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Expert Group on gender-related killing of women and girls

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Discussion on ways and means to more effectively prevent, investigate, prosecute and punish gender-related killing of women and girls

Criminalization of gender-related killing of women and girls

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I. Introduction

1. In its resolution 68/191, entitled “Taking action against gender-related killing of women and girls”, the General Assembly requested the United Nations Office on Drugs and Crime (UNODC) to continue conducting relevant research on gender-related killing of women and girls, and encouraged the Office to raise awareness among Member States regarding this matter.
2. The present paper provides an analysis of how different forms of gender-related killing of women and girls are characterized as offences under national criminal law. It identifies four ways of criminalizing the killing of women and girls by their intimate partner or other perpetrators. Relevant criminal law provisions from different jurisdictions are examined in order to highlight common elements and key differences, both in terms of definitional elements and the corresponding penalty.
3. The paper presents the findings of comparative legal research on 24 jurisdictions, but it does not purport to be exhaustive or fully comprehensive. It is based on information provided by Member States and official documents available in the public domain. All legal provisions referred to are reproduced in their original language in the annex.

II. Ways of criminalizing gender-related killing of women and girls

4. A number of countries have specifically criminalized forms of gender-related killing of women and girls. Since 2007, several Latin American countries have introduced the crime of “femicide” or “feminicide” in their penal codes or in separate laws. This recent trend is not without precedent. For example, India criminalized “dowry deaths” in 1986, to address the violent killing of a woman by her husband or his relatives on the ground of non-receipt of dowry or insufficient dowry.¹
5. Instead of creating specific offences, some countries have extended the definition of existing homicide offences by including gender-related elements in this definition. In other countries, gender-related elements have been included among other aggravating circumstances that apply not only to homicide but also to other offences. In some countries, the killing of the victim is itself considered as an aggravating factor in gender-related offences like rape or sexual violence.
6. The definitional elements of these different provisions vary widely. While provisions creating specific offences envisage the victim to be a woman, some gender-related elements within homicide offences or within aggravating circumstances are not limited to women victims. The main common feature among these ways of criminalizing gender-related killing of women and girls is that they can lead to higher penalties than those for simple forms of homicide in the respective jurisdictions.

¹ Penal Code, section 304B.

A. Specific criminal offences

7. Countries that have adopted provisions creating specific offences to deal with forms of gender-related killing of women and girls include Bolivia (Plurinational State of), Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, India, Mexico, Nicaragua, Panama and Peru.

8. The definition of the offence in the above mentioned countries includes a number of gender-related elements, in addition to the act of killing or causing the death of a woman. Only a few provisions explicitly envisage the perpetrator to be a man.² Most require the existence of at least one of a number of factual circumstances, including in relation to: the relationship between victim and perpetrator; previous violence by the perpetrator; the killing and related acts; characteristics of the victim; or other circumstances. Each of these will be briefly discussed below.

9. *Circumstances concerning the relationship between victim and perpetrator.* Most provisions envisage a relationship between the victim and the perpetrator, which may range from marriage or de facto union³ to broader concepts like family relations,⁴ forms of intimate partnership⁵ or even relationships in the context of employment or education.⁶ Broader references to relationships of subordination, dependence or superiority also exist,⁷ sometimes tied to the abuse of power or superiority by the perpetrator.⁸ In some cases, past relationships are not covered.⁹ A number of provisions also envisage a situation in which the perpetrator unsuccessfully tried to establish or re-establish a relationship with the victim before killing her.¹⁰

