets, and threatened to kill their newborn child by pointing his gun at the baby and her. After retreating to the bathroom, Susana returned to find her partner continuing his abuse; as he forcibly pulled the blankets from her and lay down, she took his weapon that was in the middle of the bed and shot him in the face).

<sup>915</sup> Juzgado de Garantías en lo Penal N° 4 del Dep. Judicial de Gral. San Martín [Juzg. Garant. Penal Gral. San Martín] [Court of Guarantees in Criminal Matters, General San Martín], 28/5/2021, “Homicidio calificado por vínculo y ensañamiento – imputadas Paula Milagros Naiaretti c. Paola Elvira Córdoba”, available at <https://www.pensamientopenal.com.ar/fallos89166-buenos-aires-perspectiva-genero-sobresimiento-madre-e-hija-estado-necesidad.pdf> (Last visited March 16, 2025) (Argentina) (For example, consider the case of Paola Cordoba, a woman who suffered years of abuse from her husband. One night, after her abuser threatened to kill her when he woke up, she and her daughter fatally stabbed him 185 times while he slept. The prosecutor moved to elevate the case to trial, and the defense opposed, filing a dismissal of the case (i.e. “sobresimiento”) on the grounds that the defendants acted in self-defense under the application of a gender perspective. However, the Court rejected the self-defense claim, ruling that there was no concurrent or imminent illegitimate aggression—since the abuser was asleep, the requisite element of imminence was not met. However, analyzing *ex officio* ruled that the defendant should be excused under an exculpatory state of necessity.) See also: Supremo Tribunal de Justicia del Estado de Michoacán (Supreme Court of Justice of the State of Michoacán), 26 de noviembre de 2012, I-443/2012, s. homicidio calificado (aggravated homicide), 6, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.poderjudicialmichoacan.gob.mx/ContenidosWeb/transparencia/sentencias/genero/20121126\\_MORE3SP\\_Apelacion\\_homicidio.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.poderjudicialmichoacan.gob.mx/ContenidosWeb/transparencia/sentencias/genero/20121126_MORE3SP_Apelacion_homicidio.pdf) (Last visited March 16, 2025) (Mexico); Suprema Corte de Justicia de Mendoza [SCJ Mza.] [Supreme Court of Justice of Mendoza], 7/9/2017, “F C/ RUIZ CASAS, VANESA YANINA P/ HOMICIDIO AGRAVADO POR SER LA VICTIMA PERSONA QUE MANTENIA RELACION DE PAREJA CON EL AUTOR MED. CONVIV. (44503) P/ RECURSO EXT.DE CASACIÓN”, 24, available at <chrome->

In the few cases in which a gender perspective was applied to non-confrontational scenarios, the defendant claimed an excuse defense, such as an exculpatory state of necessity or insurmountable fear.<sup>916</sup> This, in practice, limits the use of a gender perspective to excuse defenses in which the defendant acknowledges having committed the prohibited act but claims she should not be held fully responsible due to her inability to form intent or to control her behavior.<sup>917</sup> In other words, in the few instances where a gender perspective was applied to non-confrontational cases, it was limited to situations in which women were determined to have been in an impaired state of mind at the time of the killing. Their actions, not conforming to legal norms, were deemed unjustified—characterized as

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extension://efaidnbmnnnibpcajpcglclefindmkaj/http://av.jus.mendoza.gov.ar/moodle/pluginfile.php/33337/mod\_resource/content/0/13-03696013-7%20-%20Ruiz%20Casas.pdf (Argentina)

<sup>916</sup> Consider the case of Karina Sepúlveda, a woman who endured years of abuse and ultimately killed her intimate partner while he was sleeping. As discussed in Chapter II, the trial court initially acquitted Karina by accepting her defense based on an exculpatory state of necessity. However, the prosecution appealed that decision, and the Court of Appeals reversed the ruling and remanded the case for a new trial. In its decision, the Appeals Court overlooked her history of domestic violence, assessing the criteria for her defense through a male-biased lens. Although Karina was again acquitted at the subsequent trial, the underlying problem persists. While it is commendable that the trial court employed a gender-sensitive perspective, the appellate decision reveals that higher courts may still fail to fully consider the impact of domestic abuse on a woman's actions. See in general: Tribunal de Juicio Oral en lo Penal de Puente Alto (T.J.O.P.) (criminal trial courts Puente Alto), 17 de enero de 2013, “MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS,” Rol de la causa: O-166-2012, s. parricidio (parricide), Considerando Undécimo, Tirant Latam online: LTM31.725.960. (Chile); Corte de Apelaciones de San Miguel (C. Apel. San Miguel) (court of appeals), 27 de marzo 2013, “MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS,” Rol de la causa: 133-2013, s. parricidio, available at <https://app.vlex.com/vid/karina-carmen-sepulveda-cisternas-488434634> (Last visited February 15, 2025) (Chile).

<sup>917</sup> Juzgado de Garantías en lo Penal N° 4 del Dep. Judicial de Gral. San Martín [Juzg. Garant. Penal Gral. San Martín] [Court of Guarantees in Criminal Matters, General San Martín], 28/5/2021, “Homicidio calificado por vínculo y ensañamiento – imputadas Paula Milagros Naiaretti c. Paola Elvira Córdoba”, 114, available at <https://www.pensamientopenal.com.ar/fallos89166-buenos-aires-perspectiva-genero-sobreseimiento-madre-e-hija-estado-necesidad.pdf> (Last visited March 16, 2025) (Argentina) (For example, in the case of Paola Cordoba, a woman who killed her intimate partner while he was sleeping with the help of her daughter, the Court indicates that the basis for the exculpatory state of necessity has been the notable narrowing of the defendant's scope of self-determination in the case, which is understood to neutralize any possibility of criminal reproach; hence, the defendant's blameworthiness is null, as she acted to preserve her own life and that of her children.)

irrational and lacking of full agency—thus warranting only an excuse rather than a justification.

The reason behind this limited application of a gender perspective might be attributed to engrained bias on the part of courts and lawyers, according to which women who have killed their intimate partners must be crazy or bad.<sup>918</sup> This issue will be discussed further in the final section of this chapter, but for now, it is worth saying that some women get leniency if they appear to be victims with no agency, and on the other hand, they get harshly punished when they do not conform to male parameters, this is, when they do not act like a woman should, nor like a man. Unfortunately, courts seem unwilling to consider that a woman subjected to severe, prolonged abuse could rationally kill her intimate partner in a non-confrontational scenario.

While it is commendable for courts to have started to apply a gender perspective to the cases of women who have killed their intimate partners, the incorporation of this perspective is limited, and courts are not using it to its full potential, which leads to problems like the ones this dissertation addresses.

## **2. Standards compatible with a gender perspective**

This section examines how adopting a gender perspective can address the key issues identified in this dissertation.

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<sup>918</sup> Noh et al, *supra* note 9, at 126.



## **2.1 Incorporating the history of domestic abuse into the assessment of criminal defenses**

The first issue outlined in Chapter II is that some courts fail to consider the history of domestic abuse when assessing the blameworthiness of women who are victims of domestic violence because criminal defenses are usually assessed through a male-biased lens, excluding the defendant's perspectives, and judging her under a standard determined and imposed by men.

A gender perspective would require judges to account for these women's history, experiences, knowledge, and perspectives and to refine several aspects of the judicial assessment of their defenses. Thus, it would redefine the interpretation of imminence, provide a more nuanced analysis of symmetry in cases of reciprocal violence, improve the identification of interests and harms at stake in cases involving self-defense and exculpatory state of necessity, and lead to a comprehensive assessment of the defendant's available alternatives.

### **2.2.1 Incorporating the experiences and perspective of the woman victim of domestic abuse in the analysis of imminence**

#### **2.2.1.1 Considering gender-based violence as a permanent threat is not enough**

Imminence is a crucial element in the cases under study. For example, self-defense and exculpatory state of necessity require a current or imminent illegitimate aggression. However, as mentioned in Chapter II, some courts keep requiring the defendant to show

she reacted to temporarily close aggression, excluding any other perspective and experiences of how violence occurs.

Regarding self-defense, the modern doctrine considers illegitimate aggression as current or imminent because the conflict has not concluded, focusing not on the temporary cease of it but on the complete disappearance of the danger.<sup>919</sup> Elena Larrauri has stated that to resolve the problem of imminence, it is necessary to adequately interpret the requirement of current or imminent illegitimate aggression.<sup>920</sup> This includes for the judge to consider that (1) the aggression might be current or imminent; (2) a threat must be considered as aggression, at least a future one; (3) to establish imminence it is necessary to assess the context and take into account the special knowledge the defendant might have; (4) in a permanent crime the aggression is ongoing, and therefore, it is considered concurrent (in the sense of current or imminent); (5) interrupted aggression is not a ceased aggression.<sup>921</sup>

Some authors have distinguished between the notion of imminence in confrontational and non-confrontational scenarios.<sup>922</sup> In the first case, it is argued that the aggressor's behavior immediately preceding a defensive action should be assessed in light of the broader domestic violence framework.<sup>923</sup> Regarding non-confrontational situations, some scholars argue that the imminence requirement is also met when a woman is

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<sup>919</sup> LARRAURI, *supra* note 281, at 62; LARRAURI AND VARONA, *supra* note 281, at 42; Di Corleto, *supra* note 9, at 869; Laurenzo, *supra* note 8, at 21; Villegas, *supra* note 381, at 157.

<sup>920</sup> LARRAURI, *supra* note 281, at 62; LARRAURI AND VARONA, *supra* note 281, at 42.

<sup>921</sup> LARRAURI, *supra* note 281, at 62; LARRAURI AND VARONA, *supra* note 281, at 42.

<sup>922</sup> LAURENZO ET AL, *supra* note 7, at 96.

<sup>923</sup> Di Corleto, *supra* note 7, at 113; Di Corleto, *supra* note 9, at 866-869.

subjected to continuous aggression.<sup>924</sup> However, the main idea of these authors is that it is necessary to consider the context of domestic violence when assessing imminence and that there is ongoing aggression in the cases of domestic abuse.

Similarly, the committee of experts of MESECVI has proposed that courts recognize domestic violence as a continuous phenomenon and treat illegitimate aggression as ever-present and, therefore, imminent.<sup>925</sup> According to this view, gender-based violence that exists within a couple cannot be considered an isolated occurrence, given its ongoing nature.<sup>926</sup> Consequently, the imminence requirement should not focus solely on the exact moment of the attack; rather, the attack is “one incident within a continuum of violence wherein the beginning is easily identifiable, but the end cannot be specifically determined.”<sup>927</sup> In this manner, defensive action is allowed in crimes of an ongoing or permanent nature where an unlawful state persists over time, such as in cases of domestic abuse.<sup>928</sup>

It is also worth mentioning that some authors –especially for non-confrontational scenarios– have argued that, rather than focusing solely on imminence, the evaluation should focus on the necessity of the aggression.<sup>929</sup> This proposal rejects the requirement of

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<sup>924</sup> See in general: María Camila Correa Flórez, *Legítima Defensa en Situaciones sin Confrontación: La Muerte del Tirano de Casa*. Carolina (2016) (P.h.D dissertation, Universidad Autónoma de Madrid), available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://repositorio.uam.es/bitstream/handle/10486/673003/correa\\_florez\\_camila.pdf?sequence=1&isAllowed=y](https://repositorio.uam.es/bitstream/handle/10486/673003/correa_florez_camila.pdf?sequence=1&isAllowed=y)

<sup>925</sup> COMITÉ DE EXPERTAS DEL MESECVI, *supra* note 268, at 7-8.

<sup>926</sup> COMITÉ DE EXPERTAS DEL MESECVI, *supra* note 268, at 7.

<sup>927</sup> *Id.* at 8.

<sup>928</sup> LAURENZO ET AL, *supra* note 7, at 96.

<sup>929</sup> See in general: Rosen, *supra* note 386; LARRAURI, *supra* note 281, at 62; LARRAURI AND VARONA, *supra* note 281, at 42; Laurenzo, *supra* note 379.

imminence and argues that the decisive criterion for justification lies in the necessity and reasonableness of the defensive action rather than in whether it constitutes a response to an actual or imminent attack.<sup>930</sup>

However, the aim of addressing the imminence requirement through interpretation reaches its limit when it entails disregarding or relaxing legal requirements solely because the defendant is a woman.<sup>931</sup> Incorporating the necessity criterion seems more like a “different criteria” to apply to the cases at hand than an interpretation of the requirement. This criterion sets aside established legal criteria that courts and doctrine apply to other cases of self-defense and replaces it with a new term when the person acting in self-defense is a woman.

Thus, replacing the requirement of imminence by necessity seems more like a suggestion for future legal reform (*lege ferenda*), rather than a reinterpretation of the current requirement. Presently, the standard in the three countries explicitly ties the requirement to a current or imminent attack. This *lege ferenda* perspective to replace imminence with necessity invites a broader discussion on how legal criteria might evolve to address the complexities of modern threats better without altering the established interpretative framework.

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<sup>930</sup> Mauro Masaro and Nuria Sardaños, *Problemas Dogmáticos y de Prueba en la Legítima Defensa en Casos de Mujeres Víctimas de Violencia de Género*, in GÉNERO Y JUSTICIA PENAL 47, 55 (Julieta Di Corleto Ed. 2017).

<sup>931</sup> Lorenzo, *supra* note 8, at 19.

Regarding the concept of imminence in exculpatory state of necessity, a sector of the doctrine states that this concept is not as rigid as in self-defense, and it admits an alternative approach that adopts a more flexible and lenient understanding of imminence; including harm that is not currently occurring nor posing an immediate threat but has the potential to become a threat at any moment—in other words, that it remains latent.<sup>932</sup>

Some courts in Argentina, Chile, and Mexico have begun to reshape the requirement of imminency, finding it satisfied on the ground that gender-based violence is an ongoing aggression and not an isolated act. However, this approach is usually applied to confrontational scenarios (when the woman is under current attack, including incessant attacks) in self-defense.<sup>933</sup> Exceptionally, it has also been applied to non-confrontational

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<sup>932</sup> Enrique Cury, *El estado de necesidad en el Código Penal Chile*, in LA CIENCIA PENAL EN LA UNIVERSIDAD DE CHILE 259 (Juan Pablo Mañalich Ed. 2013); ROXIN, *supra* note 913 at 903 (Author imminency of danger encompasses substantially longer periods than the immediacy of aggression.)

<sup>933</sup> See for example: Tribunal de Casación Penal de la Provincia de Buenos Aires [TCP BA] [Court of Cassation of Buenos Aires], 24/6/2016, “LÓPEZ, SUSANA BEATRIZ S/ RECURSO DE CASACIÓN INTERPUESTO POR PARTICULAR DAMNIFICADO”, 17, available at Revista de Pensamiento Penal <https://www.pensamientopenal.com.ar/system/files/2016/03/fallos43080.pdf> (Last visited March 15, 2025) (Argentina) (Insisting on a purely temporal understanding of immediacy would deny women any possibility of successfully invoking self-defense. In this regard, domestic gender-based violence should not be seen as isolated incidents but rather as continuous and incessant aggression.); Corte de Apelaciones de Antofagasta (C.A. Antofagasta) (appellate court), 24 de julio 2021, “MP c/ Gabriela Mamani Anaya”, Rol de la causa: 648-2021, s., homicidio (homicide), Considerando Décimo, available at <https://oficinajudicialvirtual.pjud.cl/indexN.php> (Last visited March 16, 2025) (Chile) (The court stated that the problem regarding the imminence of aggression in cases of gender-based violence lies in the failure to analyze the specific context of the abused woman, instead applying an abstract and chronological examination. This assessment should be psychological, aiming to determine the perpetrator’s persistent intent—such as when they return to the victim’s home after making threats. This intent becomes evident when it is established that such behavior persists over time.); Cuarto Tribunal Colegiado en Materia Penal del Segundo Circuito (Fourth Collegiate Criminal Court of the Second Circuit), 26 de agosto de 2021, Amparo Directo 101/2021, s. homicidio (homicide), 47, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://sise.cjf.gob.mx/SVP/word1.aspx?arch=07940000280472740007006.docx&sec=Alejandro\\_\\_Vilchis\\_Robles&svp=1](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://sise.cjf.gob.mx/SVP/word1.aspx?arch=07940000280472740007006.docx&sec=Alejandro__Vilchis_Robles&svp=1) (The trial court ruled that violence against women is continuous and of a cyclical nature. Also, the Mexican court stated imminence must be interpreted

scenarios in which the defendant argued an exculpatory state of necessity.<sup>934</sup> The ongoing aggression interpretation has not been applied to nonconfrontational cases in which the woman has claimed self-defense. Therefore, I extend the same critiques mentioned in the first section of this chapter.

Particularly, regarding the imminency requirement, it is evident how the courts do not apply the gender perspective to its full potential because women who kill their intimate partners in non-confrontational scenarios were also under ongoing violence.<sup>935</sup> Even more, women who are under active attacks by their intimate partners do not require an expanded concept of imminency. In this manner, it seems that the use of a gender perspective is limited to only when general norms can supply an answer.

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beyond the moment of illegitimate aggression, as such aggression does not occur in isolation but forms part of a continuum of violence, with a discernible beginning but no definite end.)

<sup>934</sup> Tribunal de Juicio Oral en lo Penal de Puente Alto (T.J.O.P.) (criminal trial courts Puente Alto), 17 de enero de 2013, “MP. C/ KARINA DEL CARMEN SEPULVEDA CISTERNAS,” Rol de la causa: O-166-2012, s. parricidio (parricide), Considerando Décimo y Undécimo, Tirant Latam online: LTM31.725.960. (Chile) (In Karina Sepúlveda’s case, The court also asserted it is no speculation nor a remote possibility that the defendant might have died at the hands of her aggressor because her life history of abuse supports this, not as one hypothesis among many, but as a plausible, possible, and imminent outcome, given that the aggressor showed no limits in his persistent and constant violence toward his partner); Suprema Corte de Justicia de Mendoza [SCJ Mza.] [Supreme Court of Justice of Mendoza], 7/9/2017, “F C/ RUIZ CASAS, VANESA YANINA P/ HOMICIDIO AGRAVADO POR SER LA VICTIMA PERSONA QUE MANTENIA RELACION DE PAREJA CON EL AUTOR MED. CONVIV. (44503) P/ RECURSO EXT.DE CASACIÓN”, 20, available at [chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/http://av.jus.mendoza.gov.ar/moodle/pluginfile.php/33337/mod\\_resource/content/0/13-03696013-7%20-%20Ruiz%20Casas.pdf](http://chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/http://av.jus.mendoza.gov.ar/moodle/pluginfile.php/33337/mod_resource/content/0/13-03696013-7%20-%20Ruiz%20Casas.pdf) (Argentina) (The Supreme Court relied on the existence of the cycle of violence to support the notion of a permanent threat, emphasizing that its cyclical nature demonstrated the continuous danger of harm. Therefore, regarding the concept of imminence, the court concludes that her attack cannot be analyzed in isolation but must consider the specific circumstances of the defendant, who is accustomed to enduring violence and mistreatment, establishing the existence of a permanent danger that could be triggered at any moment.)

<sup>935</sup> See in general: Correa, *supra* note 924.

Another problem with the ongoing character of violence interpretation is that it assesses the woman's situation from a third-party point of view—what an outsider might deem as “ongoing” aggression— which could differ from the woman's perspective based on her experiences and unique knowledge of her abuser's behavior. This has two main consequences.

On one hand, focusing only from a third-party perspective might exclude cases where these cycles of violence are long, intermittent, or deviate from conventional patterns and yet remain brutal for the woman. Now, I acknowledge that in most cases, the abuse observed from a third-party point of view aligns with the ongoing nature of this type of violence. For instance, the typical scenario of a woman being beaten daily would easily be classified as “ongoing” violence. However, there are cases that escape the typical pattern of behavior in which the aggression is still imminent.

For example, consider the case of a woman who is severely beaten every time her husband loses at poker night with his friends or whenever her partner becomes frustrated with his favorite team losing a football game. Although a pattern of abuse exists, it cannot be easily classified as “ongoing” violence because it is not constant over time, that is, it does not happen every day, but it is triggered by specific events unique to the relationship between the victim and the abuser.

Now let's add to this scenario that the woman, to avoid the acute battering incident, employs mechanisms to pacify the batterer, such as preparing his favorite meal or being quiet and cooperative. These mechanisms are effective when the tension starts building up,

but the abuser's rage will eventually be unleashed. However, the use of these mechanisms masks the pattern as difficult to identify, given their effectiveness is also intermittent.

On the other hand, there is a lack of certainty in the imminence of the aggression in cases where the violence is considered as “ongoing”, especially in those cases where the pattern is not based on repetitive abuse on a daily basis. Even in cases where a pattern follows the typical cycle of abuse, a significant amount of uncertainty remains regarding the actual materialization of the aggression. This is particularly true in situations where the woman strikes back while the abuser is engaged in actions unrelated to directly assaulting her at that moment.

#### **2.2.1.2 The hybrid standard of reasonableness in imminence**

##### **a) The hybrid standard of reasonableness in imminence**

One way to use the gender perspective to its full potential and ground the concept of “ongoing abuse” in each situation is by validating the knowledge, experiences, and perspectives of the woman involved in the abusive relationship.

In the U.S., some courts have been using these elements in cases in which women have killed their intimate partners in a context of domestic abuse. To start, many courts have moved from requiring a showing of an immediate threat to consider a broader –or more liberal– approach, given the cyclic context of domestic violence to which the defendants are exposed (similar to the “ongoing” threat doctrine in Argentina, Chile, and



Mexico).<sup>936</sup> However, this concept of imminency is complemented by the concept of reasonableness, which requires the defendant to reasonably fear imminent death or serious bodily harm to justify the use of deadly force in self-defense.<sup>937</sup>

Most jurisdictions apply a hybrid standard of reasonableness that encompasses an objective and subjective prong.<sup>938</sup> The first prong requires that, under the same circumstances, a similarly situated person would have reasonably perceived a threat as imminent.<sup>939</sup> The second prong requires the defendant to genuinely and honestly believe that the harm was imminent based on all the circumstances she perceived at the time.<sup>940</sup>

The objective prong of this test is complemented by the subjective one by examining what a third party would have believed if they had occupied the woman's position and shared her perception of the imminence of the threat. In the words of D. Kelly Weisberg, an imminent threat is "an anticipatory perception of events that are mentally processed within the context of situational and behavioral cues."<sup>941</sup>

Moreover, some courts in the United States have acknowledged that expert testimony is relevant to the reasonableness of the defendant's belief that she was in imminent danger of death or serious injury.<sup>942</sup> Take, for example, the case of Donna

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<sup>936</sup> WEISBERG, *supra* note 154, at 222.

<sup>937</sup> *Id.*

<sup>938</sup> *Id.* at 222-223.

<sup>939</sup> *Id.*

<sup>940</sup> *Id.*

<sup>941</sup> *Id.* at 222.