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- ² Honduras, Penal Code, article 118-A; Nicaragua, Integral law against violence against women, article 9.
- ³ Bolivia (Plurinational State of), Penal Code, article 252 bis (1); Costa Rica, Law on the criminalization of violence against women, article 21; Ecuador, Penal Code, article 142(2); Guatemala, Law against femicide and other forms of violence against women, article 6(b); Honduras, Penal Code, article 118-A(1); India, Penal Code, article 304B; Nicaragua, Integral law against violence against women, article 9(b).
- ⁴ Ecuador, Penal Code, article 142(2); Guatemala, Law against femicide and other forms of violence against women, article 6(b); Nicaragua, Integral law against violence against women, article 9(b).
- ⁵ Bolivia (Plurinational State of), Penal Code, article 252 bis (1); Ecuador, Penal Code, article 142(2); Honduras, Penal Code, article 118-A(1); Mexico, Federal Penal Code, article 325(IV); Nicaragua, Integral law against violence against women, article 9(b); Panama, Penal Code, article 132-A(1).
- ⁶ Bolivia (Plurinational State of), Penal Code, article 252 bis (4); Ecuador, Penal Code, article 142(2); Guatemala, Law against femicide and other forms of violence against women, article 6(b); Nicaragua, Integral law against violence against women, article 9(b).
- ⁷ Bolivia (Plurinational State of), Penal Code, article 252 bis (4); Ecuador, Penal Code, article 142(2); Panama, Penal Code, article 132-A(2).
- ⁸ El Salvador, Special integral law on a life free from violence against women, articles 45(c) and 46(e); Peru, Penal Code, article 108-B (first paragraph, 3, second paragraph, 3).
- ⁹ Costa Rica, Law on the criminalization of violence against women, article 21; India, Penal Code, article 304B(1).
- ¹⁰ Bolivia (Plurinational State of), Penal Code, article 252 bis (2); Ecuador, Penal Code, article 142(1); Guatemala, Law against femicide and other forms of violence against women, article 6(a); Nicaragua, Integral law against violence against women, article 9(a); Panama, Penal Code, article 132-A(1).

10. *Circumstances concerning previous violence by the perpetrator.* Several provisions envisage situations in which the perpetrator subjected the victim to different forms of violence prior to the killing.¹¹ In two cases, previous sex offences are listed as separate circumstances.¹² Some provisions also include prior harassment, threats or persecution by the perpetrator against the victim.¹³ Other provisions do not refer to specific forms of prior violence but envisage killing that occurred as the result of a repeated manifestation of violence against the victim.¹⁴

11. *Circumstances concerning the killing and related acts.* Other circumstances relate more directly to the particularly cruel or violent way in which the killing occurred and to related conduct that may involve actors other than the perpetrator. Most provisions envisage that the killing is caused or accompanied by mutilation or other forms of defamatory or degrading injuries of the victim's body.¹⁵ In some cases, this explicitly extends to injuries inflicted after the killing¹⁶ or even acts of necrophilia.¹⁷ Exhibiting the body of the victim in public is included as an additional circumstance in some provisions.¹⁸ With regard to other related acts, a number of provisions include situations in which the death is the result of group activities like rites or challenges,¹⁹ or is connected to trafficking in persons.²⁰ Two provisions also include situations where the victim was incommunicado at any time before the killing,²¹ thus alluding to the possibility of abuse of authority during detention.

12. *Circumstances concerning characteristics of the victim.* Some provisions envisage that the victim was in a situation of vulnerability²² or require that the perpetrator abused of the victim's physical or psychological vulnerability.²³ Others

¹¹ Bolivia (Plurinational State of), Penal Code, article 252 bis(6); El Salvador, Special integral law on a life free from violence against women, article 45(a); Honduras, Penal Code, article 118-A(2-3); India, Penal Code, article 304B(1); Mexico, Federal Penal Code, article 325(III); Peru, Penal Code, article 108-B (first paragraph, 1, second paragraph, 4).

¹² Bolivia (Plurinational State of), Penal Code, article 252 bis(7); El Salvador, Special integral law on a life free from violence against women, article 45(b).

¹³ Honduras, Penal Code, article 118-A(3); India, Penal Code, article 304B(1); Mexico, Federal Penal Code, article 325(V); Peru, Penal Code, article 108-B (first paragraph, 2).

¹⁴ Guatemala, Law against femicide and other forms of violence against women, article 6(c); Nicaragua, Integral law against violence against women, article 9(c).

¹⁵ El Salvador, Special integral law on a life free from violence against women, article 45(e); Guatemala, Law against femicide and other forms of violence against women, article 6(e); Honduras, Penal Code, article 118-A(4); India, Penal Code, article 304B(1); Mexico, Federal Penal Code, article 325(II); Nicaragua, Integral law against violence against women, article 9(e); Panama, Penal Code, article 132-A(6).

¹⁶ Honduras, Penal Code, article 118-A(4).

¹⁷ Mexico, Federal Penal Code, article 325(II).

¹⁸ Ecuador, Penal Code, article 142(4); Mexico, Federal Penal Code, article 325(VII); Panama, Penal Code, article 132-A(7).

¹⁹ Bolivia (Plurinational State of), Penal Code, article 252 bis(9); Guatemala, Law against femicide and other forms of violence against women, article 6(d); Panama, Penal Code, article 132-A(5).

²⁰ Bolivia (Plurinational State of), Penal Code, article 252 bis(8); Peru, Penal Code, article 108-B (second paragraph, 6).

²¹ Mexico, Federal Penal Code, article 325(VI); Panama, Penal Code, article 132-A(7).

²² Bolivia (Plurinational State of), Penal Code, article 252 bis(5).

²³ El Salvador, Special integral law on a life free from violence against women, article 45(b); Panama, Penal Code, article 132-A(4).

refer to situations in which the victim was a minor,²⁴ pregnant,²⁵ or a person with disabilities.²⁶

13. *Other circumstances.* The most common other circumstance is that the killing was carried out in the presence of the children or other family members of the victim.²⁷ Some provisions incorporate a number of general aggravating circumstances by way of reference to the provision containing such circumstances.²⁸ Others contemplate situations in which the killing was carried out by multiple perpetrators or by State agents.²⁹

14. In addition to such specific factual circumstances, a number of definitions include other gender-related elements. Some require a specific mental state of the perpetrator, i.e. misogyny,³⁰ hatred or contempt for the victim because of her gender³¹ or any other motive related to her gender or the context of unequal power relations.³² A few provisions require the killing to be carried out as a result or in the context of unequal power relations between men and women,³³ because the victim is a woman³⁴ or for gender-related reasons.³⁵ These broader elements are not further defined, except in two cases, in which they are considered to exist when any of the enumerated circumstances occurs.³⁶

15. Some definitions also require two or more factual circumstances to occur. For example, the offence of “dowry deaths” includes circumstances related to the killing (“caused by any burns or bodily injury or occurs otherwise than under normal circumstances”) and to prior violence by the perpetrator (“soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband”), among others.³⁷ In other countries, the law provides for heavier

²⁴ El Salvador, Special integral law on a life free from violence against women, article 46(d); Peru, Penal Code, article 108-B (second paragraph, 1).

²⁵ Bolivia (Plurinational State of), Penal Code, article 252 bis(3); Panama, Penal Code, article 132-A(9); Peru, Penal Code, article 108-B (second paragraph, 2).

²⁶ El Salvador, Special integral law on a life free from violence against women, article 46(d); Peru, Penal Code, article 108-B (second paragraph, 5).

²⁷ Ecuador, Penal Code, article 142(3); El Salvador, Special integral law on a life free from violence against women, article 46(c); Guatemala, Law against femicide and other forms of violence against women, article 6(g); Nicaragua, Integral law against violence against women, article 9(g); Panama, Penal Code, article 132-A(3).

²⁸ Guatemala, Law against femicide and other forms of violence against women, article 6(h); Nicaragua, Integral law against violence against women, article 9(h); Peru, Penal Code, article 108-B (second paragraph, 7)

²⁹ El Salvador, Special integral law on a life free from violence against women, article 46(a-b).

³⁰ Guatemala, Law against femicide and other forms of violence against women, article 6; Nicaragua, Integral law against violence against women, article 9.

³¹ El Salvador, Special integral law on a life free from violence against women, article 45; Honduras, Penal Code, article 118-A.

³² Panama, Penal Code, article 132-A(10).

³³ Ecuador, Penal Code, article 142(1); Guatemala, Law against femicide and other forms of violence against women, article 6; Nicaragua, Integral law against violence against women, article 9.

³⁴ Ecuador, Penal Code, article 142(1); Guatemala, Law against femicide and other forms of violence against women, article 6; Peru, Penal Code, article 108-B.

³⁵ Honduras, Penal Code, article 118-A; Mexico, Federal Penal Code, article 325.

³⁶ El Salvador, Special integral law on a life free from violence against women, article 45; Mexico, Federal Penal Code, article 325.

³⁷ India, Penal Code, article 304B(1).

penalties where two or more factual circumstances occur,³⁸ or for an aggravated form of the offence that requires one or more additional factual circumstances to occur.³⁹

16. Most provisions cover a number of different forms of gender-related killing of women and girls. However, their scope varies widely between countries. Some provisions would apply to the killing of a woman who was a former colleague or girlfriend, while others would only apply to the killing of the current spouse or partner of the perpetrator. Some would apply only where such killing was motivated by misogyny or gender hatred while for others this would be irrelevant.