<sup>942</sup> *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984) (The New Jersey Supreme Court established expert testimony on battered woman syndrome was relevant to honesty and reasonableness of the defendant's belief that she was in imminent danger of death or serious injury and was an appropriate subject for expert testimony. Depending on its content, the expert's testimony might also enable the jury to find that the battered wife, because of the prior beatings, numerous beatings, as often as once a week, for seven years, from the

Bechtel, who was convicted of first-degree murder for the fatal shooting of her husband.<sup>943</sup> The couple had a long history of domestic violence, in which her partner frequently abused the defendant physically and emotionally, often under the influence of alcohol.<sup>944</sup> On the night of the homicide, Mr. Bechtel violently assaulted, raped, and threatened to kill the defendant.<sup>945</sup> Before he attacked her again, she reached for the gun under the bed and shot the deceased as she tried to get up and run.<sup>946</sup> The defense claimed self-defense under the context of Battered Woman Syndrome, but expert testimony was excluded at trial, reasoning that “the bare belief that one is about to suffer death or great personal injury will not, in itself, justify taking the life of his adversary.”<sup>947</sup> The defendant appealed.<sup>948</sup>

The trial court refused to allow expert testimony on Battered Woman Syndrome on the ground that the testimony was neither necessary nor helpful to the jury’s assessment of the defense.<sup>949</sup> However, the Appeals Court agreed with the appellant that the syndrome was relevant “to help the jury understand the battered woman and why the appellant acted

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day they were married to the day he died, is particularly able to predict accurately the likely extent of violence in any attack on her. That conclusion could significantly affect the jury's evaluation of the reasonableness of the defendant's fear for her life.); *People v. Torres*, 128 Misc. 2d 129, 488 N.Y.S.2d 358 (Sup. Ct. 1985); *People v. Humphrey*, 13 Cal. 4th 1073, 921 P.2d 1 (1996) (The California Supreme Court recognized that expert testimony on battered woman syndrome could help juries understand how a history of abuse affects a woman's perception of danger. The court noted that such testimony might enable the jury to find that the battered wife, because of prior beatings, is particularly able to predict accurately the likely extent of violence in any attack on her); *State v. Leidholm*, 334 N.W.2d 811, 820 (N.D. 1983) (The Supreme Court of North Dakota upheld the instruction given to the jury “The jury's use of a subjective standard of reasonableness in applying the principles of self-defense to the facts of a particular case requires it to consider expert testimony, once received in evidence, describing battered woman syndrome and the psychological effects it produces in the battered spouse when deciding the issue of the existence and reasonableness of the accused's belief that force was necessary to protect herself from imminent harm.”).

<sup>943</sup> *Bechtel v. State*, 1992 OK CR 55, ¶ 2, 840 P.2d 1, 4.

<sup>944</sup> *Id.* at 4-5.

<sup>945</sup> *Id.* at 5-6.

<sup>946</sup> *Id.* at 6.

<sup>947</sup> *Id.*

<sup>948</sup> *Id.* at 1.

<sup>949</sup> *Id.* at 6-7.

out of a reasonable belief that she was in imminent danger when considering the issue of self-defense.”<sup>950</sup>

Most importantly, the Court of Appeals determined that the expert testimony was relevant to aid the trier of fact in establishing reasonableness and imminence.<sup>951</sup> Regarding reasonableness, the Court of Appeals established that one condition is especially relevant to this requirement: the greater sensitivity to danger that results from the intimacy and history of the relationship.<sup>952</sup> Because of the cycle of violence, the woman develops a heightened sensitivity to any cues of distress, and because of her intimate knowledge of her batterer’s actions, she perceives danger faster and more accurately.<sup>953</sup>

The court held that the lower court should have applied a “hybrid” standard, combining the subjective and objective standards of reasonableness, and it provided new instructions to be given in all Battered Woman Syndrome cases: “A person is justified in using deadly force in self-defense if that person believed that use of deadly force was necessary to protect herself from imminent danger of death or great bodily harm. Self-defense is a defense although the danger to life or personal security may not have been real, if a person, in the circumstances and from the viewpoint of the defendant, would reasonably have believed that she was in imminent danger of death or great bodily harm.”<sup>954</sup>

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<sup>950</sup> *Id.* at 8.

<sup>951</sup> *Id.* at 9.

<sup>952</sup> *Id.*

<sup>953</sup> *Id.* (“It is during the tension-building period that the battered woman develops a heightened sensitivity to any kinds of cues of distress. Thus, because of her intimate knowledge of her batterer, the battered woman perceives danger faster and more accurately as she is more acutely aware that a new or escalated violent episode is about to occur.”)

<sup>954</sup> (*Bechtel v. State*, 1992 OK CR 55, ¶ 14, 840 P.2d 1, 11) (“While the instruction explicitly states that the fact finder should assume the viewpoint and circumstances of the defendant in assessing the reasonableness

Later, when assessing the imminence requirement, the Appeals Court connected this concept to the hybrid reasonableness standard, establishing that the meaning of imminent “must necessarily envelop the battered woman's perceptions based on all the facts and circumstances of her relationship with the victim.”<sup>955</sup> The court, citing Elizabeth Bochnak, noted that a woman might kill her mate during the period of threat preceding a violent incident during a lull in an assaultive episode or even after it had culminated to prevent a recurrence.<sup>956</sup> As stated by the Appeals Court, “the issue is not whether the danger was in fact imminent, but whether, given the circumstances as she perceived them, the defendant's belief was reasonable that the danger was imminent.”<sup>957</sup> In this manner, imminence is intrinsically linked to the concept of reasonableness, given that it goes beyond assessing whether the threat is objectively near in time and instead focuses on what the defendant perceived.

#### **b) The Battered Woman Syndrome and imminence**

Juliana Di Corleto noted that comparative law—in the United States, in particular—has relied on expert testimony to explain the experiences of women subjected to abuse, especially when they suffer from Battered Woman Syndrome.<sup>958</sup> The author states that women may possess specific knowledge about their abusers’ patterns of behavior, enabling

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of his or her belief, i.e. subjective, it also requires the defendant's viewpoint to be that of a reasonable person, in similar circumstances and with the same perceptions, i.e., objective. Thus, Oklahoma's standard is a hybrid, combining both the objective and subjective standards.”)

<sup>955</sup> Bechtel v. State, 1992 OK CR 55, ¶ 14, 840 P.2d 1, 12

<sup>956</sup> Bechtel v. State, 1992 OK CR 55, ¶ 14, 840 P.2d 1, 12

<sup>957</sup> Bechtel v. State, 1992 OK CR 55, ¶ 14, 840 P.2d 1, 12

<sup>958</sup> Di Corleto, *supra* note 9, at 873.

them to anticipate future acts of violence.<sup>959</sup> She contends that expert testimony on Battered Woman Syndrome can help explain both the risks faced by abused women and their perceptions of those risks.<sup>960</sup> Thus, Walker's theory –despite its drawbacks– becomes a valuable tool for assessing whether the woman's belief in an imminent attack was reasonable, assess the potential level of aggression she might face, illustrate the diversity of women's experiences, clarify the effects and sequelae of domestic abuse, and dispel prevailing myths.<sup>961</sup>

However, the current presentation of this idea does not clearly explain the relationship between Argentinian self-defense law and U.S. legal standards, which leads to other problems. First, although the author clarifies that she does not intend to replace Argentine law with American law, by suggesting that expert testimony can be helpful in assessing the reasonableness of the woman's belief in danger, she is indeed conflating U.S. self-defense requirements to those applicable in Argentina.<sup>962</sup> However, there is no requirement of reasonableness of the belief of the defendant in imminent danger in the Latin Countries object of investigation. Second, it is difficult to reconcile the portrayal of the woman as a knowledgeable individual—sensitive to the abuser's cues and capable of rationally assessing his behavior—with expert testimony on Battered Woman Syndrome, which emphasizes that her mental state was compromised. In this framework, while the woman can present her assessments and perspectives on the abuse, the judge may still

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<sup>959</sup> *Id.* at 873-873.

<sup>960</sup> *Id.*

<sup>961</sup> *Id.* at 875.

<sup>962</sup> *Id.*

conclude that her altered state does not make the threat any more real than it objectively was. Third, the author advocates for the use of expert testimony based on Battered Woman Syndrome with pedagogical purposes. While there is intrinsic value in courts and legal practitioners' education on the dynamics of domestic violence, it is not an appropriate method to use legal cases of women defending themselves from murder sentences for instructing legal professionals.

### **b) Incorporating elements from the hybrid standard of reasonableness**

In Argentina, Chile, and Mexico, judges assess the requirements for a defense from an objective standpoint.<sup>963</sup> However, this does not prevent the factfinder from considering the defendant's specific circumstances as part of the objective analysis of positioning in the place of the defendant –this is applicable to self-defense and exculpatory state of necessity.<sup>964</sup> As Cerezo Mir Pug states, the judge must perform an *ex ante* analysis—placing themselves in the defender's shoes at the moment when the aggression was perceived as imminent or about to begin.<sup>965</sup> Thus, the judge is not evaluating whether the woman believed she was in danger –as in a subjective standard of reasonableness.<sup>966</sup>

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<sup>963</sup> This becomes evident when we note that the self-defense laws in these Latin countries do not consider the defendant's subjective perceptions when determining imminence, nor do they employ terminology that reflects what the defendant perceived as imminent. On the other hand, in the U.S. self-defense commonly requires an "honest" belief of the imminency of harm.

<sup>964</sup> Laurenzo, *supra* note 8, at 21; LARRAURI, *supra* note 281, at 68-69; LARRAURI AND VARONA, *supra* note 281, at 48; Juan Acosta, *Artículo 10 N.ºs. 7º y 11º del Código Penal. Algunos criterios de delimitación*, in HUMANIZAR Y RENOVAR EL DERECHO PENAL. ESTUDIOS EN MEMORIA DE ENRIQUE CURY 702 (Ed. Alex Van Weezel 2013); ROXIN, *supra* note 913 at 677; Guerra, *supra* note 574, at 42.

<sup>965</sup> JOSÉ CEREZO MIR, CURSO DE DERECHO PENAL ESPAÑOL. PARTE GENERAL, Tomo II 234 (6ª ed. 1998). See also: Villegas, *supra* note 381, at 153.

<sup>966</sup> Indeed, in neither case does the judge evaluate whether the woman perceived an imminent threat of death at the hands of her intimate partner.

However, even when the assessment is objective, this does not mean to exclude every element that comes from the defendant's internal forum, given that some of these elements determine the circumstances the judge is required to assess. Part of the doctrine has noted that the defendant's specialized knowledge should be considered part of this objective assessment of the defendant's circumstances because such insights can enable her to detect the immediacy of an attack that might otherwise go unnoticed by a third party.<sup>967</sup> Similar to linear regression, these elements can help predict how the abuser is likely to act in the future. However, the analysis should not be limited to the defendant's knowledge of the abuser's behavior.

The U.S. hybrid standard becomes particularly useful in this context, given that it illustrates the defendant's state of mind, providing an understanding of why a battered woman might perceive a threat as imminent, even when it is not immediate.<sup>968</sup> As previously noted, one of the elements of the objective prong of the hybrid standard applied by U.S. courts is the consideration of the circumstances and viewpoint of the defendant. This implies that "standing in the defendant's shoes" entails not only situating oneself within the context of domestic abuse but also adopting her perspective in assessing the perceived threat.<sup>969</sup>

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<sup>967</sup> Di Corleto, *supra* note 9, at 875; Lorenzo, *supra* note 8, at 21.

<sup>968</sup> WEISBERG, *supra* note 154, at 222. See also: WALKER, *supra* note 109, at 431; DOWNS, *supra* note 202, at 249.

<sup>969</sup> BROWNE, *supra* note 200, at 175 ("In the case of battered women, it is necessary to document clearly that the use of deadly force resulted because the woman believed her life to be in imminent danger. A history of physical abuse alone does not justify the killing of the abuser. Having been physically assaulted by the abuser in the past is pertinent to such cases only as it contributes to the defendant's state of mind at the time the killing occurred ; E. G., in that it formed the basis for the woman's perception of being in imminent danger or severe bodily harm or death at the hands of her partner.")

Viewing the situation from the woman's perspective is part of the circumstances the judge must take into account, and they must consider not only the woman's knowledge of her abuser, but also additional factors that may help assess the imminence of an attack from her viewpoint—such as the failure of coping mechanisms and an increased sensitivity to danger. These elements, which belong to the woman's internal forum, are nevertheless relevant to the objective assessment of imminence, insofar as they form part of the circumstances surrounding the defendant and must be considered *ex ante*, in light of her specific characteristics

Some coping mechanisms are employed by the woman to de-escalate or calm the batterer.<sup>970</sup> These are also referred to as appeasement coping mechanisms, similar to those observed in syndromes such as Stockholm syndrome.<sup>971</sup> For example, she might try to please her partner by cooking special food that he likes, initiating or agreeing to sex, or not bringing up topics that will upset him.<sup>972</sup>

However, as the tension builds up, the mechanisms tend to fail, signaling that an attack is imminent.<sup>973</sup> Because only the woman can identify which coping mechanisms have begun to fail, this element—though rooted in her internal state—is relevant to determining the circumstances of the defendant in the objective assessment of imminence

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<sup>970</sup> WALKER, *supra* note 115, at 57-58; GONDOLF AND FISHER, *supra* note 177, at 16.

<sup>971</sup> See in general: Rebecca Bailey et al., *Appeasement: Replacing Stockholm Syndrome as a Definition of a Survival Strategy*, 13 *Journal of Trauma & Dissociation* 1 (2023) (Proposing “appeasement” as a neurobiological survival mechanism to calm perpetrators).

<sup>972</sup> Nancy K.D. Lemon, *Declaration of Nancy K.D. Lemon, In re Charges Against Ross Mirkarimi*, San Francisco Ethics Commission 4 (2012), [https://sfethics.org/wp-content/uploads/2015/04/Declaration\\_of\\_Nancy\\_Lemon\\_strikethru.pdf](https://sfethics.org/wp-content/uploads/2015/04/Declaration_of_Nancy_Lemon_strikethru.pdf)

<sup>973</sup> WALKER, *supra* note 115, at 59 (“As the tension escalates within a couple during the first phase of the cycle of violence, it becomes more difficult for the coping techniques to work”).



in a similar way knowledge conferred the woman a special ability to detect an imminent attack, the failure of her coping mechanism predict an attack as well.

Also, the woman has developed a heightened perception of danger that allows her to predict the severity of harm she is about to receive. These women become highly attuned to their abuser's behavior, enabling them to anticipate when violence is likely to escalate to the point of serious bodily harm or death.<sup>974</sup> Due to their familiarity with the cycles of abuse, they may interpret specific actions or subtle changes in the abuser's behavior—insignificant to an outsider—as clear indicators of an imminent or more severe attack.<sup>975</sup>

Incorporating these three elements –knowledge, failure of coping mechanisms and heightened sensitivity to danger– make the threat of harm more than a mere possibility; she is perfectly positive to make a well-founded prediction of what is likely to occur and the severity of the attack is about to happen to her.

Also, expert testimony would be useful to assess and corroborate the defendant's specialized knowledge of the abuser's behavior, lending credibility to her account of the battering behavior that culminated in the abuser's death, demonstrating that her knowledge is not merely subjective but is grounded in observable, consistent patterns. Expert

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<sup>974</sup> Crocker, *supra* note 388, at 127 (Because they become attuned to stages of violence from their husbands, they may interpret certain conduct to indicate an imminent attack or a more severe attack.). See also: DOWNS, *supra* note 202, at 249.

<sup>975</sup> Schneider, *supra* note 386, at 634 (“Subtle motions or threats that might not signify danger to an outsider or to the trier of fact acquire added meaning for a battered woman whose survival depends on an intimate knowledge of her assailant.”); Crocker, *supra* note 388, at 127 (“subtle gesture or a new method of abuse, insignificant to another person, may create a reasonable fear in a battered woman.”); BOCHNAK, *supra* note 384, at 44-45 (“The battered woman learns to recognize the small signs that precede periods of escalated violence. She learns to distinguish subtle changes in tone of voice, facial expression, and levels of danger. She is in a position to know, perhaps with greater certainty than someone attacked by a stranger, that the batterer's threat is real and will be acted upon.”)

testimony can also examine her coping mechanisms, showing that she acted as a rational agent capable of anticipating a subsequent attack, rather than as someone with impaired or distorted judgment. In addition, expert testimony can be useful to show how this heightened perception of danger might play an important role in identifying an imminent aggression.

It is essential to demonstrate that the defendant's actions were rational rather than born from mental impairment. Otherwise, expert testimony risks undermining her account by providing grounds to dismiss her perspective when evaluating a third party in similar circumstances. The main reason for this is that because the analysis in Latin countries is mainly focused on objective elements, the knowledge or intel that the woman has because of her history of domestic abuse becomes overshadowed by the psychological impairments that depict her as mentally unstable. For this reason, expert testimony based on the Battered Woman Syndrome might be unhelpful in making the woman look like a rational agent, given the criticism it has received portraying women as flawed and impaired.

Instead, I sustain that the Survivor Theory—a theory that we will analyze in the second part of this section—offers a more effective framework for evaluating imminence in self-defense claims because it reframes abused women as active, rational agents rather than passive victims. By emphasizing survivors' ability to assess danger and make calculated decisions, this theory bridges the gap between the defendant's subjective experience and the objective standard of what a reasonable person would perceive in the same situation. Expert testimony grounded in Survivor Theory can thus validate the defendant's immediate perception of threat by showing that her response was both a product of her lived experience and a rational reaction to imminent danger. This dual

validation not only enhances the credibility of the self-defense claim but also better captures the reality of domestic abuse, making the Survivor Theory a particularly valuable tool in assessing imminence.

### **2.2.1.3 Compatibility of the standard with a gender perspective and effects of its application**

Considering the defendant's knowledge, failure of coping mechanisms, and heightened perception of danger as part of the circumstances and viewpoint of the defendant in the hybrid standard of reasonableness is compatible with a gender perspective.

First, rather than excluding elements rooted in the woman's internal forum, these elements are part of the defendant's circumstances and thus relevant to the objective *ex ante* analysis. Applying this approach to the concept of imminence in Argentina, Chile, and Mexico makes the term imminency more comprehensive, including those cases that are not easy to catalog as "ongoing." Incorporating the woman's experiences to determine the imminence of a threat allows the consideration of information that only she possesses—information that a third party would not know—thereby revealing patterns of abuse even when the abuse does not occur daily. Also, it does not leave the determination of imminency solely to the woman's subjective fear of the abuser, as the standard maintains the objective element, requiring that a person in the woman's situation would also have perceived the threat as imminent.

Second, using a Survivor Theory as a base avoids pathologizing the defendant's actions and instead presents her as a rational and knowledgeable actor capable of

anticipating violence based on lived experience. This reframing avoids stereotypes of passivity and mental impairment often reinforced by Battered Woman Syndrome. By validating her perception of imminent danger and recognizing the asymmetries of power inherent in abusive relationships, this model aligns with the core tenets of a gender perspective—namely, the need to acknowledge structural inequalities and integrate the voices and experiences of women into legal reasoning.

### **2.2.2 Assessing crossed violence through the lens of power and control**

As discussed in Chapter II, one of the problems of disregarding the history of domestic abuse is the assumption of gender symmetry in intimate partner violence—i.e., that in cases of mutual violence, there is symmetry between adversaries. This assumption is based on flawed studies that failed to consider that measuring violence requires looking beyond mere scores on physical aggression and taking into account their magnitude and motivation. However, the main problem in cases where women exercise violence against their partners previous to the fatal event is that judges in Argentina, Chile, and Mexico arrogate the authority and knowledge to classify the typology of violence within a couple, often misinterpreting women's use of violence as indicative of a symmetrical dynamic in the relationship based on witness statements.

### **2.2.2.1 The power and control standard to determine the type of violence in a relationship**

In some cases in which women have killed their intimate partner, there is evidence that the woman was physically aggressive towards her abuser in the past. In such cases, the courts must pay attention to the dynamics of power and control rather than focus solely on the physical exchange of aggression.<sup>976</sup>

Women's use of force differs from men's, not only because women are the primary victims of intimate partner violence in Argentina, Chile, and Mexico but also because their motivations for using force often stem from defending themselves or attempting to escape.<sup>977</sup>

American professor Michael Johnson proposes a typology of intimate partner violence that recognizes these circumstances. This typology is compatible with a gender perspective because it considers the history of domestic abuse thoroughly rather than focusing on isolated incidents or individual acts of violence. Instead, it examines the dynamics of power and control within the relationship, which ultimately determine the existence of domestic violence.

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<sup>976</sup> Office on Violence Against Women, *Domestic Violence*, <https://www.justice.gov/ovw/domestic-violence> (last visited Feb. 24, 2025) (The United Nations defines domestic violence as “a pattern of abusive behavior toward an intimate partner in a dating or family relationship, where the abuser exerts power and control over the victim.”)

<sup>977</sup> See *supra* note 422.

Johnson directed research on gender symmetry and asymmetry in domestic violence cases based on the behavior of both people in the relationship.<sup>978</sup> According to his findings, intimate partner violence can be categorized into four types:

(i) Intimate Terrorism (Gender-Asymmetric), which involves one partner being both violent and controlling, often as a strategy to dominate the other, with men predominantly perpetrating this type in heterosexual relationships.<sup>979</sup> It is characterized by frequent and escalating violence, severe injuries, and psychological harm.<sup>980</sup>

(ii) Violent Resistance (Gender-Asymmetric), which occurs when one partner responds to an abusive and controlling partner with violence but does not exert control themselves; this is typically seen in women resisting male intimate terrorists.<sup>981</sup>

(iii) Situational Couple Violence (Gender-Symmetric), which arises from specific conflicts without an overarching pattern of control by either partner.<sup>982</sup>

(iv) Mutual Violent Control (Gender-Symmetric), which describes relationships where both partners are violent and controlling, representing a rare dynamic involving power struggle.<sup>983</sup>

In this paradigm, physical assault is one mechanism used to exert control over the subordinated partner, but not the key factor.<sup>984</sup> The fact that a woman employs violence

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<sup>978</sup> Michael P. Johnson, *Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence*, 12 *Violence Against Women* 1003 (2006).

<sup>979</sup> *Id.* at 1010.

<sup>980</sup> *Id.*

<sup>981</sup> *Id.*

<sup>982</sup> *Id.*

<sup>983</sup> *Id.*

<sup>984</sup> *Id.* at 1005 (“The basic idea is to look at a variety of nonviolent, controlling behaviors to identify individuals who behave in a manner that indicates a general motive to control. Note that (a) this moves the

does not necessarily suggest that the couple is engaged in a Mutual Violent Control scenario, which is characterized by symmetry in the relationship's control dynamics. There are other scenarios, such as Violent Resistance and Situational Couple Violence, in which the woman might also exercise violence with purposes other than exerting control.

Furthermore, Johnson stated that Violent Resistance is almost entirely a woman's type of violence in this sample of heterosexual relationships because in these marriages, almost all of the intimate terrorism is perpetrated by men, and in some cases, the wives do respond with violence, although rarely are they also controlling.<sup>985</sup>

Thus, it is fair to say that when a woman exerts violence, three possible scenarios arise, rather than just one, as judges often mistakenly assume. Moreover, according to this research, there is a high likelihood that a woman engaged in a physical confrontation with her intimate partner before his death was attempting to repel an attack that was part of his intimate terrorism, rather than, as some judges erroneously conclude, engaging in mutual violence under equal conditions.

Again, *Bechtel v. State* provides a helpful example of how courts should approach cases that involve violence by a woman. Oklahoma Court of Criminal Appeals reversed

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focus from the nature of any one encounter between the partners to a search for patterns of behavior in the relationship as a whole, and (b) it most certainly is not based in the nature of the violent acts themselves.”); Office on Violence Against Women (OVW) U.S. Department of Justice, *Domestic Violence*, <https://www.justice.gov/ovw/domestic-violence#:~:text=Domestic%20violence%20can%20be%20physical,within%20an%20intimate%20partner%20relationship> (last visited Mar. 22, 2025) (“Domestic violence can be physical, sexual, emotional, economic, psychological, or technological actions or threats of actions or other patterns of coercive behavior that influence another person within an intimate partner relationship. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.”)

<sup>985</sup> Johnson, *supra* note 978, at 1010.

the defendant's conviction, finding that the trial court erred in including a mutual combat jury instruction and excluding expert testimony on Battered Woman Syndrome.<sup>986</sup> The mutual combat instruction—which states that self-defense is unavailable to someone who voluntarily engages in a fight—was deemed inappropriate because there was insufficient evidence that the Appellant was the aggressor who provoked the altercation or voluntarily entered into mutual combat.<sup>987</sup> In other words, the instruction misrepresented the dynamics of the case, where the defendant's actions were more consistent with a defensive response to prolonged abuse rather than mutual violence.