17. The penalties for the different offences also vary between countries. In absolute terms, the minimum penalty ranges from 7 years imprisonment in some jurisdictions to 40 years in others, and the maximum penalty ranges from 20 years to life imprisonment. Within the different jurisdictions, the penalty can also be assessed in relative terms, by comparison with the penalties provided for simple and aggravated forms of homicide.

18. Aggravated forms of homicide exist in most legal systems. In India and other common law countries, the offence of murder carries a higher penalty than manslaughter or other culpable homicide offences. The distinction between these offences mainly depends on the mental state of the perpetrator. In many civil law countries, especially in Latin America, the criminal law distinguishes a basic form of homicide from forms of aggravated homicide, which carry a higher penalty and usually refer to the intentional killing of a person in one or more circumstances that make such killing particularly blameworthy, especially malice (“alevosía”), premeditation (“premeditación”) or cruelty (“ensañamiento”).⁴⁰ Another form of aggravated homicide in the criminal law of most Latin American countries is the intentional killing of a parent, descendant, spouse or partner of the perpetrator, which is either included among other circumstances in the definition of aggravated homicide⁴¹ or as a separate offence (often called “parricide”).⁴²

19. Most of the specific offences relating to gender-related killing of women and girls provide the same penalty as other aggravated homicide offences in the same jurisdiction. In Bolivia (Plurinational State of), both offences are punishable by 30 years imprisonment without the right to pardon,⁴³ in Costa Rica by 20 to

³⁸ Nicaragua, Integral law against violence against women, article 9; Peru, Penal Code, article 108-B (second paragraph).

³⁹ Ecuador, Penal Code, article 142(2); El Salvador, Special integral law on a life free from violence against women, article 46.

⁴⁰ See Argentina, Penal Code, article 80; Bolivia (Plurinational State of), Penal Code, article 252; Chile, Penal Code, article 391; Costa Rica, Penal Code, article 112; El Salvador, Penal Code, article 129; Guatemala, Penal Code, article 132; Honduras, Penal Code, article 117; Mexico, Federal Penal Code, article 315; Nicaragua, Penal Code, article 140; Panama, Penal Code, article 132(5); Peru, Penal Code, article 108; Venezuela (Bolivarian Republic of), Penal Code, article 406.

⁴¹ See Argentina, Penal Code, article 80(1); Colombia, Penal Code, article 104(1); Costa Rica, Penal Code, article 112(1); Ecuador, Penal Code, 140(1); El Salvador, Penal Code, article 129(1); Venezuela (Bolivarian Republic of), Penal Code, article 406(3)(a).

⁴² See Bolivia (Plurinational State of), Penal Code, article 253; Chile, Penal Code, article 390; Guatemala, Penal Code, article 131; Honduras, Penal Code, article 118; Mexico, Federal Penal Code, article 323; Nicaragua, Penal Code, article 139; Peru, Penal Code, article 107.

⁴³ See Penal Code, articles 252 and 252 bis.

35 years imprisonment,⁴⁴ and in Ecuador by 22 to 26 years imprisonment.⁴⁵ In Guatemala, the penalty for both offences is 25 to 50 years imprisonment, with the additional provision that no reduction of the sentence nor any alternative measures are available for “femicide”.⁴⁶ In Peru, both offences are punishable by a minimum of 15 years imprisonment, but in the case of aggravating circumstances, a minimum of 25 years or even life imprisonment is foreseen for “feminicide”.⁴⁷ In El Salvador, aggravated forms of “femicide” and most forms of aggravated homicide are punishable by 30 to 50 years of imprisonment.⁴⁸ In Nicaragua, 15 to 20 years of imprisonment are foreseen for aggravated homicide and for “femicide”, but only where it was committed in the public space.⁴⁹