There must be evidence that establishes the precise characteristics of the violence in a relationship. There is not enough proof that there was violence. For instance, merely having witnesses testify that they previously saw the victim with scratches and bruises—such as in the case of Claudia Moya—is not enough. Witnesses can only describe what they observed; it is the judge who must draw conclusions based on their testimony. However, determining the control dynamics within violent relationships is beyond the expertise of a judge. It requires an expert to evaluate the relationship using intimate partner violence screening tools.

Some of these tools are, for example, the Danger Assessment (DA), the Conflict Tactics Scale (CTS/CTS2) (often complemented by other tests), the Psychological Maltreatment of Women Inventory (PMWI), and the Woman Abuse Screening Tool

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<sup>986</sup> Bechtel v. State, 1992 OK CR 55, ¶ 1, 840 P.2d 1, 4

<sup>987</sup> Bechtel v. State, 1992 OK CR 55, ¶ 45, 840 P.2d 1, 14



(WAST).<sup>988</sup> This dissertation does not aim to identify the best screening tool or advocate for the use of any specific one. But appropriate tools are available and it is the expert's responsibility to select the most effective to assess the dynamics of the relationship. In this way, the expert can assist the judge to determine whether a woman's violence is a reactive response to the abuse she is experiencing or an attempt to exert control over her partner.

#### **2.2.2.2 Compatibility of the standard with a gender perspective and effects of its application**

Johnson's typology of intimate partner relationships is compatible with a gender perspective for three reasons.

First, a gender perspective requires the judge to determine whether an asymmetrical power dynamic underlies a relationship in cases where women kill their intimate partners after having previously used violence against their abusers.<sup>989</sup> This is essential given that domestic violence is defined in terms of power and control, and it is a type of violence against women.<sup>990</sup> This last kind of violence is also a type of discrimination that reinforces women's subordinate position to men and their stereotyped roles, creating a barrier to

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<sup>988</sup> See in general: Rebecca F Rabin et al., *Intimate Partner Violence Screening Tools: A Systematic Review*, 36 AM. J. PREVENTIVE MED. 439 (2009); Nasir Hussain et al., *A Comparison of the Types of Screening Tool Administration Methods Used for the Detection of Intimate Partner Violence: A Systematic Review and Meta-Analysis*, 16 TRAUMA, VIOLENCE, & ABUSE 60 (2015); Mary Paterno and Jessica E Draughon, *Screening for Intimate Partner Violence*, 61 J. MIDWIFERY & WOMEN'S HEALTH 370 (2016).

<sup>989</sup> PODER JUDICIAL, SECRETARIA TÉCNICA IGUALDAD DE GÉNERO Y NO DISCRIMINACIÓN, *supra* note 719 at 93.

<sup>990</sup> World Health Organization, *Intimate Partner Violence*, (Mar. 5, 2025, 10:53 AM), <https://apps.who.int/violence-info/intimate-partner-violence/> (United Nations defines it as "a pattern of behavior in marriage or intimate partnership used to gain or maintain power and control over an individual through physical, sexual, emotional, economic, or psychological actions or threats that influence another person.")

achieving substantive equality.<sup>991</sup> For this reason, this typology is helpful for a judge to be aware of all angles of domestic violence and not assume that the common scenario in which a man attacks a woman repetitively is the only scenario possible and that an asymmetric relationship of subordination can still be present in a couple despite woman's physical attacks to her partner.

Second, this typology aligns with a gender perspective by presenting a more accurate and comprehensive understanding of domestic violence as a phenomenon rooted in power and control rather than solely in physical aggression. Recognizing domestic violence in this broader sense expands the spectrum of domestic abuse to include cases of women who suffered from abuse but were previously dismissed for not fitting the judge's preconceived notion of an asymmetric relationship. This approach acknowledges that domestic abuse encompasses not only women who endure mistreatment in silent helplessness but also those who defend themselves—scratching, punching, slapping, or insulting in response to repeated harm from their abuser. Ultimately, this broader recognition helps uphold women's rights to equality and non-discrimination, ensuring that all survivors of domestic violence, regardless of how they respond to abuse, receive equal legal consideration.

Third, this typology is compatible with a gender perspective because it breaks with the stereotypes of a "perfect victim"—being passive and submissive—, acknowledging that some women, in fact, defend themselves. This will be explored in depth in the final

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<sup>991</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence against Women, ¶10, U.N. Doc. E/C.12/2017/35, (2017).

standard of this chapter, but for now, the key point is that Johnson's typology aligns with a gender perspective because it expands the universe of women who suffer from domestic violence and, therefore, whose history of abuse requires being considered when assessing their defenses.

Michael Johnson's typology addresses the false assumption of symmetry in cross-violence by providing a framework that helps correct the misclassification made by judges in Argentina, Chile, and Mexico. The origin of this mistake is that they assume that mutual violence indicates a symmetrical dynamic of power, where the relationship actually is marked by one-way abuse and a power imbalance within the relationship. Johnson's distinguishes different forms of intimate partner violence based on control dynamics rather than isolated incidents of physical aggression. An expert can bring this perspective to the attention of the judge, and, at the very least, help establish that a woman's use of violence does not necessarily indicate symmetry in an abusive relationship.

Additionally, expert testimony pinpointing the type of violence within a couple ensures that a qualified professional makes this essential evaluation. This approach prevents judges from relying solely on their subjective interpretations or witness statements, which may misrepresent the dynamics of abuse, and instead allows for an informed evaluation based on established screening tools and expertise in intimate partner violence.

### **2.2.3 Using the Danger Assessment Instrument to evaluate the risk of lethal or severe bodily harm in abusive relationships**

As discussed in Chapter II, one of the problems of disregarding the history of domestic abuse is that courts fail to identify and ponder the interests and harms involved in self-defense and exculpatory state of necessity. This directly affects the reasonable need for the means employed to prevent or repel aggression (proportionality) in the first one, and the requirement of the harm caused must not significantly exceed the harm being avoided in the second one. An error in this identification leads to misjudgment of the severity of violence and the level of danger of death or severe bodily harm. If the court does not take into account the level of violence and danger for the woman when assessing a defense, then it effectively denies the severity of the abuse she endured.

#### **2.2.3.1 Expanding the concept of imminence: Advancing toward a gender perspective to extend the time frame**

A gender perspective requires the judge to consider the history of domestic abuse when assessing the requirements of self-defense and the exculpatory state of necessity. As previously discussed in this chapter regarding the concept of imminence, applying a gender perspective shifts the focus from strict temporal proximity to a more flexible understanding. This broader approach includes harm that, while not currently occurring or posing an immediate threat, can potentially materialize at any moment.<sup>992</sup> Adopting this

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<sup>992</sup> COMITÉ DE EXPERTAS DEL MESECVI, *supra* note 268, at 8; ROXIN, *supra* note 913 at 621.

alternative understanding of imminence allows the judge to extend the time frame for identifying the harm and interests involved (life and physical integrity of the woman) and not just narrowly focus on the previous moments to the abuser's death.

In self-defense cases, the requirement for proportionality between the defensive action and the unlawful aggression is satisfied because the woman's response is not merely to the immediate act of aggression she suffered previous to the fatal event but to the cumulative severe abuse she has endured over time. Therefore, she does not retaliate against a minor assault but responds to the continuation of violence, informed by her past experiences.

In the same manner, in exculpatory state of necessity, harm avoided is not absent simply because the abuser was not exercising violence toward the woman at the time of the attack. Instead, the harm avoided can be identified as the severe and regular abuse the woman suffers at the hands of her partner or the danger of death.

This is why it is so necessary for the judge to expand the time frame and consider the history of abuse the woman has suffered. This approach functions as a linear regression analysis of unlawful aggression, demonstrating its escalating severity when historical abuse is considered. Consequently, when the defense of life and physical integrity is at stake, the defensive means are proportional to illegitimate aggression, and the harm caused is not significantly greater than the harm avoided.

Now, broadening the time frame alone only allows the fact finder to see further into the past and beyond the previous moments preceding the fatal attack. This is particularly

evident in cases of excess of self-defense, where a gender perspective has been applied to the concept of imminence (in confrontational cases), recognizing its fulfillment yet still resulting in the conviction of the defendant.

Take, for example, the Argentinian case of D.G.L. The defendant in this case was a woman who endured ongoing physical, psychological, and sexual abuse from her intimate partner since she was a teenager.<sup>993</sup> On the day of the fatal event, during a confrontation in a public street, her intimate partner started physically assaulting her, and during this struggle, his knife dropped to the ground.<sup>994</sup> D.G.L. picked up the knife and stabbed him in the chest, resulting in his death.<sup>995</sup>

The court acknowledged her history of gender-based violence and considered satisfied the requirement of imminent or current aggression.<sup>996</sup> However, illogically, and despite having ruled the woman was currently under attack, the court ruled that the means of defense—using a knife—was excessive compared to the physical aggression from her abuser.<sup>997</sup> The court stated that the physical aggression she faced at the moment did not

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<sup>993</sup> Tribunal de Impugnación de Tartagal [TIP Taragal] [Criminal Appeals Court of Taragal], 31/7/2018, “Recurso de casación con preso - D, G. L. por homicidio calificado por el vínculo mediando circunstancias extraordinarias de atenuación en perjuicio de B., A. de la C.”, 9-10, available at Repositorio Escuela de la Defensa Pública, [https://repositorio.mpd.gov.ar/documentos/DGL%20\(causa%20N%C2%B0%2075736\).pdf](https://repositorio.mpd.gov.ar/documentos/DGL%20(causa%20N%C2%B0%2075736).pdf) (Last visited March 15, 2025) (Argentina).

<sup>994</sup> *Id.* at 10.

<sup>995</sup> *Id.*

<sup>996</sup> *Id.* at 19-20.

<sup>997</sup> *Id.* at 20-21.

pose a lethal threat to her.<sup>998</sup> Consequently, she was convicted of murder committed in excessive self-defense.<sup>999</sup>

The error is evident. Despite the court considered her in proximal danger, the court still compared only the immediate form of aggression—say, a punch—with the defensive action—such as a stabbing. This approach overlooks the severity and level of danger to which D.G.L. was subjected, and to which she was reacting. She was not reacting with a stab just because she was punched but because more severe physical, psychological, and sexual abuse was about to come.

In this manner, just expanding the concept of imminence is not enough to fully assess the interest and harms at stake. The judge is required to assess the degree of danger to establish if her actions are justified or excused by a genuine threat to her life.

### **2.2.3.2 Complementing a broader time frame with the Danger Assessment Instrument**

In this context, consider a tool called the Danger Assessment instrument. It was created by Jackeline Cambell in 1981 to help abused women assess their risk of homicide.<sup>1000</sup> Today, it serves not only to assess the risk of intimate partner homicide but has also expanded its application to evaluate intimate partner violence, generally, making

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<sup>998</sup> *Id.* at 21.

<sup>999</sup> *Id.* at 23.

<sup>1000</sup> Laurie M. Graham et al, *The Danger Assessment: An instrument for the prevention of intimate partner homicide*, in *HANDBOOK OF INTERPERSONAL VIOLENCE AND ABUSE ACROSS THE LIFESPAN: A PROJECT OF THE NATIONAL PARTNERSHIP TO END INTERPERSONAL VIOLENCE ACROSS THE LIFESPAN (NPEIV)* 2761, 2768 (R. Geffner et al. Eds. 2022)

it the most widely used and extensively validated risk assessment instrument in this area.<sup>1001</sup>

This intimate partner homicide risk assessment instrument is intended to empower survivors to make informed decisions about their safety and protection.<sup>1002</sup> The tool structure consists of two parts: a 20-day Calendar and a 20-item instrument. The first one asks survivors to record abusive incidents over the past year, assigning a severity score from 1 (slapping or pushing) to 5 (use of a weapon resulting in injuries).<sup>1003</sup> This scale is provided on the 20-item instrument and is a measure of the frequency of abuse, the severity of the abusive incidents, and the severity of the injuries inflicted by the offender.<sup>1004</sup> After they complete the calendar, the survivors must complete the 20-item instrument that consists of "yes/no" questions evaluating risk factors for intimate partner homicide.<sup>1005</sup> Finally, DA-weighted scores categorize the level of danger for intimate partner homicide, creating four categories: variable, increased, severe, or extreme danger levels, which guide subsequent safety planning discussions.<sup>1006</sup> The Danger Assessment instrument is intended

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<sup>1001</sup> *Id.* at 2766.

<sup>1002</sup> *Id.*

<sup>1003</sup> *Id.* at 2767.

<sup>1004</sup> *Id.*

<sup>1005</sup> *Id.* at 2771-2773 (R. Geffner et al. Eds. 2022) (Over time, the DA has been adapted into several variations to meet the needs of different populations and contexts, creating extensions: i) The Danger Assessment-5: It is a shortened version used in fast-paced settings, such as emergency departments, for preliminary risk screening; ii) Lethality Screen: It was developed for law enforcement officers to identify high-risk IPV cases during field interventions; iii) Danger Assessment for Law Enforcement: It is tailored for officers working in Domestic Violence High-Risk Teams, facilitating targeted interventions and monitoring of high-risk offenders; iv) Danger Assessment for Immigrant Women (DA-I): It is expanded to include 26 items to better address cultural and situational risks among immigrant populations; v) Danger Assessment-Circle (DA-Circle): It is adapted for Indigenous communities, incorporating traditional storytelling and cultural practices in its calendar format; vi) Danger Assessment-Revised (DA-R): It is designed to predict IPV re-assault in same-sex female relationships, with modifications to address specific risk dynamics.)

<sup>1006</sup> *Id.* at 2767.



to be used in many settings, one of them, by professionals in civil and criminal justice cases.<sup>1007</sup>

The Danger Assessment instrument is a reliable and effective tool for predicting intimate partner violence and homicide risk.<sup>1008</sup> Its internal consistency provides coherent measures of intimate partner violence risk factors, and test-retest reliability supports consistent results across administrations.<sup>1009</sup> Concurrent validity has been established through correlations with other related measures –such as the Index of Spouse Abuse– affirming its alignment with established intimate partner violence assessment tools.<sup>1010</sup> Its predictive validity is supported by its ability to accurately classify cases of intimate partner violence re-assault and intimate partner homicide based on sensitivity, specificity, and receiver operating characteristic analyses.<sup>1011</sup> These properties demonstrate the Danger Assessment instrument's scientific rigor and utility in diverse professional settings.

The use of this instrument could assist the judge in determining the level of danger the woman faced and assessing the likelihood of the threat of death or serious bodily harm materializing, making it a good complement to the broader timeframe.

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<sup>1007</sup> *Id.*

<sup>1008</sup> *Id.* at 2769.

<sup>1009</sup> *Id.* at 2771.

<sup>1010</sup> *Id.*

<sup>1011</sup> *Id.*

### **2.2.3.3 Compatibility of the standard with a gender perspective and effects of its application**

The use of the Danger Assessment instrument to evaluate the level of danger a woman faces is compatible with a gender perspective, as it contributes to a complete and accurate portrait of the level of violence the defendant endured and to which she reacted. The tool helps to ensure that domestic abuse is assessed within the broader context of the relationship, weighing adequately the danger of death and severe bodily harm to which the woman is subjected rather than focusing only in the isolated incidents previous to the batterer's death.

Also, this instrument integrates the woman's perspective, breaking with the male bias that pervades the law and the interpretation of these women's legal defenses. This instrument will show, in fact, the level of danger to which they are subjected, which will shed light on the specific harms the defendant is trying to avoid with the homicide she committed.

Incorporating the Danger Assessment instrument directly addresses the two core issues in identifying harm within the exculpatory state of necessity defense. Once the concept of imminence is broadened beyond strict temporal proximity, this instrument helps judges to recognize that the defendant's actions sought to prevent severe abuse or even death, and not only what the abuser was doing at the moment of the fatal event. Second, this instrument provides an empirically validated method to assess the severity of the violence endured by the defendant. This counters the flawed assumption that a survivor's

continued existence negates the brutality of the abuse. By offering a structured, evidence-based approach to evaluating intimate partner violence, this instrument ensures, on one hand, that the illegitimate aggression is proportionate to the defensive reaction, and that the harm avoided—severe bodily harm or death—is identified and properly weighed against the harm caused.

#### **2.2.4 Considering the unavailability of options for the woman trapped in abusive relationship**

As discussed in Chapter II, one of the challenges faced by women survivors of domestic abuse is that courts often dismiss their defenses on the ground that the women had recourse to options other than killing their intimate partner. This assessment of the woman's options may defeat her defense. If she had other options, the requirements of the rational necessity of the means in self-defense and the requirement that there must be no other feasible and less harmful means in the exculpatory state of necessity are unfulfilled.

However, research shows that many women remain in abusive relationships due to complex barriers that eliminate these so-called alternatives. Without the consideration of the domestic violence context in which these women act, the named requirements appear unfulfilled by the factfinder.

##### **2.2.4.1 Unavailability of other options**

Domestic abuse creates significant barriers that prevent women from leaving an abusive relationship. These barriers include internal factors, such as psychological trauma,

as well as external factors, such as the absence of support systems and economic constraints. In the United States, there is an evolving recognition that these obstacles must be considered when evaluating the options available to women who have killed their intimate partners.

Regarding internal (psychological) factors that prevent women from leaving, some modern authors have preferred to refer to them as “battering and its effects” instead of Battered Woman Syndrome, moving away from pathologizing the victim (characterizing them as inherently passive or submissive) as Walker’s theory does and instead focuses on the survival strategies used by women and the unique ability to predict their partner’s behavior.<sup>1012</sup>

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<sup>1012</sup> Sue Osthoff and Holly Maguigan, *Explaining without pathologizing: Testimony on battering and its effects*, in CURRENT CONTROVERSIES ON FAMILY VIOLENCE 225, 232-236 (Loseke et al. eds., 2005) (authors prompt scholars and practitioners to shift their focus from Walker’s earliest work and engage with recent advancements in social science, emphasizing the understanding of the woman’s active survival strategies and her heightened perception of her partner’s violence.); Russell, *supra* note 103, at 137 (Terminology associated with learned helplessness has led to increased attention to woman’s passivity and to the creation of a stereotype of the battered woman. For this reason, many scholars believe that the use of a social framework or expert testimony explaining battering and its effects would be more effective than using terminology associated with the syndrome.); Mary Ann Dutton, *Update of the “Battered Woman Syndrome” Critique*, VAWNET: NAT’L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN 1, 3 (2009), [https://vawnet.org/sites/default/files/materials/files/2016-09/AR\\_BWSCritique.pdf](https://vawnet.org/sites/default/files/materials/files/2016-09/AR_BWSCritique.pdf) (“Instead, today many practitioners use the term “battering and its effects” to describe the experiences of women exposed to domestic violence (Osthoff & Maguigan, 2005). Even so, it is important to note that some experts and attorneys continue to utilize the term BWS in their work.”); FORREL Y MATTHEWS, *supra* note 379, at 217-218 (A recent comprehensive study by the U.S. Department of Justice and of Health and Human Services, assessing the validity of battered woman syndrome testimony, determined that expert testimony about “battering and its effects” was a more useful construct, applicable to a much broader range of criminal cases involving battered women. As the study put it, “understanding an individual’s appraisal of a situation as dangerous involves consideration of the actual threat behavior, the dangerousness of the situation, and the resources at hand for responding to that threat.” We wholeheartedly agree with the study’s conclusion that “battering and its effects” testimony should supplant the “battered woman syndrome” testimony. We would take it a step further, however, so that the issue is not only battering and its effects but also the objective reality and dangerousness of violence against women. Applying the reasonable woman standard-to her behavior and to his-empatically states that women are entitled to physical safety and personal autonomy.)

Evan Stark's characterization of domestic violence as a cage further enriches this understanding by showing how domestic abuse is not simply about violent acts but a deliberate pattern of control that incorporates structural constraints and organizes them into a pattern of oppression.<sup>1013</sup> Stark's framework highlights how various mechanisms—such as enforced isolation, economic control, constant surveillance, and the imposition of arbitrary rules—function as the "iron rods" of a cage that entraps victims, rendering them prisoners.<sup>1014</sup> This caging effect explains why it can be difficult for victims to leave abusive relationships, as they are not merely trying to escape from a person but an entire oppressive system that curtails their freedoms in multiple dimensions.

An important consideration regarding battering and its effects is that the existence of internal factors does not imply that these women failed to evaluate their options due to psychological impairments, as some proponents of the Battered Woman Syndrome might argue.<sup>1015</sup> Instead, this approach aims to show that viable options were simply nonexistent for them. A gender perspective invites acknowledgment of this reality, framing the woman's actions within the context of systemic barriers and the absence of alternatives rather than condemning them as individuals who lack the capacity to assess the reality of their situations.

On the contrary, women who remain in an abusive relationship are often engaging in a rational choice process, weighing the risks and potential benefits of leaving against the

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<sup>1013</sup> EVAN STARK, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* 249 (2nd ed. 2023).

<sup>1014</sup> *Id.*

<sup>1015</sup> WALKER, *supra* note 115, at 49-50.

possibility of positive change within the relationship.<sup>1016</sup> In this manner, the judiciary must shift away from what Elizabeth Schneider described as the judicial willingness to accept the battered woman's perspective only when it aligns with the portrayal of women as damaged.<sup>1017</sup> Instead, courts must recognize the perspective of women who see themselves as acting competently, assertively, and rationally in response to the alternatives available.<sup>1018</sup>

In addition to internal factors, external social limitations also serve as barriers comprising the metaphorical cage of domestic abuse. They include a lack of viable alternatives, limited knowledge or access to information, and financial constraints, all of which intensify the fear of escaping abusive situations.<sup>1019</sup>

The lack of options for the woman who is a victim of domestic abuse has been recognized by American courts in cases in which women have killed their intimate partners.<sup>1020</sup>

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<sup>1016</sup> GONDOLF AND FISHER, *supra* note 177, at 12 (“The survivor may experience anxiety or uncertainty over the prospects of leaving the batterer. The lack of options, know-how, and finances raise fears about trying to escape the batterer. The battered woman may therefore attempt to change the batterer instead of attempting to leave.”).

<sup>1017</sup> Schneider, *supra* note 194, at 230 (1992) (“Judicial willingness to find the battered women's perspective acceptable may relate to the fact that the perspective that courts are hearing and to which they are responding is that of damaged women, not of women who perceive themselves to be, and may in fact be, acting competently, assertively and rationally in light of the alternatives.”)

<sup>1018</sup> *Id.*

<sup>1019</sup> GONDOLF AND FISHER, *supra* note 177, at 12.

<sup>1020</sup> *People v. Torres*, 128 Misc. 2d 129, 133, 488 N.Y.S.2d 358 (Sup. Ct. 1985) (The court stated that “more significantly, the proffered expert evidence would also serve to dispel the ordinary lay perception that a woman who remains in a battering relationship is free to leave her abuser at any time. In fact, according to Dr. Blackman, the feeling of no escape is one of the principal common characteristics of battered women. It arises out of a combination of factors including a lack of anyplace else to go, a state of “learned helplessness”, a fear that if found she will be subjected to even more merciless treatment, an attachment to the traditional values of the stability of the family, and a hope that her mate will change for the better.”); *People v. Humphrey*, 13 Cal. 4th 1073, 1078, 921 P.2d 1 (1996) (The expert testimony declared that “battered women

For example, in *Porter v. State*, Karla Louise Porter suffered years of severe physical and emotional abuse from her husband, including threats to her life.<sup>1021</sup> He was planning to move to Florida with her and threatened that he would kill her there.<sup>1022</sup> She believed he would kill her, as he had threatened to do so multiple times.<sup>1023</sup> Fearing for her life, she solicited several individuals to kill him, eventually paying one man to commit the homicide.<sup>1024</sup> She was convicted of first-degree murder, conspiracy to commit first-degree murder, solicitation to commit first-degree murder, and use of a handgun in a crime of violence.<sup>1025</sup> She filed a motion for a new trial, arguing the jury was not properly instructed, which was denied, and subsequently, she appealed.<sup>1026</sup>

Porter argued that she acted in imperfect self-defense, meaning that although she honestly believed she was in imminent danger, her belief may have been unreasonable.<sup>1027</sup> However, the trial court misstated the law regarding the use of force, instructing that to find that Porter acted in imperfect self-defense, she must have “used no more force than

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often employ strategies to stop the beatings, including hiding, running away, counterviolence, seeking the help of friends and family, going to a shelter, and contacting police. Nevertheless, many battered women remain in the relationship because of lack of money, social isolation, lack of self-confidence, inadequate police response, and a fear (often justified) of reprisals by the batterer.”); *State v. Leidholm*, 334 N.W.2d 811, 820 (N.D. 1983) (The Supreme Court of North Dakota upheld the instruction given to the jury “The jury’s use of a subjective standard of reasonableness in applying the principles of self-defense to the facts of a particular case requires it to consider expert testimony, once received in evidence, describing battered woman syndrome and the psychological effects it produces in the battered spouse when deciding the issue of the existence and reasonableness of the accused’s belief that force was necessary to protect herself from imminent harm.”).

<sup>1021</sup> *Porter v. State*, 455 Md. 220, 226-231 (2017)

<sup>1022</sup> *Id.*

<sup>1023</sup> *Id.*

<sup>1024</sup> *Id.*

<sup>1025</sup> *Id.* at 232.

<sup>1026</sup> *Id.*

<sup>1027</sup> *Id.*

was reasonably necessary to defend herself.”<sup>1028</sup> The court's instruction also implied that the jury should objectively evaluate whether Porter could safely retreat by instructing that it could find imperfect self-defense only if “retreat from the threat was unsafe.”<sup>1029</sup> Porter was convicted and filed an appeal against the trial court’s ruling.

The Appeals Court noted that one of the common rationales for limiting the requirement for “imminent or immediate” danger is the existence of alternative methods to address non-imminent threats without resorting to defensive force.<sup>1030</sup>

Debunking this rationale, the court stated that in other similar cases, expert testimony on Battered Spouse Syndrome was helpful for the jury to assess whether the defendant could have safely retreated or not by explaining why, due to prior abuse, the defendant did not leave or take alternative action.<sup>1031</sup>

Consequently, the admission of expert testimony on Battered Spouse Syndrome aims to counter the assumption that an abused woman would have left or sought help if the relationship were truly abusive.<sup>1032</sup> Particularly in this case, expert witnesses would provide the jury with explanations for why Porter did not seek alternative means of escape.<sup>1033</sup>

Some courts in Argentina, Chile, and Mexico have recognized that in some domestic violence cases, the woman lacks viable options to escape abuse. For example, in the case of Susana López, previously discussed, the court concluded that situations

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<sup>1028</sup> *Id.* at 239.

<sup>1029</sup> *Id.*

<sup>1030</sup> *Id.* at 247.

<sup>1031</sup> *Id.* at 248.

<sup>1032</sup> *Id.* at 249.

<sup>1033</sup> *Id.*



involving confrontations between a woman and a man—often a cohabitant—do not always provide the opportunity to choose between more or less severe means of defense.<sup>1034</sup> Instead, the woman often resorts to the only viable form of protection available to her. The reasons behind this behavior stem from specific factors such as socialization, education, personal experiences, including the trauma associated with domestic violence—and the physical disparities between the individuals involved.<sup>1035</sup>

Another example is the case of Teresa Seco—already discussed in Chapter II—the Supreme Court of Justice established that there is no "aberrant disproportion" between the harmful act (punches) and the defensive act (use of a knife), given that Teresa faced an attack from an individual of considerable size who had previously assaulted her on other occasions and in the presence of her child.<sup>1036</sup> In her case, a brief reflection on the typical disadvantages women face in terms of size and strength makes it evident that the defendant

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<sup>1034</sup> Crocker, *supra* note 388, at 127 (“Women's lack of physical defense training, coupled with a socialization process that equates femininity with weakness, means that women may perceive danger sooner and more frequently than men. Unlike men, they are not taught to defend themselves, either in school yard tussles or through military training. They are raised to be physically, emotionally, and intellectually passive.”); Schneider, *supra* note 386, at 646-647 (Discussing how jury instructions should focus the jury's attention both on the woman defendant's circumstances and on her perspective, such as past circumstances that affected the woman's appraisal of the imminence of danger or consider not only size and strength differences between the woman and her assailant but also differences in socialization and access to training). See also: Tribunal de Casación Penal de la Provincia de Buenos Aires [TCP BA] [Court of Cassation of Buenos Aires], 24/6/2016, “LÓPEZ, SUSANA BEATRIZ S/ RECURSO DE CASACIÓN INTERPUESTO POR PARTICULAR DAMNIFICADO”, 18-20, available at [Revista de Pensamiento Penal](https://www.pensamientopenal.com.ar/system/files/2016/03/fallos43080.pdf) <https://www.pensamientopenal.com.ar/system/files/2016/03/fallos43080.pdf> (Last visited March 15, 2025) (Argentina).

<sup>1035</sup> See *supra* note 1034.

<sup>1036</sup> Corte Suprema de Justicia de Tucuman [CSJ Tucuman] [Supreme Court of Justice Tucuman], 28/4/2014, “SECO TERESA MALVINA S/ HOMICIDIO AGRAVADO POR EL VINCULO”, 23, available at <https://www.mpf.gob.ar/direccion-general-de-politicas-de-genero/files/2019/12/4.-Seco-Teresa-Malvina.pdf> (Last visited March 15, 2025) (Argentina).

acted rationally by using the first available tool (a knife) to protect her integrity and that of her child.<sup>1037</sup>

Likewise, some courts have considered the defendant's lack of options in cases of exculpatory state of necessity. For example, in Vanessa Ruiz's case—already discussed in Chapter II—the Supreme Court of Justice of Mendoza stated that “The State offers victims of gender-based violence various judicial and administrative avenues to seek recourse and file complaints. However, the process has made it clear that these mechanisms are ineffective, as the State has failed to fulfill its duty of assistance and support satisfactorily. Consequently, it is impossible to hold the defendant accountable for not resorting to the State's prescribed avenues for safeguarding her rights, as those mechanisms were not in a position to provide an adequate solution. In summary, the fewer the guarantees of protection provided by the system to which the conflict must be directed, the greater the scope for applying the exculpatory state of necessity. The inability of the alternatives offered by the State to satisfactorily address an intrafamilial conflict allows for greater flexibility in interpreting the requirements of the state of necessity.”<sup>1038</sup>

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<sup>1037</sup> *Id.*

<sup>1038</sup> Suprema Corte de Justicia de Mendoza [SCJ Mza.] [Supreme Court of Justice of Mendoza], 7/9/2017, “F C/ RUIZ CASAS, VANESA YANINA P/ HOMICIDIO AGRAVADO POR SER LA VICTIMA PERSONA QUE MANTENIA RELACION DE PAREJA CON EL AUTOR MED. CONVIV. (44503) P/ RECURSO EXT.DE CASACIÓN”, 24, available at [chrome-extension://efaidnbmninnibpcajpcglclefindmkaj/http://av.jus.mendoza.gov.ar/moodle/pluginfile.php/33337/mod\\_resource/content/0/13-03696013-7%20-%20Ruiz%20Casas.pdf](chrome-extension://efaidnbmninnibpcajpcglclefindmkaj/http://av.jus.mendoza.gov.ar/moodle/pluginfile.php/33337/mod_resource/content/0/13-03696013-7%20-%20Ruiz%20Casas.pdf) (Argentina)

#### 2.2.4.2 Establishing the unavailability of options

Doctrine, in general, has recognized the importance of considering the social and psychological conditions, as well as the economic difficulties, that individuals face when trying to leave their partners.<sup>1039</sup>

A gender perspective invites the judge to consider the limitations of alternatives. However, it might happen that, despite considering the existence of limitations for battered woman to leave their intimate partners, the judge still considers that in a particular case, a woman had other options because of her specific circumstances.

To avoid this, it is not enough to simply assert that women lack alternatives; the available options must be analyzed in the context of the specific case—especially when the woman has attempted to escape but her efforts have ultimately failed.<sup>1040</sup> For example, the limitations faced by women differ markedly depending on their employment status, and these circumstances become even more complex when children are involved. Employed women may benefit from a degree of financial independence and access to resources, yet they often encounter constraints such as rigid work schedules and the pressure to maintain employment, which can limit their ability to leave an abusive relationship. Conversely, women who are not employed may have fewer work-related restrictions but are often more financially dependent, reducing their options for escape. The presence of children further complicates the situation, as the responsibility for childcare and the desire to protect their

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<sup>1039</sup> Di Corleto, *supra* note 7, at 117.

<sup>1040</sup> LARRAURI, *supra* note 281, at 66; LARRAURI AND VARONA, *supra* note 281, at 45.

children can restrict both groups, making it even more difficult to pursue viable alternatives. Thus, any evaluation of a woman's ability to leave an abusive situation must take into account these nuanced differences in limitations and responsibilities.

A socio-economic report made by a social worker that evaluates aspects such as employment status, income level, economic dependence, and access to social support services is essential for demonstrating the limited options available to a woman victim of domestic violence. This report requires taking into account the socioeconomic risk factors of domestic and intimate partner violence: low income and financial insecurity, unemployment, limited educational attainment, housing instability, social isolation, and adverse community-level conditions such as high rates of violence and economic deprivation.<sup>1041</sup>

This report should analyze how these conditions, along with family responsibilities—especially when children are involved—restrict her ability to leave an abusive situation. Ideally, the document will include quantitative data on her financial situation and a qualitative analysis detailing existing barriers, such as the lack of support networks, difficulties accessing shelters or assistance services, and other factors that limit her alternatives for escaping abuse.

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<sup>1041</sup> CAWC, *Socioeconomic Risk Factors for Domestic and Intimate Partner Violence*, <https://www.cawc.org/news/socioeconomic-risk-factors-for-domestic-and-intimate-partner-violence/> (last visited Mar. 28, 2025).

### **2.2.4.3 Compatibility of the standard with a gender perspective and effects of its application**

In cases involving women who kill their abusive partners, the judiciary must consider the unique context and circumstances of the defendant when assessing the requirements of self-defense and exculpatory state of necessity. This entails adopting a gender-sensitive perspective that acknowledges the experiences of women as victims of domestic violence and the options realistically available to them as they perceive them, not from an outsider's point of view.<sup>1042</sup>

It is essential to evaluate the availability of other alternatives in order to challenge the traditional legal assumption that victims of domestic abuse always have safer alternatives available, such as leaving the relationship, seeking state protection, or relying on the criminal justice system. By incorporating this requirement, courts can more accurately assess the feasibility of alternative courses of action and ensure that women's defensive actions are not unfairly dismissed. In order to do this, a comprehensive socioeconomic report made by a social worker is necessary to illustrate the unavailability of options the defendant had.

Also, this standard is compatible with a gender perspective because it helps dismantle the male-biased perspective embedded in criminal law and to begin to judge these women's defenses from their standpoint: that the woman who victim of domestic abuse, who is trapped in a relationship and cannot freely leave as a male is expected to do.

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<sup>1042</sup> COMITÉ DE EXPERTAS DEL MESECVI, *supra* note 268, at 10-13.

This consideration would help to satisfy the requirements of a “reasonable need for the means employed to prevent or repel aggression” in self-defense and “no other feasible and less harmful means were available to avoid the harm” in an exculpatory state of necessity.

The effect of considering the unavailability of other alternatives addresses the problem of judges misjudging the defendant's options, ensuring that they do not penalize women for acting rationally in situations where no meaningful alternatives exist, thereby aligning legal standards with the lived experiences of survivors of intimate partner violence.

## **2.2 Using the Survivor Theory as the foundation of legal defenses**

As discussed in Chapter II, Battered Woman Syndrome —the foundation supporting various defense theories for women who kill their intimate partners in the U.S., Argentina, Chile, and Mexico—presents three significant issues. First, the concept of a syndrome suggests that defendants are mentally impaired. Second, its use to support excuse and justification defenses creates ambiguity regarding whether the woman's actions were rational and justified or merely excused due to mental impairment. Third, the theory reinforces harmful stereotypes by portraying women as passive, dependent, and helpless "battered women" who never left, sought help, nor fought back, rather than as resilient survivors. Thus, the core of the Battered Woman Syndrome is that fundamentally incompatible with a gender perspective.

As mentioned, relying on this theory as the basis for a criminal defense requires women to conform to stereotypes of being passive, submissive, weak, and mentally

impaired to justify their actions.<sup>1043</sup> This means that, in order to access any defense based on this theory, women who kill their intimate partners need to embrace these harmful preconceptions. In this manner, while the gender perspective seeks to identify and dismantle gender stereotypes, Battered Woman Syndrome creates, reinforces, and solidifies outdated ones, directly affecting the rights to equality and non-discrimination, given that, as explained, stereotypes work against the materialization of these rights by making arbitrary distinctions between people. The "battered woman" stereotype excludes those who do not fit its narrow criteria but who nonetheless experience domestic violence and kill their intimate partners within that context.<sup>1044</sup> Therefore, if the woman does not look impaired, submissive, passive, weak, broken, or if she reacts in any way that is not compatible with the battered woman stereotype, her defense will wobble despite the fact that she is no less than women who satisfy the stereotype, is a victim of domestic abuse. The perpetuation of stereotypes, as the Battered Woman syndrome theory does, is incompatible with a gender perspective.

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<sup>1043</sup> Crocker, *supra* note 388, at 144 (discussing the stereotype of battered women); Goodmark, *supra* note 589, at 95 (discussing how battered women who fight back must overcome the stereotype of battered woman being weak, passive and helpless).

<sup>1044</sup> Goodmark, *supra* note 589, at 95 (2008) ("As the image of the battered woman depicted by Lenore Walker took hold among the major players in the legal system, the paradigmatic victim began to crowd out the stories of women who did not conform to the stereotype").

### 2.2.1 Potential alternatives to Battered Woman Syndrome

For these reasons, some authors have suggested moving from the Battered Woman Syndrome and using expert testimony on a social framework<sup>1045</sup> or a coercive control theory.<sup>1046</sup>

Social framework expert testimony consists of descriptions of studies that report the prevalence of different constellations of symptoms when a person has been subjected to trauma or has a particular neurobiological trait.<sup>1047</sup> The expert testimony would describe symptoms, and other witnesses would describe the symptoms in the defendant.<sup>1048</sup>

However, the downside of this framework is that it normally will not provide information about the relevant mental state at the time of the criminal offense.<sup>1049</sup> Furthermore, most people who have experienced the relevant trauma or possess the relevant biological trait do not commit criminal offenses, and thus, research about them does not say much about the causes of a particular crime or the characteristics of a particular defendant.<sup>1050</sup> In addition, given the fact that a small percentage of women trapped in abusive relationships concrete the killing of their intimate partners, the expert will not be able to explain why he or she thinks this defendant did this because the social framework limits the expert.<sup>1051</sup>

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<sup>1045</sup> Christopher Slobogin, *Psychological Syndromes and Criminal Responsibility*, 6 Annu. Rev. Law Soc. Sci. 109, 121 (2010); Russell, *supra* note 103, at 103.

<sup>1046</sup> See in general: STARK, *supra* note 1013.

<sup>1047</sup> Slobogin, *supra* note 1045, at 121.

<sup>1048</sup> *Id.*

<sup>1049</sup> *Id.* at 122.

<sup>1050</sup> *Id.*

<sup>1051</sup> *Id.*



Another alternative is the power and control theory.<sup>1052</sup> which highlights the tactics used by abusers and their cumulative effects, providing a comprehensive understanding of how abusers systematically strip away liberty and autonomy from their victims. As explained, this theory reframes domestic abuse as a metaphor for a "cage", in which each iron rod represents a means to entrap a woman<sup>1053</sup> The goal of exercising coercive control is to dominate and take over a partner's individuality and sense of self.<sup>1054</sup> This creates a state of oppression and entrapment, which victims experience as a loss of freedom, rooted in gendered dynamics both in how it is carried out and in its impact.<sup>1055</sup>

The most pernicious effect is the impact on victims, with many experiencing what Stark calls "perspecticide"—the erosion of their ability to think independently or plan for the future.<sup>1056</sup> This destruction of autonomy often leaves victims feeling trapped and paralyzed, unable to make independent judgments or thoughts.<sup>1057</sup>

However, despite this theory might have enormous value in explaining how domestic abuse works and why women stay in abusive relationships, its value in cases of women who kill their intimate partner is lessened because it often emphasizes the abuser's systematic patterns of domination rather than the survivor's immediate actions and rationale. By framing the survivors as entrapped or psychologically broken, the theory risks portraying them as passive victims rather than rational actors, potentially undermining their

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<sup>1052</sup> Catalina de los Ángeles Sierra Campos, *Aproximación a la defensa preventiva en el caso del tirano familiar: ¿necesitamos una teoría del control coercitivo?*, 28 REV. IUS ET PRAXIS 160 (2022)

<sup>1053</sup> STARK, *supra* note 1013 at 249.

<sup>1054</sup> *Id.* 256.

<sup>1055</sup> *Id.*

<sup>1056</sup> *Id.* at 261-262.

<sup>1057</sup> *Id.* at 261.

credibility in court. Additionally, Coercive Control Theory relies on extensive contextual explanations of the abuser's long-term tactics but not on the actions of the defendant to cope with them. This may dilute the emotional impact of the survivor's immediate situation and reduce the jury's ability to empathize with their actions as necessary for survival. Such disadvantages make this framework less suited for cases where proving reasonable and immediate self-defense is critical.

### **2.2.2 The Survivor Theory**

#### **2.2.2.1 The theory**

An alternative explanation more suitable to explain the behavior of battered women who remain with their intimate partners is the Survivor Theory or Survivor Hypothesis, formulated in the United States by Edward Gondolf and Ellen Fisher in 1988. This theory originated from a disagreement with a fundamental aspect of the Battered Woman Syndrome theory, the concept of Learned Helplessness.<sup>1058</sup> The Survivor Theory posits that these women should be viewed as active survivors, directly challenging the notion that they are merely victims.<sup>1059</sup>

There are five main distinctions between these two theories. First, Learned Helplessness suggests that severe abuse creates a state of helplessness in the victims, in which childhood abuse and the neglect of health resources exacerbate this condition,

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<sup>1058</sup> GONDOLF AND FISHER, *supra* note 177, at 11.

<sup>1059</sup> *Id.*

resulting in significant victimization of the woman.<sup>1060</sup> Conversely, the Survivor Theory posits that such abuse encourages the development of innovative coping strategies and efforts to seek assistance and that prior abuse and neglect may drive these women to explore alternative support mechanisms and strategies to mitigate the abuse, casting the woman in the role of a survivor.<sup>1061</sup>

Second, Learned Helplessness indicates that victims suffer from low self-esteem, self-blame, guilt, and depression, believing that changing their behavior might alter the battery, however, the abuse continues.<sup>1062</sup> In contrast, the Survivor Theory acknowledges that while survivors may feel anxious or uncertain about leaving their abuser, limitations such as lack of options, know-how, and financial resources heighten fears of escape, and consequently, the woman might focus on changing the abuser's behavior rather than leaving.<sup>1063</sup>

Third, Learned Helplessness describes victims as becoming psychologically paralyzed, hesitant to seek or accept help, and likely to return to their abuser.<sup>1064</sup> Meanwhile, the Survivor Hypothesis suggests that survivors actively pursue a range of both informal and formal help sources, although often these efforts are met with inadequate assistance, leaving them no choice but to return to their abuser while they continue seeking help.<sup>1065</sup>

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<sup>1060</sup> *Id.* at 12.

<sup>1061</sup> *Id.*

<sup>1062</sup> *Id.*

<sup>1063</sup> *Id.*

<sup>1064</sup> *Id.*

<sup>1065</sup> *Id.*

Fourth, the indecision and vulnerability identified in Learned Helplessness may perpetuate and even exacerbate the cycle of abuse, possibly reflecting an underlying masochism where the woman feels deserving of the abuse.<sup>1066</sup> On the flip side, the Survivor Hypothesis argues that the failure of support systems to provide comprehensive, decisive intervention permits the continuation and escalation of abuse.<sup>1067</sup>

Fifth, Learned Helplessness contends that victims primarily require psychological counseling to address their diminished self-esteem, depression, and masochism.<sup>1068</sup> Alternatively, the Survivor Theory advocates for providing survivors with access to resources essential for escaping the abusive situation, calling for the coordination and integration of community services to ensure the allocation of necessary resources and long-term comprehensive intervention.<sup>1069</sup>

Thus, the authors introduce a survivor hypothesis that counters the traditional narrative of learned helplessness by asserting, "Battered women increase their help-seeking efforts as violence intensifies, diverging from the expected decrease in help-seeking behavior that the concept of learned helplessness suggests."<sup>1070</sup> This perspective accurately depicts these women as active survivors, challenging the notion that they are merely helpless victims.<sup>1071</sup>

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<sup>1066</sup> *Id.*

<sup>1067</sup> *Id.*

<sup>1068</sup> *Id.*

<sup>1069</sup> *Id.*

<sup>1070</sup> *Id.* at 17-18.

<sup>1071</sup> *Id.* at 17.

This acknowledgment does not negate the reality that some women may indeed suffer from severe low self-esteem, guilt, self-blame, depression, vulnerability, and a sense of futility.<sup>1072</sup> However, these symptoms acquire alternative meanings and proportions when viewed through a different lens.<sup>1073</sup> What is traditionally seen as indicators of Learned Helplessness might be part of the adjustment to active help-seeking.<sup>1074</sup> These symptoms could be a temporary manifestation of traumatic shock, where the individual's seemingly unresponsive or depressed demeanor is part of the mind's healing process.<sup>1075</sup> Also, the presence of depression and guilt in some women could be interpreted as symptoms of separation anxiety, a natural response to the prospect of leaving the abuser.<sup>1076</sup>

Building on their theory, Gondolf and Fisher developed a causal model of help-seeking to substantiate their hypothesis, demonstrating that battered women indeed intensify their efforts to seek help in response to escalating abuse as an effort to gain safety from generally dangerous (batterer) men.<sup>1077</sup> Specifically, this model indicates that the diversity of help sources women reach out to expands in correlation with the increase in the batterer's antisocial behaviors.<sup>1078</sup> This evidence reinforces the idea that battered women are more inclined to exit a relationship when it becomes evident that the batterer will not change or is genuinely a danger to their safety.<sup>1079</sup>

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<sup>1072</sup> *Id.* at 21.

<sup>1073</sup> *Id.*

<sup>1074</sup> *Id.*

<sup>1075</sup> *Id.*

<sup>1076</sup> *Id.* at 22.

<sup>1077</sup> *Id.* at 37.