20. In some countries, the specific offences relating to gender-related killing of women and girls allow for penalties that may be higher than for other aggravated homicide offences. In Mexico, the offence of “feminicide” is punishable by 40 to 60 years imprisonment and a fine,⁵⁰ whereas the penalty for aggravated homicide is 30 to 60 years of imprisonment.⁵¹ In Panama, the penalty for gender-related killing of women and girls is 25 to 30 years imprisonment,⁵² while 20 to 30 years imprisonment are foreseen for aggravated homicide.⁵³ In Honduras, the penalty for “femicide” is 30 to 40 years of imprisonment,⁵⁴ as opposed to 20 to 30 years imprisonment for aggravated homicide, although there are circumstances in which the latter is punishable by 30 years to life imprisonment.⁵⁵ In El Salvador, “femicide” carries the penalty of 20 to 25 years imprisonment,⁵⁶ as opposed to 20 to 30 years imprisonment foreseen for some but not all forms of aggravated homicide.⁵⁷ In Nicaragua, “femicide” is punishable more severely where it occurs in the private sphere, by 20 to 25 years imprisonment,⁵⁸ which exceed the 15 to 20 years imprisonment for aggravated homicide.⁵⁹

21. In a few cases, the penalties for specific offences relating to gender-related killing of women and girls may be lower than for other aggravated homicide offences. In India, the offence of “dowry death” is punishable by a minimum of 7 years up to life imprisonment, whereas the penalty for murder is imprisonment for life or capital punishment.⁶⁰ In Nicaragua, aggravated homicide is punishable by 20 to 30 years imprisonment if two or more circumstances occur that are listed in

⁴⁴ See Penal Code, article 112; Law on the criminalization of violence against women, article 21

⁴⁵ See Penal Code, articles 140 and 141.

⁴⁶ See Penal Code, article 132; Law against femicide and other forms of violence against women, article 6.

⁴⁷ See Penal Code, article 108 and 108-B.

⁴⁸ See Penal Code, article 129; Special integral law on a life free from violence against women, article 46.

⁴⁹ See Penal Code, article 140; Integral law against violence against women, article 9.

⁵⁰ See Penal Code, article 325.

⁵¹ See Penal Code, article 320.

⁵² See Penal Code, article 132.

⁵³ See Penal Code, article 132-A.

⁵⁴ See Penal Code, article 118-A.

⁵⁵ See Penal Code, article 117.

⁵⁶ See Special integral law on a life free from violence against women, article 45.

⁵⁷ See Penal Code, article 129.

⁵⁸ See Integral law against violence against women, article 9.

⁵⁹ See Penal Code, article 140.

⁶⁰ See Penal Code, sections 302 and 304(2).

the definition of this offence.⁶¹ By contrast, if two or more of the circumstances listed in the offence of “femicide” occur, the penalty is 25 years imprisonment where it occurs in the private sphere and 20 years imprisonment where it occurs in the public space.⁶²

22. All of the specific offences relating to gender-related killing of women and girls are punishable more severely than the simple forms of homicide in the respective jurisdiction. Even in those cases where the penalties for the specific offences may be lower than for other aggravated homicide offences, they are still higher than the respective simple forms of homicide. In India, culpable homicide not amounting to murder is punishable by imprisonment of a term that may extend to 10 years or even life imprisonment,⁶³ but there is no minimum as in the case of “dowry death”. In Nicaragua, simple homicide is punishable by 10 to 15 years imprisonment,⁶⁴ which is well below the sentencing ranges for “femicide” discussed above.

B. Gender-related elements in forms of aggravated homicide

23. Gender-related elements are included in the definition of aggravated homicide in the criminal law of Argentina, Belgium, Chile, Colombia, Croatia, France, Italy, Russian Federation, Turkey and Venezuela (Bolivarian Republic of). In some cases, the definition of different forms of aggravated homicide is contained in different provisions, although in most of these countries it is contained in a single provision listing various circumstances that make the intentional killing of a person particularly blameworthy.

24. In some cases, these formulations give rise to woman-specific forms of aggravated homicide that resemble some of the specific offences analysed above. Recently created forms include the killing of a woman by a man through gender-based violence⁶⁵ or (not necessarily by a man) because she is a woman.⁶⁶ A more ‘traditional’ form is the killing of a pregnant woman, which is found in the criminal law of several countries.⁶⁷ The latter is linked to a specific factual circumstance concerning the victim, whereas the former refer to broader gender-related elements.

25. Other forms of aggravated homicide that are based on gender-related elements do not require the victim to be a woman. One of these forms is homicide as a hate crime, which requires a specific mental state of the perpetrator. In Argentina, the definition of aggravated homicide includes the killing of a person out of hatred related to, *inter alia*, the victim’s gender, sexual orientation or gender orientation.⁶⁸ A similar provision exists in the criminal law of Belgium, concerning the intentional

⁶¹ See Penal Code, article 140.