<sup>1078</sup> *Id.*

<sup>1079</sup> *Id.*

The main implication of this model is the existence of a systemic failure rather than a failure on the part of the woman.<sup>1080</sup> The helping sources are the ones that have not succeeded in responding to abuse in two aspects.<sup>1081</sup> First, despite battered women reaching out to numerous help sources, these sources have failed to provide safety or stop the abuse.<sup>1082</sup> Second, the model points out that the antisocial batterers have been elusive or unresponsive to the interventions to address their behavior.<sup>1083</sup>

The former underscores a crucial need for the reassessment and enhancement of support systems, including shelter programs and intervention strategies beyond merely addressing the symptoms of learned helplessness, but help these women to appraise the level of danger better and take more decisive action against batterers.<sup>1084</sup>

Most defenses on homicide are indeed based on Battered Woman Syndrome, given the level of acceptance that the theory already has. However, some courts in the U.S. have also shifted away from Battered Woman Syndrome, labeling it “outdated” and “unscientific,” moving to a nomenclature more closely aligned with battering and its effects, opening the door to other theories such as the survivor theory. For example, in *State v. Curley*, the Louisiana Supreme Court, in deciding a case on ineffective assistance of counsel, explicitly noted that “Battered Woman Syndrome” is an “inartful (and likely outdated)” term that does not adequately reflect the breadth or nature of current scientific

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<sup>1080</sup> *Id.*

<sup>1081</sup> *Id.*

<sup>1082</sup> *Id.*

<sup>1083</sup> *Id.*

<sup>1084</sup> *Id.* at 38.

knowledge.<sup>1085</sup> The Court referenced a 1996 U.S. Department of Justice report that highlighted concerns over the term's implication of a psychological defect, emphasizing instead the broader framework of "battering and its effects."<sup>1086</sup> It also cited criticism from legal experts and advocacy groups that the term "syndrome" can stigmatize survivors or mischaracterize their experiences as pathological.<sup>1087</sup>

#### **2.2.2.2 Compatibility of the standard with a gender perspective and effects of its application**

Survivor Theory is compatible with a gender perspective for three reasons. First, by emphasizing survivors' agency and rational decision-making, Survivor Theory aligns with the goals of a gender perspective, which seeks to dismantle harmful stereotypes and promote equality. It reframes women who suffer domestic abuse not as passive, helpless, or mentally impaired individuals but as active agents who navigate abuse with resilience and resourcefulness. This shift ensures that survivors do not need to conform to stereotypes of weakness, submission, or psychological damage to access legal defenses based on this theory, avoiding, in this manner, the arbitrariness of Battered Woman Syndrome, where only those who appear weak, submissive, or impaired are deemed deserving of legal defense based on Walker's theory.

Also, in the same manner as Johnson's typology, this theory validates a broader range of behaviors, including seeking help, resisting abuse, or ultimately acting in self-

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<sup>1085</sup> State v. Curley, 2016-1708 (La. 6/27/18), 250 So. 3d 236, 244

<sup>1086</sup> State v. Curley, 2016-1708 (La. 6/27/18), 250 So. 3d 236, 244

<sup>1087</sup> State v. Curley, 2016-1708 (La. 6/27/18), 250 So. 3d 236, 244-245.

defense, regardless of whether the woman fits the stereotype of a "perfect battered woman." It acknowledges that not all women endure abuse silently or without resistance. Some may fight back, some may attempt to leave, and others may continue to seek help despite systemic failures. This inclusivity ensures that women who are strong, assertive, or nonconforming are not excluded and enables them to use this theory as a foundation for their defenses.

Lastly, Survivor Theory acknowledges the systemic and structural inequalities that constrain survivors, such as economic dependency, societal expectations, and inadequate institutional support, rather than pathologizing their behavior or relying on subjective notions of impairment. In this manner, it challenges the structural roots of inequality rather than reinforcing stereotypes that limit women's autonomy and self-determination.

The Survivor Theory addresses all the issues attached to Battered Woman Syndrome mentioned in Chapter II and offers an alternative compatible with a gender perspective.

First, this theory removes the concept of a "syndrome" present in Lenore Walker's framework, and instead, it emphasizes survivors' rational decision-making in the face of abuse. It reframes the experiences of women who have endured domestic violence as grounded in rationality and agency, rather than psychological deficits or illness. Moreover, Survivor Theory avoids alignment with PTSD diagnostic criteria, which reinforce perceptions of mental illness, and focuses instead on contextual factors and survivors' active strategies for resisting abuse. Additionally, Gondolff and Fisher's theory highlights



external factors—such as financial dependence, social stigma, and fear of reprisal—as the primary challenges survivors face, rather than internal psychological deficits, avoiding portrayals of survivors as mentally ill or incapable of rational decision-making.

Second, Survivor Theory avoids the contradiction of Battered Woman Syndrome theory, supporting justification defenses because it does not rely on the concept of mental impairment, thus bypassing the suggestion that the woman's actions stemmed from a disturbed mental state. Instead, it focuses on her experience of abuse, her realistic appraisal of the danger she faced, and the constraints imposed by external factors. This framing strengthens the argument that her actions were justified, as they were reasonable and necessary responses to prevent harm in self-defense cases.

Moreover, Survivor Theory addresses Anne Coughlin's critique regarding the incompatibility of learned helplessness with the act of killing in self-defense. While Battered Woman Syndrome might imply that a psychologically paralyzed individual could not act decisively to end the abuse, Survivor Theory highlights the survivor's active resistance and resourcefulness in navigating it. This theory explains that the defendant did not leave, seek help, or fight back earlier due to external barriers while validating her ultimate act of self-defense as a rational and proportionate reaction to immediate danger.

In Latin American countries, where expert testimony often supports both justifications (e.g., self-defense) and excuse defenses (e.g., transient mental disorder), Survivor Theory eliminates the inconsistency of portraying the defendant as both rational and impaired, given that the woman is seen as a rational agent that assesses the elements

of the defense from a rational point of view, and not from an individual incapable of reasoning due to fear, anger, or mental impairment.

Third, Survivor Theory effectively addresses the issue of stereotypes perpetuated by Battered Woman Syndrome by replacing the image of battered women as passive, helpless, and damaged with a portrayal of them as active survivors who demonstrate resilience and resourcefulness, highlighting the diverse strategies women employ to cope with abuse, navigate systemic barriers, and protect themselves and their families. This broader, more inclusive framework challenges the monolithic "battered woman stereotype" described by Phyllis Crocker, which narrowly defines victims as passive individuals who never leave, seek help, or fight back.

By rejecting the concept of a "perfect victim" and the rigid character expectations imposed by Battered Woman Syndrome, Survivor Theory acknowledges the varying ways women respond to abuse, validating the experiences of women who fight back, seek help, or actively resist their abusers. This approach also eliminates the need for defendants to conform to narrowly defined molds to access legal defenses, ensuring that diverse survivor experiences, including those of women who are strong, assertive, or defiant, are equally recognized in court.

## **2.3 Eliminating stereotypes in the selection of defenses for women who kill their intimate partners in the context of domestic violence**

### **2.3.1 The origin of the shifting between justifications and excuses: stereotypes**

The first step to eliminate this shifting is to understand why it happens and why there is a “preference” to justify women who commit criminal acts according to male parameters and excuse women who do not. Both of these find their origin in the same evil: The fulfillment of the female archetype. According to MacKinnon, this archetype is rooted in the feminine stereotype, which she describes as "docile, soft, passive, nurturing, vulnerable, weak, narcissistic, childlike, incompetent, masochistic, and domestic, designed for childcare, homemaking, husband care."<sup>1088</sup> Women who resist or fail to conform to this model are perceived as less feminine and, consequently, as lesser women.<sup>1089</sup>

This archetype also shapes the relationship between criminal law and women. They are not expected to engage in injurious criminal behavior because they are perceived as more accountable to an ethic of care, prioritizing the needs of others and preserving family connections, traditions, and identities.<sup>1090</sup> Feminine cooperative and pro-social behavior is seen as inherently opposed to law-breaking and criminal activity.<sup>1091</sup>

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<sup>1088</sup> CATHERINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 109 (1989).

<sup>1089</sup> *Id.* at 110

<sup>1090</sup> Jennifer Schwartz and Darrel Steffensmeier, *Gender Opportunities and Risk Preferences for Offending Across the Life Course*, 3 Dev Life Course Criminology 125, 131-132 (2017).

<sup>1091</sup> *Id.*

However, when women commit crimes, their defense often faces greater challenges—not only because they are seen as violating the general expectation that women should not engage in criminal behavior but also because certain offenses contradict deeply entrenched gender stereotypes—such as the “good mother,” the “good wife,” the “good woman”—resulting in a differentiated standard for men and women.<sup>1092</sup> However, these standards are different from the ones affecting women who kill.

Women who commit violent acts—such as murder—are more typically seen as crazy or irrational than as behaving reasonably.<sup>1093</sup> This obeys the contradiction of the homicidal and the fundamental structures of appropriate gendered behavior, given that a woman who commits such an act defies patriarchal gender discourse by violating societal and gender norms.<sup>1094</sup> Depending on the circumstances of the homicide, society and the law label these women as mad, bad, or victims—labels that inherently deny their agency.<sup>1095</sup>

Particularly, the law has historically treated husband-killing as an exceptionally egregious crime, one that undermines the foundations of civil governance and threatens the core ideals of traditional society.<sup>1096</sup> Women who commit such acts are often labeled as

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<sup>1092</sup> See in general: Cecilia Hopp, “Buena madre”, “buena esposa”, “buena mujer”: abstracciones y estereotipos en la imputación penal, in *GENERO Y JUSTICIA PENAL* 15 (Julieta Di Corleto Ed. 2017).

<sup>1093</sup> BROWNE, *supra* note 200, at 176; JONES, *supra* note 281, at 155-166.

<sup>1094</sup> Siobhan Weare, *The Mad, the Bad, the Victim: Gendered Constructions of Women Who Kill Within the Criminal Justice System*, 2 *LAWS* (3) 337, 338 (2013).

<sup>1095</sup> *Id.*

<sup>1096</sup> SCHNEIDER, *supra* note 160, at 113.

victims, crazy or irrational<sup>1097</sup> or monstrous creatures,<sup>1098</sup> anything but individuals acting reasonably.

However, portraying women who kill their intimate partners in the context of domestic violence as anything other than rational agents is a societal phenomenon that also pervades media representations. Marianne S. Noh and her colleagues conducted a study in which they analyzed newspaper portrayals of battered women who committed homicide in both the U.S. and Canada.<sup>1099</sup> The researchers identified four dominant categories in media narratives: i) the medical model, which frames these women as suffering from psychological conditions such as Battered Woman Syndrome and thus excused from responsibility, labeled as mad; ii) the conventional rationality model, which portrays them as calculating criminals acting with intent and rationality, labeled as bad; iii) the feminist jurisprudence model, which justifies their actions as reasonable self-defense rooted in structural inequalities, labeled as reasonable and; iv) the early legal feminism model, a hybrid approach recognizing both psychological and rational dimensions to their actions, labeled as reasonable.<sup>1100</sup>

The findings revealed that news portrayals of battered women who kill predominantly framed them as female deviants, categorized as either "mad" or "bad."<sup>1101</sup>

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<sup>1097</sup> BROWNE, *supra* note 200, at 176; JONES, *supra* note 281, at 155-166.

<sup>1098</sup> SCHNEIDER, *supra* note 160, at 113. See also: Elisabeth Ayyildiz, *When Battered Woman's Syndrome Does Not Go Far Enough: The Battered Woman as Vigilante*, 4 AM. U. J. GENDER & L. 141, 147 (1995); JONES, *supra* note 281, at 131-144 (2009).

<sup>1099</sup> Noh et al, *supra* note 9.

<sup>1100</sup> *Id.* at 114-116 (2010) (According to the author, these models are larger social systems constructions and not strictly legal theory models with certain courtroom strategies and outcomes. However, their typified defenses and outcomes are assumed to align with how the battered woman who kills is explained.)

<sup>1101</sup> *Id.* at 126.

The medical model framed the battered woman as mentally ill, focusing on her psychological state, such as Battered Woman Syndrome, rather than addressing the history of abuse.<sup>1102</sup> This approach mitigated her accountability but left her stigmatized and subject to social control through the mental health system.<sup>1103</sup> In contrast, the conventional rationality model relied on traditional narratives, depicting these women as calculating, cold-blooded murderers acting out of intent or self-interest, reinforcing stereotypical notions of rational and deliberate violence.<sup>1104</sup>

Also, this portrayal of battered women who kill their intimate partners as bad or crazy corresponds to the theories in criminology literature about how the criminal justice system treats female offenders. On the one hand, the chivalry or paternalism hypothesis states that women are treated more leniently in the criminal justice system as a reflection of the male desire to protect the weaker sex.<sup>1105</sup> In the case of battered women who kill their intimate partner, when they are seen as crazy or victims, this leniency is often justified by framing them as individuals who acted under extraordinary circumstances beyond their control, thereby aligning with traditional gender roles of passivity and vulnerability. However, this leniency comes at a cost, as it undermines their agency and rationality, framing their actions as driven by impairment rather than as deliberate and reasoned responses to abuse.<sup>1106</sup>

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<sup>1102</sup> *Id.* at 126.

<sup>1103</sup> *Id.* at 126.

<sup>1104</sup> *Id.* at 126.

<sup>1105</sup> Edna Erez, *Dangerous Men, Evil Women: Gender and Parole Decision-Making*, 9 Just. Q. 105, 107 (1992).

<sup>1106</sup> De Vel-Palumbo, *supra* note 691, at 21.

On the other hand, the evil women hypothesis states that "women who violate gender-role expectations and behave in an "unladylike" fashion are punished harshly for the double violation of gender and legal norms, and therefore are denied the chivalrous (and lighter) dispositions reserved for "normal" women."<sup>1107</sup> Women who kill their intimate partners have also been reported to have harsher punishments.<sup>1108</sup>

This trend is evident in cases involving women who kill their intimate partners, with research by Terrance and Matheson revealing that deviations from the expected battered woman stereotype lead to more severe verdicts.<sup>1109</sup> Consequently, women portrayed as cold, calculating, or acting with intent, are not only seen as lawbreakers but also as violators of societal and gender norms, leading to harsher sentences and a denial of the leniency typically extended to female offenders.

This portrayal of battered women who kill as either crazy or evil also permeates the judiciary not only in the assessment of their defenses but also in the treatment of these female offenders.

Regarding the judiciary assessment of the defenses, especially when the defense is grounded in Battered Woman Syndrome, Elizabeth Schneider observed that while testimony on the syndrome serves as a means to articulate the shared yet distinct experiences of battered women, it also reinforces stereotypes of incapacity and

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<sup>1107</sup> See *supra* note 1105.

<sup>1108</sup> Russell, *supra* note 103, at 54 (discussing several studies that show how the level of knowledge on the dynamics of violence influences the verdicts severity of punishment).

<sup>1109</sup> See in general: Terrance and Matheson, *supra* note 573.

inferiority.<sup>1110</sup> Judges and lawyers respond to such testimony because it aligns with internalized stereotypes about women.<sup>1111</sup> Old stereotypes of women as "passive, sick, powerless, and victimized," presented in a new form, perpetuate the criminal justice system's tendency to treat women as either irrational, helpless, or both, further entrenching gendered biases in the legal process.<sup>1112</sup>

In the same manner that judges and lawyers in Argentina, Chile, and Mexico respond to women's perspectives that conform to outdated stereotypes, they also tend to favor defenses that portray these women as mad (or victims who succumbed to madness) when they do not accommodate the male paradigm of action. This explains why lawyers, for instance, are more likely to argue an excuse defense, such as the exculpatory state of necessity, rather than a justification defense like self-defense, unless the woman's actions conform strictly to a male-centric framework. Judges, when faced with a choice between a justification defense and an excuse defense,<sup>1113</sup> also tend to favor the latter when the male framework is not fulfilled, reinforcing these stereotypes. Also, in cases in which only a justification defense is argued, but the woman does not fit neatly in the mad victim portrayal, the judges often reject it. The sole exception occurs when women act within the

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<sup>1110</sup> SCHNEIDER, *supra* note 160, at 134.

<sup>1111</sup> *Id.*

<sup>1112</sup> *Id.*

<sup>1113</sup> The judge's role is more constrained in this regard, as the fact-finder must rule on the defenses presented by the defense counsel and cannot introduce new defenses beyond those already argued. This preference becomes particularly evident in cases where the judge has a choice—specifically, when the defense has presented one defense as subsidiary to another, with one being a justification defense and the other an excuse defense.



male-defined framework, such as in confrontational scenarios, where justification defenses are more readily accepted.

There are two significant issues with the defenses used in cases of women who kill their intimate partners. First, these defenses oscillate between justification and excuse, using the history of domestic abuse to support claims in which the harm is deemed permissible while simultaneously meeting the criteria for claims in which the harm is not permissible but excused due to an impairment in the defendant. Second, women are often justified when their actions align with male-centric parameters of justification defenses, such as traditional self-defense. However, when their actions deviate from these parameters, they are more likely to be excused. For instance, in a traditional self-defense scenario where women act within a confrontational setting and align their actions with this male-centric framework, they are justified. In contrast, in non-confrontational scenarios where the aggression has de-escalated or during lulls in violence, women are excused rather than justified, even though they are still acting in self-defense. The distinction between excuse and justification is relevant because the typology of defense impacts these women's agency and moral character as rational actors and, ultimately, as human beings. Also, it was mentioned in Chapter II that the origin of this oscillation is embedded in stereotypes of battered woman who kill their intimate partners and that, according to the application of a gender perspective, require their elimination.

### 2.3.2 A gender-sensitive defense strategy

Despite the fact that the defense should play a key role in promoting an adequate understanding of the facts and challenging discriminatory stereotypes, it is still uncommon to find legal defenses that incorporate a gender perspective.<sup>1114</sup> In Chile and Mexico, there is no specific and mandatory regulation that explicitly requires defense attorneys to promote a defense with a gender perspective, as is the case in Argentina for public defenders.

In Argentina, Article 42 of law 27.149, paragraph n) establishes that it is the duty of the defense attorney to promote a defense with a gender perspective.<sup>1115</sup>

In Chile, although no general provision mandates a gender perspective in the defense of women, the National Defense has established minimum standards for public criminal defenders.<sup>1116</sup> In 2018, it issued the Manual of Minimum Actions in Matters of Gender Equality, which serves as a protocol to guide defenders in addressing gender-related issues in their practice.<sup>1117</sup> According to the manual, defenders are required to develop their defense strategies from a gender perspective when the defendant is a woman.<sup>1118</sup>

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<sup>1114</sup> Hopp, *supra* note 1092, at 36.

<sup>1115</sup> Law No. 27.149, art. 42, ¶ n), *Boletín Oficial* [B.O.], June 30, 2015 (Argentina) (Establishes that it is the duty of the defense attorney to promote a defense with a gender perspective).

<sup>1116</sup> Law No. 19718 art. 7, d) Febrero 10, 2001, *Diario Oficial* [D.O.] (Chile).

<sup>1117</sup> DEFENSORIA PENAL PUBLICA, Resolución Exenta N° 484, 15 (Dic. 28, 2018), [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.academiahumanitas.cl/archivos/210201\\_defen-sapenalyrpa/MAM\\_Genero.pdf](https://www.academiahumanitas.cl/archivos/210201_defen-sapenalyrpa/MAM_Genero.pdf) (last visited Mar. 22, 2025).

<sup>1118</sup> DEFENSORIA PENAL PUBLICA, Resolución Exenta N° 484 (Dic. 28, 2018), [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.academiahumanitas.cl/archivos/210201\\_defen-sapenalyrpa/MAM\\_Genero.pdf](https://www.academiahumanitas.cl/archivos/210201_defen-sapenalyrpa/MAM_Genero.pdf) (last visited Mar. 22, 2025).

In Mexico, there is no general provision that mandates a gender perspective in the defense of women. However, Article 20 of the Constitution establishes the right to an effective defense.<sup>1119</sup> To secure this right, Mexico provides public defenders through the Federal Institute of Public Defense.<sup>1120</sup> This institution has made efforts to train its defenders and incorporate a gender perspective into their practices through specialized training sessions.<sup>1121</sup> In a study conducted by Ortiz and Perez on the total number of defenders in the country, 69% of those interviewed reported that they have access to the SCJN's protocol for adjudicating cases with a gender perspective, the guide for defense and advisory services with a gender perspective issued by the institute, and the guidelines for addressing vulnerable groups.<sup>1122</sup>

Also, CEDAW, in its Recommendation 33, asserts that women have the right to access justice through the provision of free legal assistance.<sup>1123</sup> One of the obligations outlined is to “ensure that legal aid and public defense providers are competent and gender-sensitive, respect confidentiality, and are granted adequate time to defend their clients.”<sup>1124</sup> Therefore, women's right to access justice includes the one to have access to a specialized defense that is gender sensitive.<sup>1125</sup>

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<sup>1119</sup> Constitución Política de los Estados Unidos Mexicanos, CP, Diario Oficial de la Federación [DOF] 05-02-1917, art. 20(b)(VIII), últimas reformas DOF 10-02-2014 (Mexico).

<sup>1120</sup> Gabriela Ortiz and Cindi Perez, *Mexico*, in DEFENSA PENAL EFECTIVA CON PERSPECTIVA DE GÉNERO EN AMÉRICA LATINA 253, 265 (Centro de Estudios de Justicia de Las Americas Ed., 2022)

<sup>1121</sup> *Id.* at 272-275.

<sup>1122</sup> *Id.* at 274.

<sup>1123</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 33 on Access to Justice and Legal Aid, ¶ 37, U.N. Doc. A/C.10/37/Add.13 (1999).

<sup>1124</sup> *Id.*

<sup>1125</sup> Di Corleto and Carrera, *supra* note 197, at 16.

According to Di Corleto, for a defense with a gender perspective to be effective, it is necessary, first, to reexamine the dogmatic categories in criminal law; second, to identify and produce evidence with attention to women's experiences; and third, to acknowledge the existence of potentially conflicting interests in cases where the assisted individuals are accused alongside their partners.<sup>1126</sup> Regarding the first stage, developing a defense strategy that incorporates the gender-based violence experienced by the defendant is a key factor for evaluating her criminal responsibility.<sup>1127</sup> In other words, the abuse suffered by the defendant must be factored into the defense as a central element for the judge to consider.

However, an effective defense that truly safeguards women's rights goes beyond simply incorporating a history of domestic abuse. It requires the elimination of stereotypes in the defenses.

Some of the directives and line instruments have stated that it is necessary for defense lawyers to avoid using stereotypes, but it limits to those related to gender roles, such as “the good mother”, the “good victim”, “the good wife,” or assumptions about a woman's role in the family or her responsibilities related to maternity.<sup>1128</sup> Thus, the

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<sup>1126</sup> *Id.*

<sup>1127</sup> Di Corleto and Carrera, *supra* note 197, at 16. See also: DEFENSORIA PENAL PUBLICA, Resolución Exenta N° 484 15 (Dic. 28, 2018), 18, [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.academiahumanitas.cl/archivos/210201\\_defen-sapenalyrpa/MAM\\_Genero.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://www.academiahumanitas.cl/archivos/210201_defen-sapenalyrpa/MAM_Genero.pdf) (last visited Mar. 22, 2025) (The criminal defense attorney must contextualize the violence suffered by the accused, inflicted by the victim, in order to support claims of self-defense, an exculpatory state of necessity, or overwhelming fear in crimes committed against those who assaulted her.)

<sup>1128</sup> Cecilia Hopp, *Argentina*, in DEFENSA PENAL EFECTIVA CON PERSPECTIVA DE GÉNERO EN AMÉRICA LATINA 47, 59 (Centro de Estudios de Justicia de Las Américas Ed., 2022); DEFENSORIA PENAL PUBLICA, Resolución Exenta N° 484 15 (Dic. 28, 2018), 18, [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.academiahumanitas.cl/archivos/210201\\_defen](https://efaidnbmnnnibpcajpcglclefindmkaj/https://www.academiahumanitas.cl/archivos/210201_defen)

stereotypes the defense attorneys are required to avoid are limited and do not include specific stereotypes related to battered women who kill their intimate partners.

It is necessary to remark that these instruments require public defenders to avoid stereotypes but do not forbid their use.<sup>1129</sup> Even more, some legal operators have declared that defenses based on stereotypes are the best available.<sup>1130</sup> Therefore, these stereotypes are still used when they are convenient for the defense.<sup>1131</sup>

There are no established guidelines for selecting a particular affirmative defense (f.e. self-defense, exculpatory state of necessity, insanity, etc.) that avoids reliance on stereotypes and certainty, there is no prohibition to avoid stereotypes surrounding battered women who kill their intimate partners. As mentioned, these women are often portrayed as either “mad” or “bad.” The latter option is clearly untenable, as it typically results in a

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sapenalyrpa/MAM\_Genero.pdf (last visited Mar. 22, 2025) (The criminal defense attorney must contextualize the violence suffered by the accused, inflicted by the victim, in order to support claims of self-defense, an exculpatory state of necessity, or overwhelming fear in crimes committed against those who assaulted her.)

<sup>1129</sup> DEFENSORIA PENAL PUBLICA, Resolución Exenta N° 484 15 (Dic. 28, 2018), 18, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.academiahumanitas.cl/archivos/210201\_defen-sapenalyrpa/MAM\_Genero.pdf (last visited Mar. 22, 2025) (The criminal defense attorney must contextualize the violence suffered by the accused, inflicted by the victim, in order to support claims of self-defense, an exculpatory state of necessity, or overwhelming fear in crimes committed against those who assaulted her.)

<sup>1130</sup> Hopp, *supra* note 1128, at 51 (In a study conducted by the author in Argentina in which interviews were carried out with the people who provided training for the public defender's office, they indicated that it was an arduous process that generated resistance, as many public defense magistrates believed that defenses based on gender stereotypes were the best available.)

<sup>1131</sup> Hopp, *supra* note 1128, at 59; DEFENSORIA PENAL PUBLICA, Resolución Exenta N° 484 15 (Dic. 28, 2018), 18, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.academiahumanitas.cl/archivos/210201\_defen-sapenalyrpa/MAM\_Genero.pdf (last visited Mar. 22, 2025) (The criminal defense attorney must contextualize the violence suffered by the accused, inflicted by the victim, in order to support claims of self-defense, an exculpatory state of necessity, or overwhelming fear in crimes committed against those who assaulted her.) (Often, the defenders reaffirm the gender stereotypes that underpin the charge, do not dispute the evidence, and merely ask for a reduction in the sentence, arguing that the woman would have acted in a state of non-imputability.)

conviction. Consequently, framing these women as “mad” based on an excuse defense becomes a viable strategy for those cases in which the defender cannot easily sustain a justification defense based on the woman as a rational agent.

For a justification defense to succeed, the defender must demonstrate that the woman’s actions fall within the same parameters typically applied to men engaged in a bar fight. Indeed, in these cases, they incorporate the context of domestic violence, but this context serves as a complement for the main argument of the defense that falls neatly into the traditional dogmatic categories.

In cases in which women are not acting just like men, some litigators might opt for an excuse defense to secure an acquittal, even if it is based on stereotypes that undermine their client’s agency.<sup>1132</sup> The reason for this is that representing these women as rational is challenging, even more so when the defense is based on Battered Woman Syndrome.

However, this approach—where a defense based on traditional, dogmatic parameters uses a justification defense to portray the woman as rational, while alternative defenses rely on stereotypes of incapacity to support an excuse defense—may inadvertently reinforce the very gender stereotypes that a gender perspective aims to eliminate. This outcome ultimately undermines the goal of providing a defense rooted in a truly gender-sensitive framework.

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<sup>1132</sup> Coughlin, *supra* note 559, at 25 (The distinction between using an excuse defense or a justification or the other may be irrelevant for criminal practitioners focused on securing an acquittal.)

### 2.3.3 Judge's obligation to avoid stereotypes in the assessment of evidence

As already discussed in Chapter III, judges are required to apply a gender perspective to cases where women kill their intimate partners, which obliges them to address and eliminate stereotypes while ensuring that judicial reasoning complies with international and national mandates for equality and non-discrimination. But the question is how judges can avoid this oscillation between justification and excuse defenses.

In legal proceedings, judges are presented with a defense, and the factfinder assesses the legal requirements of a defense in light of evidence. In other words, the judge must determine whether the essential conditions for a defense have been met by the evidence presented during the trial. However, the rules governing the collection, admission, and evaluation of evidence—despite their apparent neutral character—are nonetheless imbued with a patriarchal bias.<sup>1133</sup>

The idea of eliminating stereotypes from the evaluation of evidence to ensure impartial judgment has been applied in areas such as sexual crimes.<sup>1134</sup> In recent years, this approach has been extended to cases involving women who have killed their intimate partners.

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<sup>1133</sup> Jesús Ezurmendia et al., *La Defensa de Género: Algunos Problemas Probatorios en Materia de Legítima Defensa*, 16 POLÍT. CRIM. No. 32, 875, 883-884 (2021); Julieta Di Corleto, *La valoración de la prueba en casos de violencia de género*, en GARANTÍAS CONSTITUCIONALES EN EL PROCESO PENAL 589-604 (Florencia G. Plazas, Luciano A. Hazan eds., 2015).

<sup>1134</sup> See in general: Di Corleto, *supra* note 1133.

Ezurmendia, González, and Valenzuela propose that a gender perspective must be included in the evidentiary process in cases of self-defense where a woman is charged with homicide in Chile.<sup>1135</sup> The authors analyze three stages in this process in which the judge could apply a gender perspective: the production of evidence, the assessment of evidence, and the standard for evaluating evidence.<sup>1136</sup> I will focus on the second stage because the fulfillment of the requirements for an affirmative defense is determined based on the judge's evaluation of the evidence.

In Chile, the free evaluation system of evidence is based on *sana crítica*—that is, a rational evaluation of the evidence constrained by logic, scientifically grounded knowledge, and the maxims of experience.<sup>1137</sup>

The Supreme Court has defined the maxims of experience as “those that, as already indicated, adhere to guidelines drawn from the general observation of society, of which the judge is not only a part but also nourished by. They correspond to inferences supported by the example of repeated behaviors and facts over time, which, when abstracted from the singularities of each specific situation, allow for the formulation of rules or models that can be accepted as truth, so that by examining their results, it is possible to discover their causes.”<sup>1138</sup>

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<sup>1135</sup> Ezurmendia et al, *supra* note 1133, at 876.

<sup>1136</sup> *Id.* at 881.

<sup>1137</sup> *Id.* at 887.

<sup>1138</sup> Supreme Court, July 25, 2016, 30.941-2015 (Chile), quoted on Jesús Ezurmendia et al., *La Defensa de Género: Algunos Problemas Probatorios en Materia de Legítima Defensa*, 16 POLÍT. CRIM. No. 32, 875, 887 (2021).



A gender-sensitive evaluation of evidence requires constructing inferences that acknowledge historical inequality and existing gender stereotypes while discarding prejudices based on gender.<sup>1139</sup> The maxims of experience, being epistemic evidentiary inferences, are particularly susceptible to the influence of stereotypes because they are inferred from the factfinder's stock of knowledge.<sup>1140</sup> This vulnerability underscores the importance of exercising extra caution during evidence assessment to prevent reinforcing gender-based biases.<sup>1141</sup>

Given the way maxims of experience are created, prejudices, scripts, and stereotypes might influence them.<sup>1142</sup> In cases of self-defense, the stereotype of the "fabricating woman," the "good woman," or the "good wife" may influence the maxims of experience in judges.<sup>1143</sup> The problem is that, if stereotypes taint a judge's inferences, it can lead to gender-biased conclusions—for example, unfaithful women being labeled as "bad" and assumed likely to engage in violent criminal behavior.<sup>1144</sup>

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<sup>1139</sup> Ezurmendia et al, *supra* note 1133, at 887.

<sup>1140</sup> *Id.* (The authors state that the court must be rigorous in its reasoning because, by applying a maxim of experience, it may fall into generalizations or biases inherent in the patriarchal structure on which our criminal justice system is built. This is not a trivial matter, as the decision-making body, drawing on its personal experience, formulates and applies the maxim of experience based on its "stock of knowledge.").

<sup>1141</sup> *Id.*

<sup>1142</sup> *Id.* at 888.

<sup>1143</sup> *Id.* See also: Di Corleto, *supra* note 1133, at 600 (The author has also advocated for the elimination of stereotypes such as "fabricating woman," "good woman," or "good wife" because can undermine judges' impartiality.) For a further analysis on how gender stereotypes – such as the "honest woman," "perjurer," "instrumental woman," "co-responsible woman," and "fabricating woman"- impact the administration of justice in cases of violence against women see: DEFENSORÍA GENERAL DE LA NACIÓN, DISCRIMINACIÓN DE GÉNERO EN LAS DECISIONES JUDICIALES: JUSTICIA PENAL Y VIOLENCIA DE GÉNERO, 83-112 (2010).

<sup>1144</sup> Ezurmendia et al, *supra* note 1133, at 889.

This reasoning is also applied to Argentina and Mexico. In Argentina, there is also a free evaluation system of evidence based on *sana crítica*.<sup>1145</sup> This concept impose on judges the obligation to express the elements of evidence leading to a specific factual conclusion, along with an explanation of the reasoning behind that conclusion, in accordance with the laws of human thought (i.e., the logical principles of equality, non-contradiction, excluded middle, and sufficient reason), as well as common experience and psychology.<sup>1146</sup> In similar terms, these limits have been recognized by the National Chamber of Criminal Cassation in Argentina.<sup>1147</sup>

Similarly, in Mexico, there is also a free evaluation system for evidence.<sup>1148</sup> Although it does not explicitly state that it is based on the principle of *sana crítica*, both doctrine and case law have established that the limits on the evaluation process are maxims of experience, scientific knowledge, laws of logic, and *sana crítica*.<sup>1149</sup>

Therefore, since Argentina and Mexico also employ maxims of experience as constraints on the free evaluation of evidence, there is a risk that stereotypes may similarly infiltrate the evidentiary assessment process—as pointed out by Ezurmendia, González, and Valenzuela in Chile's legal proceedings.

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<sup>1145</sup> Código Procesal Penal (Criminal Procedure Code) [Cód. Proc. Pen.] art. 398 (Argentina).

<sup>1146</sup> JULIO MAIER, DERECHO PROCESAL PENAL TOMO I 482 (2nd ed. 2004).

<sup>1147</sup> Cámara Nacional de Casación Penal, Sala II, 1995-C-525, cited in Cámara Nacional de Casación Penal [CNCP] [National Court of Appeal on Criminal Matters: highest federal court on criminal matters], 05/09/2018, Sala II, “Alfonso, Eduardo y otro s/ recurso de casación,” 48, available at [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.mpf.gob.ar/lesa/files/2019/03/139-20180905-Sala-II-Alfonso-LOPEZ-FADER-Y-ALFONSO.pdf](https://www.mpf.gob.ar/lesa/files/2019/03/139-20180905-Sala-II-Alfonso-LOPEZ-FADER-Y-ALFONSO.pdf) (Last visited March 15, 2025) (Argentina).

<sup>1148</sup> Código Procesal Penal (Criminal Procedure Code) [Cód. Proc. Pen.] art. 398 (Argentina).

<sup>1149</sup> Daniel González Lagier, *Inferencia probatoria y valoración conjunta de la prueba in* MANUAL DE RAZONAMIENTO PROBATORIO 353, 383 (Jordi Ferrer Beltrán ed., 2022).

The reasoning on how stereotypes might be replicated in the assessment of evidence is relevant because the ones that affect battered woman who kill, this is, being a cold calculating woman or a woman mentally impaired lacking agency cause of the abuse suffered might as well influence the judge when establishing the facts that will serve as base to fulfill the requirements of an affirmative legal defense.

Take, for example, the case Karla Porter, who, after years of mistreatment, lacked the courage to kill her abusive partner herself and instead asked a third person to do it. A judge might, however, adopt a maxim of experience suggesting that women who hire killers are calculating and cold-blooded—essentially reflecting the stereotypical image often portrayed in the media. Yet, a close examination of Porter's case reveals that she was in imminent danger; her husband subjected her to severe daily abuse, making her death a highly probable scenario.

A second example, from another perspective, involves a woman who was repeatedly subjected to severe beatings. Imagine that, after another brutal night of assaults, her drunk husband falls asleep, so she took the opportunity to kill him and set the bed on fire. In such a case, a judge might be inclined to label her as mentally unstable, attributing her drastic actions to a psychological impairment resulting from the abuse rather than recognizing them as a desperate response to chronic violence.

Although these examples are extreme, they illustrate the primary point about stereotypes in the evaluation of the evidence process: judges may be influenced by their

existing knowledge of the world, which can lead them to apply stereotypical maxims of experience when evaluating cases.

This ultimately also influences the affirmative defenses that will be granted or denied by the factfinder. In cases where the judge has the discretion to choose between defenses—specifically when the defense has presented one defense as subsidiary to another, with one being a justification defense and the other an excuse defense—or in cases where the defense only introduced a justification defense—the judge must apply a gender perspective in the assessment of evidence that will sustain the requirements of these affirmative defenses. This perspective requires the judge to eliminate ingrained stereotypes of madness or evilness and assess the case without prejudice, discrimination, or bias.

This does not mean that a judge can never grant an excuse defense or that a justification must always be awarded. It means that when assessing the evidence, judges should apply a gender perspective and avoid relying on maxims of experience rooted in stereotypes, as these may lead them to favor facts that conform to preconceived notions of a battered woman who kills to be bad or mad, perpetuating the stereotype. However, by avoiding these stereotypes, cases that are typically treated as excuse defenses rather than justifications—or cases in which a justification has been denied—could instead be recognized as justified.

### **2.3.4 Compatibility with a gender perspective**

Eliminating stereotypes that portray women as "crazy" or "evil" is not only compatible with a gender perspective, but it demands it because they reinforce a discriminatory system that evaluates women based on their conformity—or lack thereof—to these reductive labels rather than on the material circumstances of their cases. These stereotypes particularly harm women who kill in the context of domestic violence, as they begin their cases at a disadvantage. They are forced to conform either to the stereotype of being "mad" or a victim, thus excusing their actions, or to the male standard of rationality, which justifies their behavior. Women who fail to fit into either of these categories are often left with no defense and face criminal punishment.

Judges and lawyers must actively work to eliminate harmful stereotypes by adopting a gender-sensitive approach in their legal reasoning. They should critically assess defenses and evidence with an awareness of the unique dynamics of domestic abuse, recognizing that women who kill their intimate partners often act as rational agents responding to sustained violence. This means moving beyond outdated labels of "mad" or "evil" and instead considering the defendant's experiences.

By adopting this perspective, the legal system moves toward a fairer application of justice, validating these women's autonomy and recognizing them as rational individuals capable of moral reasoning—rather than reducing them to mere stereotypes of victimhood or pathology. This approach ensures equality and challenges systemic biases, promoting a more inclusive and just legal framework.

### **3. Summary**

There is an emerging trend among some courts to apply a gender perspective in cases of domestic violence homicides perpetrated by women. However, this approach is mainly limited to confrontational scenarios where the victim is under immediate attack and non-confrontational cases based on excuse defenses (e.g., state of necessity or insurmountable fear). This application of a gender perspective seems more like a mere token to women's rights than true development of its potential.

The next sections aimed to define the application of a gender perspective to the problems identified in this dissertation. To address these challenges, this dissertation proposes the incorporation of U.S. legal standards that align with a gender perspective.

The first proposal is to incorporate the history of abuse into judicial assessments, ensuring that the experiences and perspectives of these women are acknowledged in the assessment of their defenses. Considering the history of domestic abuse creates several standards compatible with a gender perspective that will impact different aspects of the legal defenses of these women, including the interpretation of imminence, the assessment of reciprocal violence, the identification of harm, and the evaluation of alternatives available to the defendant.

First, regarding the concept of imminence, a critical element in self-defense and an exculpatory state of necessity, must be redefined through a gender perspective to account for the cyclical and ongoing nature of domestic violence. Traditional interpretations requiring immediate temporal proximity between threat and action fail to reflect the

continuous aggression experienced by survivors. A first approach with a gender perspective recognizes that domestic abuse creates an ever-present threat, where violence, though not active at a specific moment, remains imminent due to its cyclical nature and the victim's intimate knowledge of their abuser's behavior. However, this approach leaves out the cases of women in atypical cycles and leaves room for uncertainty about the attack. A solution compatible with a gender perspective that will ground the concept of imminency is incorporating elements that, might be considered "subjective", but that ultimately provide context to the objective assessment of imminence, like in a hybrid standard of reasonableness as a complement. This will enable a more accurate, comprehensive, and equitable evaluation of defense claims within the context of domestic abuse.

Second, crossed violence challenges the assumption of gender symmetry in interpersonal violence by emphasizing that women's use of force often stems from self-defense or attempts to escape abuse, unlike male partners' aggressions, which are typically aimed at asserting control. In this manner, the typology of violence offered by Michael Johnson is helpful to establish that violence from the female partner does not mean the exercise of power and control but violence born in resistance. A gender perspective requires judges to move beyond mere physical acts and assess the motivation and context of violence, often through expert testimony and specialized tools.

Third, identifying and pondering the interests and harms involved in self-defense and exculpatory state of necessity requires integrating a gender perspective to account for the broader context of domestic abuse. Courts often fail by narrowly focusing on immediate circumstances previous to the killing, disregarding the history of abuse, and minimizing

the evils women seek to avoid. A gender perspective not only broadens the concept of imminence but also requires the judge to make sure of the level of dangerousness the woman experiments. Tools like the Danger Assessment instrument help evaluate the severity of the risk and provide objective measures of abuse dynamics, supporting a fairer judicial assessment of the defendant's defense.

Lastly, women in abusive relationships often face profound internal and external barriers that make leaving or seeking less harmful alternatives to defend themselves unfeasible. These barriers include the psychological effects of battering, emotional dependence, economic constraints, and a lack of institutional support, which collectively create a system that traps victims within abusive relationships. A gender-sensitive perspective challenges these assumptions, helping the judge to consider the systemic barriers and the rationality of women's survival strategies in abusive contexts.

Another standard proposed by this dissertation is the use of the Survivor Theory, which offers a compelling alternative to Battered Woman Syndrome, addressing its critical flaws while aligning with a gender-sensitive perspective. Unlike Lenore Walker's theory, which pathologizes women as mentally impaired, passive victims, Survivor Theory emphasizes their agency, rational decision-making, and resilience. It reframes survivors as active individuals who navigate abusive relationships by employing diverse coping mechanisms and strategic responses, highlighting the external barriers—such as economic dependency and systemic failures—that prevent them from escaping abuse. This perspective avoids reinforcing harmful stereotypes that portray women as helpless or incapable, ensuring that legal defenses reflect the realities of domestic violence survivors.



Additionally, Survivor Theory resolves the contradictions inherent in Battered Woman Syndrome by eliminating the ambiguity between justification and excuse defenses. It supports defenses like self-defense without relying on notions of psychological impairment, focusing instead on the survivor's rational appraisal of danger and the necessity of their actions. By rejecting the "perfect victim" stereotype, Survivor Theory validates a wide range of survivor behaviors, whether they involve seeking help, resisting abuse, or acting decisively in self-defense.

Survivor Theory also aligns closely with a gender perspective by dismantling stereotypes and promoting equality. It acknowledges systemic inequalities and structural barriers that constrain survivors without pathologizing their responses. By presenting survivors as active agents navigating abuse with resourcefulness and determination, this framework not only strengthens their credibility in court but also challenges societal and institutional biases that perpetuate gender inequality.

Lastly, the shifting between justifications and excuses for women who commit violent acts stems from outdated female archetypes. Women deviating from stereotypes—expected to be docile, nurturing, and passive—are labeled either as mentally unstable or as cold, calculating criminals. Media portrayals and judicial practices reinforce these biases, framing them as either "mad" or "evil." Ultimately, these stereotypes are also replicated by legal operators in the defenses of women who have killed their intimate partners.

This dissertation proposes eliminating stereotypes hidden behind the defenses for women who kill their abusive partners. The perception of women who kill their intimate

partners in the context of domestic violence is influenced by these stereotypes. Society, in general, tends to justify or excuse these women's actions based on old notions of femininity, portraying them as either victims, irrational or inherently deviant. This framing influences legal outcomes, as courts tend to favor excuse defenses over justification defenses unless the woman's actions fit a male-defined framework of legitimate violence. Applying a gender perspective is critical for dismantling these stereotypes and ensuring equitable judicial assessments. Lawyers and judges must move beyond defenses that reinforce outdated portrayals of women as mad or bad when selecting and assessing the requirements of an affirmative defense.

## CONCLUSION

Intimate partner violence—one of the most pervasive forms of domestic abuse—can escalate to homicide. Chapter I illustrates how women, predominantly victimized by male partners, face a disproportionate burden of abuse, as reflected in both the high number of victims and the stark gender disparities in perpetration. While men account for about 90% of global homicides in countries like Argentina, Chile, Mexico, and the USA, intimate partner homicides flip this pattern, with women being five times more likely to be victims. This study, however, focuses on the 16% of cases where women kill their male partners.

These homicides are rarely impulsive acts; instead, they emerge from a prolonged history of abuse, driven by motives such as self-defense, retaliation, or desperation. The chapter also introduces Battered Woman Syndrome—a framework explaining how repeated abuse can lead to feelings of entrapment and learned helplessness, compelling victims to remain in harmful situations.

The second part of the chapter shifts focus to the primary subjects of the investigation: women survivors of battering. It argues for replacing the term "battered woman" with "woman survivor of battering" to more accurately reflect their dual role as both victims and proactive agents.

Finally, the chapter outlines the key characteristics of these survivors: they are socially constructed as subordinate due to gender roles, they endure abuse while also demonstrating resilience, and they have suffered repeated physical abuse. In summary, this

introductory chapter traces the trajectory of women who, as both victims and survivors, eventually become defendants in cases involving the murder of their abuser.

Chapter II illustrates the legal challenges these women face, which—if unaddressed—can result in the dismissal of valid defenses and wrongful convictions. It begins by outlining the common defenses used by women who have killed their intimate partners in Argentina, Chile, and Mexico, and their correlative defense in the U.S. to provide background to the reader.

The first challenge is the legal system's male bias. Law has been historically shaped by male perspectives, which continue to influence judicial reasoning and often overlook the lived experiences of women subjected to domestic violence. This bias affects several key aspects of how courts assess the defenses invoked by women who kill their abusive partners. This dissertation focuses particularly on how male bias distorts the interpretation of imminence, the understanding of mutual violence, the weighing of interests and harms in self-defense and exculpatory necessity, and the evaluation of whether the defendant had reasonable alternatives to committing the homicide.

Regarding the requirement of imminence in self-defense and exculpatory state of necessity, the problem arises when using a traditional concept that ties the danger to immediate attacks. This understanding ignores the cyclical nature of abuse and survivors' intimate knowledge of risk, experiences, and perspectives.

Additionally, the misinterpretation of mutual violence as indicative of symmetry in abusive relationships reflects a male-biased perspective. This view fails to recognize that

women's use of violence is often defensive or reactive, whereas men's violence tends to be coercive and controlling.

Another problem rooted in the male-biased perspective of criminal law is the tendency of some courts to misjudge the interests and harms at stake in self-defense and exculpatory state of necessity. By focusing narrowly on the immediate circumstances of the fatal incident, judges minimize the severity and context of the prior abuse. This leads to flawed assessments, where the harm caused—killing the abuser—is deemed excessive compared to the harm avoided.

Lastly, some courts assume that these women had alternative, less harmful options than killing their abusers, questioning why the defendant did not leave. The misconception that these women could have escaped overlooks the complexity of their circumstances, rendering the notion of alternative actions illusory.

The second main challenge is that courts in the Latin Countries of this investigation often use expert testimony based on Battered Woman Syndrome. However, this theory remains controversial and may ultimately do more harm than good. First, it frames women as mentally impaired, not only by the nomenclature used but also by the symptomatology associated with the syndrome. Second, it is difficult to understand how the syndrome can simultaneously support defenses with opposing objectives, such as justification and excuse. This duality creates ambiguity, complicating the determination of whether the woman's actions were rationally justified or if she should be excused due to mental impairment. Third, ultimately, this theory reinforces stereotypes, portraying women as passive and

dependent—battered woman stereotype. This rigid stereotype becomes a standard that women must fit to benefit from the testimony, disadvantaging those who do not conform.