⁶² See Integral law against violence against women, article 9.

⁶³ See Penal Code, section 304.

⁶⁴ See Penal Code, article 138.

⁶⁵ Argentina, Penal Code, article 80(11).

⁶⁶ Colombia, Penal Code, article 104.

⁶⁷ Croatia, Criminal Code, article 111(2); France, Penal Code, article 221-4(3); Russian Federation, Criminal Code, article 105(2)(d); Turkey, Penal Code, article 82(f).

⁶⁸ Penal Code, article 80(4).

killing of a person where one of the motives was hatred, contempt or hostility based on the person's sex, change of sex, sexual orientation or other bias motives.⁶⁹

26. In other countries, the definition includes elements that are less explicitly related to gender but may nevertheless encompass gender-related killing of women and girls. Until the creation of a specific offence in 2013, the penal code of Panama defined the killing of a person as a consequence of an act of domestic violence as a form of aggravated homicide.⁷⁰ Relevant forms in other jurisdictions include murder because of the refusal of the victim to enter into marriage or civil union,⁷¹ killing a family member who was previously abused⁷² or homicide for motives of honour or custom.⁷³ A number of provisions also envisage situations where the killing is accompanied or preceded by other offences concerning gender-based violence, such as rape or violent acts of a sexual character,⁷⁴ sexual assault⁷⁵ or stalking.⁷⁶

27. Several countries broadened the existing aggravated homicide offence of "parricide", concerning the intentional killing of a parent, descendant, spouse or partner. In most of the cited Latin American countries, it now includes former spouses,⁷⁷ as well as a broader range of intimate partners, ranging from permanent partners⁷⁸ to persons currently or previously in an affective relationship⁷⁹ or cohabiting⁸⁰ with the perpetrator. In some cases, the definition also covers the killing of other permanent members of the domestic unit⁸¹ or of persons habitually living in the domicile of specific categories of victims.⁸² In other cases, the corresponding provisions are limited to the killing of a current spouse,⁸³ cohabitant or partner in civil union.⁸⁴

28. These different forms of aggravated homicide cover a number of circumstances relating to the relationship between victim and perpetrator, to previous violence by the perpetrator, to the killing and related acts or to the victim, many of which can also be found in specific offences concerning gender-related killing of women and girls. However, the gender-related forms of aggravated

⁶⁹ Penal Code, article 405quater(1).

⁷⁰ Penal Code, article 132(2).

⁷¹ France, Penal Code, article 221-4(10).

⁷² Croatia, Criminal Code, article 111(3).

⁷³ Turkey, Penal Code, article 82(k).

⁷⁴ Russian Federation, Criminal Code, article 105(2)(j).

⁷⁵ Canada, Criminal Code, section 230.

⁷⁶ Italy, Penal Code, article 576(5.1).

⁷⁷ Argentina, Penal Code, article 80(1); Chile, Penal Code, article 390; Venezuela (Bolivarian Republic of), Organic law on the right of women to a life free from violence, article 65.

⁷⁸ Colombia, Penal Code, article 104(1).

⁷⁹ Argentina, Penal Code, article 80(1); Venezuela (Bolivarian Republic of), Organic law on the right of women to a life free from violence, article 65.

⁸⁰ Chile, Penal Code, article 390. From 2011 to 2013, a similar provision was included in the Penal Code of Peru, based on law no. 29819, adopted on 5 December 2011, published on 27 December 2011.

⁸¹ Colombia, Penal Code, article 104(1).

⁸² France, Penal Code, article 221-4(4ter).

⁸³ Turkey, Penal Code, article 82(d); France, Penal Code, article 221-4(9).

⁸⁴ France, Penal Code, article 221-4(9).

homicide are less comprehensive than the specific offences and most are not woman-specific.