The third problem is the shifting between justification and excuse defenses based on whether the woman's actions conform to a male-centered model of self-defense. This inconsistency weakens the role of expert testimony on domestic abuse and creates ambiguity about whether the woman acted rationally or was mentally impaired. Moreover, relying on excuse defenses undermines women's agency by portraying them as helpless rather than as autonomous individuals making reasoned decisions. As a result, women are not granted equal legal recognition as rational actors, reinforcing gendered inequalities in the application of criminal law.

Chapter III aims to set the basis for the proposed solution. The problems this dissertation addresses arise from deeply ingrained gender inequality that is embedded in and reinforced by gender roles and stereotypes. The gender perspective is an analytical tool designed to assess and correct gender-based differences, power imbalances, stereotypes, and discrimination across social, political, and cultural contexts.

Applied to law, this perspective may influence both legislative creation and judicial interpretation, countering gender inequality through explicit or implicit measures. In judicial reasoning, the gender perspective finds its foundation in the rights to equality and non-discrimination.

These rights are enshrined in several legal instruments, both international and national, in Argentina, Chile, and Mexico. On the one hand, these Latin American countries

are parties to international human rights treaties that establish the rights to equality and non-discrimination, alongside non-binding instruments that guide judicial interpretation. On the other hand, their national legislation—along with domestic soft-law instruments—reinforces the obligation to incorporate a gender perspective into judicial decisions through laws addressing discrimination, gender-based violence, and inequality.

Judges must apply a gender perspective when gender may cause unequal impact—not based on parties' sex, but on identified imbalances, stereotypes, or vulnerability. It's especially relevant in three contexts: (i) power asymmetry, (ii) gender-based violence or discrimination, and (iii) differential treatment due to stereotypes.

Finally, given the versatility of the gender perspective, its scope of application is vast, covering a variety of topics, such as domestic violence, prison conditions, and economic rights after divorce. These examples underscore the broad applicability of the gender perspective across diverse areas of law, promoting fairness and equity in judicial decisions.

Chapter IV starts illustrating how some courts are beginning to apply a gender perspective in domestic violence homicides committed by women, but this is often limited to confrontational cases of self-defense or non-confrontational scenarios in which the woman claims excuse defenses. This limited use appears symbolic rather than transformative, not using the gender perspective to its full potential.

The following sections of this chapter aim to apply the gender perspective to the problems identified in this dissertation. To address them, this thesis proposes incorporating U.S. legal standards aligned with a gender perspective.

First, it proposes full recognition of the history of abuse. This shift impacts legal interpretations of imminence, reciprocal violence, harm, and available alternatives.

The concept of imminence in self-defense and exculpatory state of necessity must be redefined through a gender perspective to reflect the ongoing nature of domestic violence. Traditional views requiring an immediate threat overlook the constant danger survivors face. A gender-sensitive approach sees violence as ever-present due to its cyclical nature and the victim's awareness of their abuser's behavior. However, this approach excludes cases involving women in atypical cycles and leaves room for uncertainty about the nature of the attack.

A solution compatible with a gender perspective that grounds the concept of imminence is the incorporation of elements that may arise from the woman's internal forum but ultimately provide context for the objective assessment of her circumstances, influencing how imminence is evaluated. In this manner, this dissertation proposes the incorporation of certain elements from the objective prong of the hybrid standard of reasonableness as a means to enhance the woman's perspective and support the judge's assessment of her circumstances by adopting her standpoint.

Second, the assumption that crossed violence signifies the existence of gender symmetry in an abusive relationship is wrong. The typology of violence offered by Michael



Johnson proves that when a woman exercises violence not necessarily means she is as aggressive as her partner, but that it could be a reactive action to the abuse she is suffering. In this typology, more than centering on the number of physical assaults, the author centers on the motivation and objective of the assault.

The typology of intimate partner violence includes four categories. Intimate Terrorism is gender-asymmetric and involves one partner—typically the man in heterosexual relationships—using violence and control to dominate the other, often resulting in severe and escalating harm. Violent Resistance is also gender-asymmetric and occurs when one partner, usually a woman, uses violence in response to ongoing abuse and control but does not seek control themselves. In contrast, Situational Couple Violence is gender-symmetric and arises from isolated conflicts without a pattern of control. Lastly, Mutual Violent Control, also gender-symmetric, involves both partners using violence and control in a rare power-struggle dynamic.

This typology is indeed compatible with a gender perspective given it presents a more accurate and comprehensive understanding of domestic violence as a phenomenon rooted in power and control rather than solely in physical aggression. Also, it breaks with the stereotypes of a "perfect victim"—being passive and submissive—, acknowledging that some women, in fact, defend themselves, expanding the universe of women who suffer from domestic violence and, therefore, whose history of abuse requires being considered when assessing their defenses.

Third, to identify and ponder the interests and harms involved in self-defense and exculpatory state of necessity it is essential to integrate a gender perspective to account for the broader context of domestic abuse. Courts often fail by narrowly focusing on immediate circumstances previous to the killing, disregarding the history of abuse, and minimizing the evils women seek to avoid.

A gender perspective broadens the concept of imminence, allowing the judge to look beyond the moments immediately preceding the fatal event. However, this may not be sufficient, as doubts may still arise regarding the level of danger the woman faced. To address this issue, tools such as the Danger Assessment instrument help evaluate the severity of risk and offer objective indicators of abuse dynamics, thereby supporting a more accurate and equitable judicial assessment of the defendant's claim to a legal defense.

The last issue born in male bias is the consideration that women have a great array of options besides killing their intimate partners. However, as demonstrated in Chapter II and IV, women often remain in abusive relationships due to psychological, financial, and institutional barriers. A gender-sensitive approach helps courts understand these constraints and evaluate women's survival strategies as rational responses to systemic limitations. In such cases, a comprehensive socioeconomic report may shed light on the defendant's particular circumstances.

The second standard proposed by the dissertation is the replacement of Battered Woman Syndrome as the foundational theory of affirmative defenses with the Survivor Theory developed by Edward Gondolf and Ellen Fisher.

This theory challenges the concept of learned helplessness and portrays abused women as rational actors who actively seek help and develop coping strategies despite systemic failures. It emphasizes external barriers—such as economic dependence, social stigma, and inadequate institutional support—rather than internal psychological deficits. Most importantly, it reframes women’s experiences not as evidence of pathology but as rational responses to ongoing abuse.

Survivor Theory is also fully compatible with a gender perspective. It dismantles stereotypes by portraying women as resourceful and resilient rather than helpless or submissive. Unlike Battered Woman Syndrome, it does not require defendants to fit the image of a “perfect victim” to access legal defenses. Instead, it validates diverse survival strategies and recognizes women as active agents capable of making reasoned decisions in the face of danger. This approach aligns with principles of equality and non-discrimination, ensuring that legal defenses are available to all survivors, regardless of how they respond to abuse.

Lastly, the shifting between justification and excuse defenses stems from outdated female archetypes. Women who deviate from the expected norms of passivity, nurturance, and emotional fragility are often categorized in one of two ways: either as mentally unstable or as cold, calculating criminals. These reductive labels—“mad” or “bad”—are not only replicated by legal operators but also embedded in the very structure of legal defenses available to women who kill their abusive partners.

This dissertation proposes the elimination of these stereotypes in criminal defenses, specifically, the notions that women are either irrational victims or malicious offenders

unless their actions conform to a male-centric framework of rationality. As a result, courts tend to favor excuse defenses when women's actions fall outside this model, reinforcing the idea that their responses to abuse stem from psychological impairment rather than reasoned self-defense.

Applying a gender perspective is essential to dismantling these entrenched biases. Legal operators –judges and lawyers– must move beyond frameworks that depict women as either inherently flawed or pathologically passive. The use of a gender perspective requires them to assess these cases by recognizing the rationality behind women's actions in the context of sustained abuse, ensuring that defenses do not rely on outdated archetypes that obscure the woman's autonomy, reasoning, agency, and above all, dignity.

## BIBLIOGRAPHY

Acosta, Juan, *Artículo 10 N°s. 7° y 11° del Código Penal. Algunos criterios de delimitación*, in HUMANIZAR Y RENOVAR EL DERECHO PENAL. ESTUDIOS EN MEMORIA DE ENRIQUE CURY (Ed. Alex Van Weezel 2013).

Adams, David, *Treatment models of men who batter: a postfeminist analysis*, in FEMINIST PERSPECTIVES ON WIFE ABUSE 176 (Kersti Yllö and Michele Louise Bograd eds., 1988).

Agoff, Carolina et al., *Perspectivas de las mujeres maltratadas sobre la violencia de pareja en México*, 48 SALUD PÚBLICA MÉX. S307 (2006).

Ainetter-Brautigam, Christine, *International Human Rights Law: The Relevance of Gender*, in THE HUMAN RIGHTS OF WOMEN: INTERNATIONAL INSTRUMENTS AND AFRICAN EXPERIENCES (Wolfgang Benedek, et al. eds., 2002).

AMERASINGHE, A. RANJIT B. , GENDER AND THE LAW (2003).

AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5<sup>th</sup> ed. 2013).

Andrade Fernández, Maikol J. et al., *Reflexión del principio de igualdad y no discriminación interdisciplinariamente desde una perspectiva sociológica, filosófica y jurídica. Una mirada hacia algunas problemáticas sociales y el canal de comunicación con la legitimación política*, 4 REV. SALA CONSTITUCIONAL 119 (2022).

Aristotle, *The Nicomachean Ethics* (Roger Crisp trans., rev. ed., Cambridge Univ. Press 1980).

Aron, Charles J., *In Defense of Battered Women - Is Justice Blind - The Federal Justice System Often Ignores a Woman's Troubled Past*, 20 HUM. RTS. 14 (1993).

Ayyildiz, Elisabeth, *When Battered Woman's Syndrome Does Not Go Far Enough: The Battered Woman as Vigilante*, 4 AM. U. J. GENDER & L. 141 (1995).

Bailey, Rebecca et al., *Appeasement: Replacing Stockholm Syndrome as a Definition of a Survival Strategy*, 13 Journal of Trauma & Dissociation 1 (2023).

Barnett, Ola W. and Cheok Y. Lee, *Gender Differences In Attributions of Self-defense and Control In Interpartner Aggression*, 3 VIOLENCE AGAINST WOMEN, 462 (1997).

Basile, Kathleen & Michele Black, *Intimate Partner Violence Against Women*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN (Claire M Renzetti et al. eds., 2nd ed., 2011).

BERRY, DAWN BRADLEY, THE DOMESTIC VIOLENCE SOURCE BOOK (1995).

BHASIN, KAMLA, WHAT IS PATRIARCHY? 2 (2021).

Block, Carolyn & Antigone Christakos, *Intimate Partner Homicide in Chicago Over 29 Years*, 41 CRIME & DELINQ. 496 (1995).

Block, Carolyn Rebecca, *How Can Practitioners Help an Abused Woman Lower Her Risk of Death?*, 250 NIJ J. 4 (2003).

BOBBIO, NORBERTO , THE AGE OF RIGHTS (1996).

BOCHNAK, ELIZABETH , WOMEN'S SELF-DEFENSE CASES: THEORY AND PRACTICE 45 (1981); Julie Blackman, *Potential Uses for Expert Testimony: Ideas Toward the Representation of Battered Women Who Kill*, 9 WOMEN'S RTS. L. REP. 227 (1986).

Browne, Angela, *Assault and homicide at home: When battered women kill*, in ADVANCES IN APPLIED SOCIAL PSYCHOLOGY 57 (M. J. Saks & L. Saxe Eds., 1986).

BROWNE, ANGELA, WHEN BATTERED WOMEN KILL (1987).

Brunatti, Olga G., *La judicialización de los conflictos intrafamiliares en el fuero penal bonaerense. Modelos interpretativos de violencia familiar y nociones nativas de la categoría víctima*, in ANTROPOLOGÍA, VIOLENCIA Y JUSTICIA: REPENSANDO MATRICES DE LA SOCIABILIDAD CONTEMPORÁNEA EN EL CAMPO DEL GÉNERO Y DE LA FAMILIA 125 (Theophilos Rifiotis & Natalia Castelnuevo Eds., 2011).

BUREAU OF JUSTICE STATISTICS, FEMALE VICTIMS OF VIOLENCE (2009).

BUREAU OF JUSTICE STATISTICS, HOMICIDE TRENDS IN THE UNITED STATES 1980–2008 (2011).

Callahan, A. Renee, *Will the Real Battered Woman Please Stand Up--In Search of a Realistic Legal Definition of Battered Woman Syndrome*, 3 AM. U. J. OF GENDER & THE L. 117 (1994).

Campbell, Jacquelyn C. et al., *Intimate partner homicide: review and implications of research and policy*, 8 TRAUMA, VIOLENCE, & ABUSE 3, 246 (2007).

Campbell, Jacquelyn C. et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 AM. J. OF PUB. HEALTH, 1089 (2003).

Campbell, Jacquelyn C., *If I can't have you, no one can: Power and control in homicide of female partners*, in FEMICIDE: THE POLITICS OF WOMAN KILLING 99 (J. Radford et al. eds., 1992).

Carcedo Cabañas, Ana, *Diagnósticos y valoraciones psicológicas de las mujeres maltratadas: los riesgos revictimizantes*, 21 MED. LEG. COSTA RICA 71 (2004).

CARRANCÁ Y TRUJILLO, RAÚL, DERECHO PENAL MEXICANO, PARTE GENERAL, TOMO II (2nd. Ed. 1941).

Cascardi, Michele & Dina Vivian, *Context for Specific Episodes of Marital Violence: Gender and Severity of Violence Differences*, 10 J. Fam. Viol. 265 (1995).

Castillo Morales, Juan Pablo, *El estado de necesidad del artículo 10 n° 11 del Código penal chileno: ¿Una norma bifronte? Elementos para una respuesta negativa*, 11 Polít. Crim. 340 (2016).

CEREZO MIR, JOSÉ, CURSO DE DERECHO PENAL ESPAÑOL. PARTE GENERAL, Tomo II (6ª ed. 1998).



CHARLESWORTH, HILARY AND CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS* (2000).

Charlesworth, Hilary, *Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations*, 18 HARV. HUM Rts. J. 1 (2005).

CHIMBOS, PETER D., *MARITAL VIOLENCE: A STUDY OF INTERSPOUSE HOMICIDE* (1978).

COMITÉ DE EXPERTAS DEL MESECVI, *RECOMMENDATION ON THE APPLICATION OF SELF-DEFENSE IN CASES OF WOMEN IN SITUATIONS OF GENDER-BASED VIOLENCE* (2019).

Cornia, Rebecca D., *Current Use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes About Women*, 8 UCLA Women's L. J. 99 (1997).

Correa Flórez, María Camila, *Legítima Defensa en Situaciones sin Confrontación: La Muerte del Tirano de Casa*. Carolina (2016).

Coughlin, Anne, *Excusing women*, 82 California Law Review 1 (1994).

COUSO, JAIME ET. AL., *CÓDIGO PENAL COMENTADO: LIBRO PRIMERO (ARTS. 1º A 105) DOCTRINA Y JURISPRUDENCIA* (1st ed. 2011).

CREUS, CARLOS, *DERECHO PENAL INTRODUCCIÓN Y PARTE GENERAL* (3rd ed. 1992).

Crocker, Phyllis L., *The Meaning of Equality for Battered Woman Who Kill Men in Self-Defense*, 8 HARV. WOMEN's L.J. 121 (1985).

CURY URZUA, ENRIQUE, DERECHO PENAL PARTE GENERAL (V. Corte Suprema) (2nd ed. 1992).

CURY URZÚA, ENRIQUE, DERECHO PENAL: PARTE GENERAL (7th ed. 2004).

Cury, Enrique, *El estado de necesidad en el Código Penal Chile*, in LA CIENCIA PENAL EN LA UNIVERSIDAD DE CHILE (Juan Pablo Mañalich Ed. 2013).

DE BEAUVOIR, SIMONE, THE SECOND SEX (1974).

de Vel-Palumbo, Melissa et al., *Morally Excused but Socially Excluded: Denying Agency Through the Defense of Mental Impairment*, 17 PLOS ONE 1 (2022).

DEFENSORÍA GENERAL DE LA NACIÓN, DISCRIMINACIÓN DE GÉNERO EN LAS DECISIONES JUDICIALES: JUSTICIA PENAL Y VIOLENCIA DE GÉNERO (2010).

DENTON, MICHELLE, FEMINISM AND GENDER EQUALITY (2020).

Di Corleto, Julieta & María Lina Carrera, *Responsabilidad Penal de las Mujeres Víctimas de Violencia de Género: Lineamientos para una Defensa Técnica Eficaz*, 5 REV. DAS DEFENSORÍAS PÚBLICAS DO MERCOSUR 11 (2017).

Di Corleto, Julieta, *La valoración de la prueba en casos de violencia de género*, en GARANTÍAS CONSTITUCIONALES EN EL PROCESO PENAL (Florencia G. Plazas, Luciano A. Hazan eds., (2015).

Di Corleto, Julieta, *Legítima Defensa Y Géneros: Una Cartografía De La Jurisprudencia Argentina*, in ESTUDIOS SOBRE JURISPRUDENCIA 88 (Ministerio Público de la Defensa Argentina ed., 2020).

Di Corleto, Julieta, *Mujeres que matan. Legítima defensa en el caso de las mujeres golpeadas*, REV. DERECHO PENAL Y PROC. PENAL LEXIS NEXIS, No. 5, 860 (2006).

Díaz, Álvaro Paúl, La génesis de la Declaración Americana de los Derechos y Deberes del Hombre y la relevancia actual de sus trabajos preparatorios, 47 Rev. Derecho (Valparaíso) 361 (2016).

DIRECCIÓN NACIONAL DE POLÍTICA CRIMINAL EN MATERIA DE JUSTICIA Y LEGISLACIÓN PENAL, INFORME SOBRE LOS DETENIDOS POR HOMICIDIOS DOLOSOS - SNEEP (2015).

Dobash R., Emerson and Rusell P. Dobash, *Research as Social Action: The Struggle for Battered Women*, in FEMINIST PERSPECTIVES ON WIFE ABUSE 51 (Kersti Yllö and Michele Louise Bograd eds., 1988).

DOWNS, DONALD, MORE THAN VICTIMS: BATTERED WOMEN, THE SYNDROME SOCIETY AND THE LAW (1997).

Dreke, Rebecca J. et al., *Challenges with and Recommendations for Intimate Partner Stalking Policy and Practice: a Practitioner Perspective*, 35 J. of Fam. Violence, 769 (2020).

Dressler, Joshua, *Battered Women and Sleeping Abusers: Some Reflections*, 3 OHIO ST. J. CRIM. L. 457 (2006).

Du Bois, Barbara, *Passionate Scholarship-Notes on Values, Knowing and Method in Feminist Social Science*, in THEORIES OF WOMEN'S STUDIES 105 (Gloria Bowles & Renate Klein eds., 1983).

Dunn, Jennifer, *Victims" and "survivors": Emerging Vocabularies of Motive for "battered Women Who Stay*, 75 SOCIO. INQUIRY 1 (2005).

Dutton, Mary Ann, *Update of the "Battered Woman Syndrome" Critique*, VAWNET: NAT'L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN 1 (2009).

Ellemers, Naomi, *Gender Stereotypes*, 69 Annu. Rev. Psychol. 275 (2018).

ELLSBERG, MARY ET AL., RESEARCHING VIOLENCE AGAINST WOMEN: A PRACTICAL GUIDE FOR RESEARCHERS AND ACTIVISTS (2005).

EQUIS JUSTICIA PARA LAS MUJERES, TRANSPARENCIA EN LA PUBLICACIÓN DE SENTENCIAS: ¿RETROCESOS A PARTIR DE LA LEY GENERAL DE TRANSPARENCIA Y ACCESO A LA INFORMACIÓN PÚBLICA? (2018).

Erez, Edna, *Dangerous Men, Evil Women: Gender and Parole Decision-Making*, 9 Just. Q. 105 (1992).

EWING, CHARLES PATRICK, BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION (1987).

EWING, CHARLES, TRIALS OF A FORENSIC PSYCHOLOGIST: A CASEBOOK (2008).

Ezurmendia, Jesús et al., *La Defensa de Género: Algunos Problemas Probatorios en Materia de Legítima Defensa*, 16 POLÍT. CRIM. No. 32, 875 (2021).

Facio, Alda , *El derecho a la igualdad entre mujeres y hombres*, in INTERPRETACIÓN DE LOS PRINCIPIOS DE IGUALDAD Y NO DISCRIMINACIÓN PARA LOS DERECHOS HUMANOS DE LAS MUJERES EN LOS INSTRUMENTOS DEL SISTEMA INTERAMERICANO 65 (IIDH ed., 2008).

FACIO, ALDA , LA RESPONSABILIDAD ESTATAL (2016).

FELSON, RICHARD B. AND AM. PSYCH. ASS'N, VIOLENCE & GENDER REEXAMINED (2002).

Fernández, Sheila, *Crítica a los conceptos de maltrato a la mujer desde la epistemología feminista*, 2 REVISTA FARO 26 120 (2017).

Ferrante, Marcelo, *Argentina*, in THE HANDBOOK OF COMPARATIVE CRIMINAL LAW 12 (Kevin Jon Heller and Markus Dirk Dubber eds., 2011).

FISCALÍA NACIONAL DIVISIÓN DE ESTUDIOS, ANÁLISIS DESCRIPTIVO DEL HOMICIDIO CONSUMADO EN CHILE 2016 – 2020 (2021).

FONTAN, BALESTA, CARLOS, DERECHO PENAL INTRODUCCIÓN Y PARTE GENERAL (1998).

FORELL, CAROLINE & DONNA MATTHEWS, A LAW OF HER OWN: THE REASONABLE WOMAN AS A MEASURE OF MAN (2000).

GAGNE, PATRICIA , BATTERED WOMEN'S JUSTICE: THE MOVEMENT FOR CLEMENCY AND THE POLITICS OF SELF-DEFENSE (1998).

GARCÍA RAMÍREZ, SERGIO, LA IMPUTABILIDAD EN EL DERECHO PENAL MEXICANO (1981).

GARCIA, VENESSA & PATRICK M. McMANIMON, GENDERED JUSTICE: INTIMATE PARTNER VIOLENCE AND THE CRIMINAL JUSTICE SYSTEM (2011).

GARRIDO MONTT, MARIO, DERECHO PENAL: PARTE GENERAL TOMO II (3rd ed. 2003).

GONDOLF, EDWARD AND ELLEN FISHER, BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS (1988).

Goodmark, Leigh, *When is a Battered Woman Not a Battered Woman - When She Fights Back*, 20 Yale J.L. & Feminism 75 (2008).

Graham, Laurie M. et al, *The Danger Assessment: An instrument for the prevention of intimate partner homicide*, in HANDBOOK OF INTERPERSONAL VIOLENCE AND ABUSE ACROSS THE LIFESPAN: A PROJECT OF THE NATIONAL PARTNERSHIP TO END INTERPERSONAL VIOLENCE ACROSS THE LIFESPAN (NPEIV) 2761 (R. Geffner et al. Eds., 2022).

Guerra, Rodrigo, *Estado de necesidad exculpante: A propósito de actos de defensa por efectos del maltrato a partir de un caso emblemático*, 20 Rev. Derecho U. San Sebastián 16 (2014).

Haslanger, Sally, Gender and Race: (What) Are They? (What) Do We Want Them to Be?, 34 Noûs (1) 31 (2000).

Hayes, Ceri, *Tackling violence against women: a worldwide approach*, in GENDER-BASED VIOLENCE 1 (Geraldine Terry & Joanna Hoare Eds., 2007).

Hecht Schafran, Lynn, *Is the Law Male: Let Me Count the Ways*, 69 CHI.-KENT L. REV. 397 (1993).

HELLUM, ANNE ET AL., WOMEN'S HUMAN RIGHTS: CEDAW IN INTERNATIONAL, REGIONAL, AND NATIONAL LAW (2013).

Hendrix, Melva Jo et al., *The Battered Wife*, 78 THE AMERICAN JOURNAL OF NURSING 4650 (1978).

Hermida, Julian, *Convergence of Civil Law and Common Law in the Criminal Theory Realm*, 13 U. MIAMI INT'L & COMP. L. REV. 163 (2005).

Hodell, Emily C. et al., *Factors Impacting Juror Perceptions of Battered Women Who Kill Their Abuser: Delay and Sleeping Status*, 18 PSYCHOL. PUB. POL'Y & L. 338 (2012).

HOFF, LEE ANN, BATTERED WOMEN AS SURVIVORS (1990).

Hope Keating, *Battered Women in Florida: Will Justice Be Served?* 20 FLA. ST. U. L. Rnv. 679 (1993).

Hopp, Cecilia, *"Buena madre", "buena esposa", "buena mujer": abstracciones y estereotipos en la imputación penal*, in GENERO Y JUSTICIA PENAL (Julieta Di Corleto Ed. 2017).

Hopp, Cecilia, *Argentina*, in DEFENSA PENAL EFECTIVA CON PERSPECTIVA DE GÉNERO EN AMÉRICA LATINA 47 (Centro de Estudios de Justicia de Las Americas Ed., 2022).

Hussain, Nasir et al., *A Comparison of the Types of Screening Tool Administration Methods Used for the Detection of Intimate Partner Violence: A Systematic Review and Meta-Analysis*, 16 TRAUMA, VIOLENCE, & ABUSE 60 (2015).

INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS, HERRAMIENTAS BÁSICAS PARA INTEGRAR LA PERSPECTIVA DE GÉNERO EN ORGANIZACIONES QUE TRABAJAN DERECHOS HUMANOS (2008).

INSTITUTO NACIONAL DE ESTADÍSTICA Y GEOGRAFÍA (INEGI), ENCUESTA NACIONAL SOBRE LA DINAMICA DE LAS RELACIONES EN LOS HOGARES (2016).

INSTITUTO NACIONAL DE LAS MUJERES, LEY GENERAL PARA LA IGUALDAD ENTRE MUJERES Y HOMBRES, CONÓCELA! (2007).

JIMÉNEZ ALLENDES, MARÍA ANGÉLICA ET AL., VIOLENCIA CONTRA LA PAREJA EN LA JUSTICIA PENAL: MAYORES PENAS, MAYOR VIOLENCIA (2011).

JIMÉNEZ MARTÍNEZ, JAVIER, LA ESTRUCTURA DEL DELITO EN EL DERECHO PENAL MEXICANO (3rd ed 2011).

Johnson, Michael P., *Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence*, 12 Violence Against Women 1003 (2006).



Johnson, Michael, *Domestic Violence: The Intersection of Gender and Control*, in GENDER VIOLENCE: INTERDISCIPLINARY PERSPECTIVES 257 (Laura L. O'Toole, Jessica R. Schiffman, & Margie Kiter Edwards (Eds.) 2nd ed. 2007).

JONES, ANN, NEXT TIME SHE'LL BE DEAD: BATTERING AND HOW TO STOP IT (1994).

Jones, Ann, *When Battered Women Fight Back*, 9 Barrister 12 (1982).

JONES, ANN, WOMEN WHO KILL (2009).

Kaufman, Whitley R.P., *Self-Defense, Imminence, and the Battered Woman*, 10 NEW CRIMINAL LAW REVIEW: AN INTERNATIONAL AND INTERDISCIPLINARY JOURNAL (3) 342 (2007).

Kimmel, MS, "Gender Symmetry" In *Domestic Violence - A Substantive and Methodological Research Review*, 8 VIOLENCE AGAINST WOMEN 1332 (2002).

KINDERSLEY, DORLING, THE FEMINISM BOOK: BIG IDEAS SIMPLY EXPLAINED (2021).

Kinports, Kit, *Defending Battered Women's Self-Defense Claims*, 67 Or. L. Rev. 393 (1988).

Kinports, Kit, *So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense*, 23 ST. LOUIS UNIV. PUB. L. REV. 155 (2004).

LAFAVE, WAYNE R., CRIMINAL LAW (Fifth edition, ed. 2010).

Lagier, Daniel González, *Inferencia probatoria y valoración conjunta de la prueba in* MANUAL DE RAZONAMIENTO PROBATORIO 353 (Jordi Ferrer Beltrán ed. 2022).

Langan, Patrick A. and John M. Dawson, *Spouse Murder Defendants in Large Urban Counties: Executive Summary* (1995).

LANGLEY, WINSTON, WOMEN'S RIGHTS IN INTERNATIONAL DOCUMENTS: A SOURCEBOOK WITH COMMENTARY (1991).

Larrauri, Elena , *Violencia Doméstica y Legítima Defensa: Una Aplicación Masculina del Derecho Penal*, Jueces Para La Democracia No. 23 (1994).

LARRAURI, ELENA, MUJERES Y SISTEMA PENAL: VIOLENCIA DOMESTICA (2008).

LAURENZO, PATRICIA ET AL, MUJERES IMPUTADAS EN CONTEXTOS DE VIOLENCIA O VULNERABILIDAD (2020).

Laurenzo, Patricia, *Mujeres en el abismo: delincuencia femenina en contextos de violencia o exclusión*, 21 REVISTA ELECTRÓNICA DE CIENCIA PENAL Y CRIMINOLOGÍA 1 (2019).

Leguízamo, María, *La legítima defensa. Casos particulares*, in LA SITUACIÓN ACTUAL DEL SISTEMA PENAL EN MÉXICO 143 (Sergio García and Olga Islas Eds., 2011).

LIEM, MARIEKE & FRANS KOENRAADT, DOMESTIC HOMICIDE: PATTERNS AND DYNAMICS (2018).

Lloyd, Genevieve, *Woman as Other: Sex, Gender and Subjectivity*, 4 AUSTL. FEMINIST STUD. (10) 13 (1989).

López Tinoco, Zeltzi Alejandra & Christian Hernández Gutiérrez, *Legítima Defensa Desde una Perspectiva de Género en México* (2023).

LORBER, JUDITH, *GENDER INEQUALITY: FEMINIST THEORIES AND POLITICS* (4th ed. 2010).

MacKinnon, Catharine A., *Women's Lives, Men's Laws* (2005).

MACKINNON, CATHERINE, *TOWARD A FEMINIST THEORY OF THE STATE* 109 (1989).

Maguigan, Holly, *Battered Women and Self – Defense: Myths and Misconceptions in Current Reform Proposals*, in *DEFENDING BATTERED WOMEN IN CRIMINAL CASES* 395 (AMERICAN BAR ASSOCIATION AND CALIFORNIA COALITION FOR BATTERED WOMEN IN PRISON ED. 1993).

Mahoney, Martha R., *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1 (1991).

MAIER, JULIO, *DERECHO PROCESAL PENAL TOMO I* 482 (2nd ed. 2004).

MALO CAMACHO, GUSTAVO, *DERECHO PENAL MEXICANO* (1st ed. 1997).

Margulies, Peter *Identity on Trial: Subordination, Social Science Evidence, and Criminal Defense*, 51 Rutgers L. Rev. 45 (1998).

Masaro Mauro & Nuria Sardaños, *Problemas Dogmáticos y de Prueba en la Legítima Defensa en Casos de Mujeres Víctimas de Violencia de Género*, in GÉNERO Y JUSTICIA PENAL (Julieta Di Corleto Ed. 2017).

Masson, Erin, *Admissibility of Expert or Opinion Evidence of Battered Woman Syndrome on Issue of Self Defense*, 58 A.L.R. 5<sup>th</sup> 749 2 (a) (2005).

Méndez-Hernández, Pablo et al., *Violencia contra la mujer: conocimiento y actitud del personal médico del Instituto Mexicano del Seguro Social, Morelos, México*, 45 SALUD PÚBLICA MÉX. 472 (2003).

MILL, JOHN STUART, THE SUBJECTION OF WOMEN (1869).

Miller, Susan L. & Michelle L. Meloy, *Women's Use of Force*, 12 Violence Against Women (1), 89 (2006).

MILLER, SUSAN, VICTIMS AS OFFENDERS: THE PARADOX OF WOMEN'S VIOLENCE IN RELATIONSHIPS (2005).

MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS DE LA NACIÓN, PRIMER ESTUDIO NACIONAL SOBRE VIOLENCIAS CONTRA LA MUJER (2017).

MINISTERIO DE LAS MUJERES, GÉNEROS Y DIVERSIDAD DE LA NACIÓN, GESTIÓN 2020 (2020).

MINISTERIO DEL INTERIOR Y SEGURIDAD PÚBLICA, PRINCIPALES RESULTADOS ENCUESTA NACIONAL DE VICTIMIZACIÓN POR VIOLENCIA INTRAFAMILIAR Y DELITOS SEXUALES (2013).

MINISTERIO PUBLICO, BOLETÍN ESTADÍSTICO ANUAL ENERO - DICIEMBRE 2020 (2021).

Miracco, Mariana Carolina et al., *Estrategias de afrontamiento en mujeres maltratadas: la percepción del proceso por parte de las mujeres*, 17(1–2) ANU. INVESTIG. - FAC. PSICOL., UNIV. B. AIRES 59 (2010).

MONAHAN, JOHN, PREDICTING VIOLENT BEHAVIOR (1981).

Nicholson, Linda, *Interpreting Gender*, 20 SIGNS 79 (1994).

Noh, Marianne S. et al., *Mad, Bad, Or Reasonable? Newspaper Portrayals of the Battered Woman Who Kills*, 27 GENDER ISSUES, 110 (2010).

NUÑEZ, RICARDO, DERECHO PENAL ARGENTINO, PARTE GENERAL, TOMO I (1959).

OFICINA DE VIOLENCIA DOMÉSTICA (OVD), INFORME ESTADÍSTICO ANUAL AÑO 2020 (2021).

Olivares Carolina and Reyes Antonia, *De Víctima A Victimaria: Defensa de la Mujer Parricida en el Contexto de Violencia Intrafamiliar: Un Estudio desde la Jurisprudencia Chilena* (2019).

ONU MUJERES, LA IGUALDAD DE GÉNERO (2018).

Ortiz Gabriela & Cindi Perez, *Mexico*, in DEFENSA PENAL EFECTIVA CON PERSPECTIVA DE GÉNERO EN AMÉRICA LATINA 253 (Centro de Estudios de Justicia de Las Americas Ed., 2022).

Osthoff, Sue and Holly Maguigan, *Explaining without pathologizing: Testimony on battering and its effects*, in CURRENT CONTROVERSIES ON FAMILY VIOLENCE 225 (Loseke et al. eds., 2005).

OTTI, OLUCHI, INSIDE THE MIND OF A BATTERED WOMAN: UNDERSTANDING THE MINDSET AND BEHAVIORS OF ABUSED VICTIMS (2012).

Outlaw, Maureen, *No One Type of Intimate Partner Abuse: Exploring Physical and Non-Physical Abuse Among Intimate Partners* 24J FAM VIOL 263 (2009).

Overmier, J. Bruce & Martin E. Seligman, *Effects of Inescapable Shock Upon Subsequent Escape and Avoidance Responding*, 63 J. OF COMPAR. & PHYSIOLOGICAL PSYCH 28 (1967).

PAPI BEYER, MARIO, MANUAL DE INTRODUCCIÓN AL DERECHO (2013).

Paterno, Mary & Jessica E Draughon, *Screening for Intimate Partner Violence*, 61 J. MIDWIFERY & WOMEN'S HEALTH 370 (2016).

Peces-Barba, Gregorio , *La universalidad de los derechos Humanos*, 15–16 Doxa Cuadernos de Filosofía del Derecho 613 (1994).

Petrosky, *Racial and Ethnic Differences In Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014*, 66 MORBIDITY & MORTALITY WKLY. REP., 741 (2017).

Pitlevnik, Leonardo and Pablo Zalazar, *Eximentes de Responsabilidad Penal en los casos de Mujeres Víctimas de Violencia*, in GÉNERO Y JUSTICIA PENAL (Julieta Di Corleto Ed. 2017).

PODER JUDICIAL DE CORDOBA, CONCEPTOS BÁSICOS PARA JUZGAR CON PERSPECTIVA DE GÉNERO (2023).

PODER JUDICIAL, SECRETARIA TÉCNICA IGUALDAD DE GÉNERO Y NO DISCRIMINACIÓN, CUADERNO BUENAS PRÁCTICAS PARA INCORPORAR LA PERSPECTIVA GÉNERO EN LA ADMINISTRACIÓN DE JUSTICIA (2018).

POLITOFF, SERGIO ET. AL., LECCIONES DE DERECHO PENAL CHILENO: PARTE GENERAL (2d ed. 2003).

Postmus, Judy L. et al., *Economic Abuse As an Invisible Form of Domestic Violence: A Multicountry Review*, 21 TRAUMA, VIOLENCE & ABUSE 261 (2020).

Rabin, Rebecca F et al., *Intimate Partner Violence Screening Tools: A Systematic Review*, 36 AM. J. PREVENTIVE MED. 439 (2009).

Ramos Lira, Luciana, *Reflexiones para la comprensión de la salud mental de la mujer maltratada por su pareja íntima*, 16 REV. ESTUD. DE GÉNERO: LA VENTANA 130 (2002).

RED MESA DE MUJERES DE CIUDAD JUÁREZ, INFORME SOMBRA DE CIUDAD JUÁREZ, CHIHUAHUA, EN SEGUIMIENTO AL INFORME PRODUCIDO POR EL COMITÉ CEDAW BAJO EL ARTÍCULO 8º PROTOCOLO FACULTATIVO DE LA CONVENCIÓN Y DE LAS RECOMENDACIONES A MÉXICO (2018).

Reece, Laura E. , *Women's Defenses to Criminal Homicide and the Right to Effective Assistance of Counsel: The Need for Relocation of Difference*, 1 UCLA Women's L. J. 53 (1991).

RENZETTI, CLAIRE M. ET AL., SOURCEBOOK ON VIOLENCE AGAINST WOMEN (2nd ed. 2011).

RIDGEWAY, CECILIA, FRAMED BY GENDER: HOW GENDER INEQUALITY PERSISTS IN THE MODERN WORLD (2011).

Ripstein, Arthur, *Self-Defense and Equal Protection*, 57 U. PITT. L. REV. 685 (1996).

Robinson, Paul H., *Criminal Law Defenses: A Systematic Analysis*, 82 COLUM. L. REV. 199 (1982).

Rodríguez Luna, Ricardo & Encarna Bodelón González, *Mujeres maltratadas en los juzgados: la etnografía como método para entender el derecho "en acción"*, 24 REV. ANTROPOL. SOC. 105 (2015).

Rodwan, Gail, & Jeanice Dagher-Margosian, *Michigan Recognizes Battered Spouse Syndrome*, 72 MICH. B.J. 82 (1993).



Romero-Sánchez, Mónica et al., *Talking About 'Victims', 'Survivors' and 'Battered Women': How Labels Affect the Perception of Women Who Have Experienced Intimate Partner Violence*, 36 INT'L J. SOC. PSYCHOL. 30 (2021).

Rosen, Richard A., *On Self-Defense, Imminence, and Women Who Kill Their Batterers*, 71 N.C. L. REV. 371 (1993).

Rothenberg, Bess, *The Success Of The BWS: An Analysis Of How Cultural Arguments Succeed* 17, no. 1, SOCIOLOGICAL FORUM 81, (2002).

ROXIN, CLAUS, DERECHO PENAL PARTE GENERAL. FUNDAMENTOS. LA ESTRUCTURA DE LA TEORÍA DEL DELITO TOMO I 621 (1997).

RUSSELL, BRENDA, BATTERED WOMAN SYNDROME AS A LEGAL DEFENSE (2010).

Santibáñez Torres, María Elena and Tatiana Vargas Pinto, *Reflexiones en torno a las modificaciones para sancionar el femicidio y otras reformas relacionadas (Ley N° 20.480)* 38 REV. CHIL. DERECHO (1), 193 (2011).

Schechter, Susan, *Building bridges between activists, professionals and researchers*, in FEMINIST PERSPECTIVES ON WIFE ABUSE 299 (Kersti Yllö and Michele Louise Bograd eds., 1988).

SCHECHTER, SUSAN, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT (1982).

SCHNEIDER, ELIZABETH M. & CLARE DALTON, DOMESTIC VIOLENCE AND THE LAW: THEORY AND PRACTICE (2nd ed. 2008).

SCHNEIDER, ELIZABETH , BATTERED WOMEN AND FEMINIST LAWMAKING (2000).

Schneider, Elizabeth M. , *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 14 WOMEN'S RTS. L. REP. 213 (1992).

Schneider, Elizabeth M., *Particularity and Generality: Challenges of Feminist Theory and Practice In Work On Woman-Abuse*, 67 N.Y.U. L. Rev. 520 (1992).

Schneider, Elizabeth, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623 (1980).

Schopp, Robert F. et al., *Battered Woman Syndrome, Expert Testimony, and the Distinction Between Justification and Excuse*, 1994 UNIV. OF ILL. L. REV. 45 (1994).

Schudson, Michael, *How Culture Works: Perspectives From Media Studies On the Efficacy of Symbols*, 18 THEORY & SOC'Y, 153 (1989).

Schulhofer, Stephen , *The Gender Question in Criminal Law*, 7 SOCIAL PHILOSOPHY AND POLICY 2 105 (1990).

Schulhofer, Stephen J., *The Feminist Challenge in Criminal Law*, 143 U. Pa. L. Rev. 2151 (1995).

Schwartz, Jennifer and Darrel Steffensmeier, *Gender Opportunities and Risk Preferences for Offending Across the Life Course*, 3 Dev Life Course Criminology 125 (2017).

Seco Martínez, José María, *De la igualdad formal a la igualdad material*, 36 REV. PODER JUD. 55 (2d. ser. 2017).

Seligman, Martin E. & Steven F. Maier, *Failure to Escape Traumatic Shock*, 74 J. OF EXPERIMENTAL PSYCH. 1 (1967).

SERRET, ESTELA Y JESSICA MÉNDEZ MERCADO, SEXO, GÉNERO Y FEMINISM (2011).

Sierra Campos, Catalina de los Angeles, *Aproximación a la defensa preventiva en el caso del tirano familiar: ¿necesitamos una teoría del control coercitivo?*, 28 REV. IUS ET PRAXIS 160 (2022).

Sierra Campos, Catalina de los Ángeles, *Aproximación a la defensa preventiva en el caso del tirano familiar: ¿Necesitamos una teoría del control coercitivo?*, 28 REV. IUS ET PRAXIS 160 (2022).

SINGH, SUPRIYA, DOMESTIC ECONOMIC ABUSE: THE VIOLENCE OF MONEY (2021).

Slobogin, Christopher, *Psychological Syndromes and Criminal Responsibility*, 6 Annu. Rev. Law Soc. Sci. 109 (2010).

Smart, Carol, *The Woman of Legal Discourse*, in GENDER AND JUSTICE (Naffine, Ngaire ed. 2016).

SMITH, SHARON G. ET AL., THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2015 DATA BRIEF – UPDATED RELEASE (2018).

STARK, EVAN, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE (2nd ed. 2023).

Stark, Evan, *Re-presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973 (1995).

Stockl, Heidi et al., *The global prevalence of intimate partner homicide: A systematic review*, 382 THE LANCET 859 (1993).

SUBSECRETARÍA DE PREVENCIÓN DEL DELITO DEL MINISTERIO DEL INTERIOR Y SEGURIDAD PUBLICA, IV ENCUESTA DE VIOLENCIA CONTRA LA MUJER EN EL ÁMBITO DE VIOLENCIA INTRAFAMILIAR Y EN OTROS ESPACIOS (2020).

SUPREMA CORTE DE JUSTICIA DE LA NACION, PROTOCOLO PARA JUZGAR CON PERSPECTIVA DE GÉNERO (2022).

SUPREMA CORTE DE JUSTICIA PROVINCIA DE BUENOS AIRES, GUÍA DE PRÁCTICAS ACONSEJABLES PARA JUZGAR CON PERSPECTIVA DE GENERO (2023).

Terrance, C. & K. Matheson, *Undermining Reasonableness: Expert Testimony in a Case Involving a Battered Woman Who Kills*, 27 PSYCH. OF WOMEN Q. 37 (2003).

Torres, Isabel, *Derechos Políticos de las Mujeres, acciones afirmativas y paridad*, 47 REVISTA IIDH 225 (2008).

Tramontana, Enzamaría, *Hacia la consolidación de la perspectiva de género en el Sistema Interamericano: avances y desafíos a la luz de la reciente jurisprudencia de la Corte de San José*, 53 REVISTA IIDH 141 (2011).

U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE, NONFATAL DOMESTIC VIOLENCE, 2003–2012 (2014).

U.S. DEPARTMENT OF JUSTICE, INTIMATE PARTNER VIOLENCE: ATTRIBUTES OF VICTIMIZATION, 1993–2011 (2013).

UN WOMEN, CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) FOR YOUTH (2016).

UNITED NATION OFFICE ON DRUGS AND CRIMES, HANDBOOK FOR THE JUDICIARY ON EFFECTIVE CRIMINAL JUSTICE RESPONSES TO GENDER-BASED VIOLENCE AGAINST WOMEN AND GIRLS (2019).

UNITED NATIONS OFFICE ON DRUGS AND CRIME, GLOBAL STUDY ON HOMICIDE: EXECUTIVE SUMMARY (2019).

VERA, JUAN, VALORACIÓN PROBATORIA: EXIGENCIAS LEGALES, JURISPRUDENCIALES Y DOCTRINALES (2022).

Vidal, Víctor, *Análisis de las características más relevantes del estado de necesidad establecido por la Ley 20.480*, 9 Ars Boni et Aequi 237 (2013).

Villegas Díaz, Myrna, *Homicidio de la pareja en violencia intrafamiliar: mujeres homicidas y exención de responsabilidad penal*, 23 Rev. Derecho 149 (2010).

Walker, Lenore E. et al., *The Battered Woman Syndrome* (paper presented at the AM. PSYCHOL. ASS'N CONVENTION, Washington, D.C., Sept. 1976).

WALKER, LENORE E., *THE BATTERED WOMAN SYNDROME* (4th ed. 2016).

Walker, Lenore E., *Who Are The Battered Women?*, 2 FRONTIERS: A J. OF WOMEN STUD. 52, (1977).

WALKER, LENORE, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* (1989).

WALKER, LENORE, *THE BATTERED WOMAN* (1979).

Wallace, Shana, *Beyond Imminence: Evolving International Law and Battered Women's Right to Self-Defense*, 71 The University of Chicago Law Review (4) 1749 (2004).

Weare, Siobhan, *The Mad, the Bad, the Victim: Gendered Constructions of Women Who Kill Within the Criminal Justice System*, 2 LAWS (3) 337 (2013).

WEISBERG, D. KELLY, *DOMESTIC VIOLENCE LAW* (2019).

Weizmann-Henelius, Ghitta et al., *Gender-Specific Risk Factors for Intimate Partner Homicide: A Nationwide Register-Based Study*, 27 J. of Interpersonal Violence 1519, (2012).

WOLFGANG, MARVIN, PATTERNS IN CRIMINAL HOMICIDE (1975).

WORLD HEALTH ORGANIZATION, GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN: PREVALENCE AND HEALTH EFFECTS OF INTIMATE PARTNER VIOLENCE AND NON-PARTNER SEXUAL VIOLENCE (2013).

YOUNG, IRIS, THE JUSTICE AND POLITICS OF DIFFERENCE (2022).

ZAFFARONI, EUGENIO RAÚL ET AL., MANUAL DE DERECHO PENAL: PARTE GENERAL (2nd ed. 2007).