29. In terms of penalties, most gender-related forms are not different from other forms of aggravated homicide. One exception is Chile, where only the provision on “parricide” was modified, so that the pre-existing difference in punishment between this offence and other aggravated homicide offences continues to apply. The killing of the current or former spouse or cohabiting partner is thus punishable more severely than killing a person with malice or premeditation.⁸⁵ In Venezuela (Bolivarian Republic of), where different penalties apply to different forms of aggravated homicide, the gender-related form is also punishable more severely. Thus, the killing of a spouse, former spouse, cohabitant, former cohabitant, person with whom the perpetrator maintained a married life, stable union or emotional relationship, with or without cohabitation, is punishable by 28 to 30 years imprisonment.⁸⁶ The same penalty is foreseen for the killing of the President of the Republic, parents or descendants,⁸⁷ whereas killing a sibling or other high-ranking state officials are punishable by 20 to 25 years imprisonment⁸⁸ and killing by means of poison, fire or submersion is punishable by 15 to 20 years imprisonment.⁸⁹

30. As with the specific offences considered above, all of the examined gender-related forms of aggravated homicide carry a heavier penalty than the simple form of homicide in the respective jurisdiction.

C. Gender-related aggravating circumstances for homicide and other offences

31. The criminal law of many countries includes provisions on aggravating circumstances which may apply to a number of offences, including homicide. Contrary to the provisions examined in the previous section, such circumstances are not part of the definition of specific homicide offences with specific penalties. Rather, they affect the determination of the penalty for relevant offences in accordance with the general rules on the application of penalties in each jurisdiction.

32. Specific gender-related elements are part of the provisions on aggravating circumstances in the legislation of Brazil, Canada, Chile, Colombia, Croatia, Italy, Spain and Venezuela (Bolivarian Republic of). Where such circumstances do not constitute or form part of the definition of the offence, they may be applied in relation to simple or aggravated homicide in the respective jurisdiction.⁹⁰ Whether and how gender-related aggravating circumstances are applied to such offences in practice is beyond the scope of this paper, which focuses on presenting and analysing relevant provisions.

⁸⁵ See Penal Code, articles 390 and 391.

⁸⁶ Organic law on the right of women to a life free from violence, article 65.

⁸⁷ Penal Code, article 406(3).

⁸⁸ Penal Code, article 407.

⁸⁹ Penal Code, article 406(1).

⁹⁰ See Brazil, Penal Code, article 61; Chile, Penal Code, article 63; Colombia, Penal Code, article 58; Italy, Penal Code, article 61; Spain, Penal Code, article 67; Venezuela, Penal Code, article 79.

33. Only in a few cases, the gender-related aggravating circumstances are woman-specific. In Brazil, this includes committing an offence with violence against women in one of the forms specified by law.⁹¹ In some cases, committing an offence against a pregnant woman is also considered an aggravating circumstance,⁹² similar to certain woman-specific forms of aggravated homicide mentioned above.

34. In most cases, relevant aggravating circumstances are formulated in a gender-neutral way. Several countries have broad provisions on hate crimes that include as aggravating circumstances gender-related bias motives, such as hatred or discrimination because of the gender, sex, sexual orientation or gender identity of the victim.⁹³ In one case, committing a crime with offence or contempt for the respect that is due to the victim on account of his or her sex is also considered an aggravating circumstance.⁹⁴ In some countries, gender-related aggravating circumstances pertain to the relationship between the victim and the perpetrator. This includes situations where offenders abuse of domestic relations and cohabitation,⁹⁵ or of the 'superiority' of their sex,⁹⁶ or where they commit a crime against their spouse.⁹⁷ Another aggravating circumstance is that the offence was carried out in the presence of or against children.⁹⁸ Most of these circumstances can also be found in a number of the provisions examined in the previous sections.

35. In terms of penalties, it makes a difference when gender-related elements are included among general aggravating circumstances rather than in the definition of aggravated homicide. Instead of giving rise to heavier penalties, aggravating circumstances are to be considered, together with any mitigating circumstances, in determining the penalty for an offence. Applying gender-related aggravating circumstances to homicide offences will thus lead to a penalty that may be at the upper end but not beyond the limits foreseen for these offences in the respective jurisdiction. For example, the intentional killing of a woman through gender-based violence in Brazil is punishable by 6 to 20 years imprisonment,⁹⁹ whereas the sentencing range would be higher (12 to 30 years imprisonment) if such violence had been included in the provision on aggravated homicide.¹⁰⁰ In Argentina, by contrast, such killing is punishable by life imprisonment, since the gender-related element is included in the provision on aggravated homicide,¹⁰¹ whereas the sentencing range would be lower (8 to 28 years imprisonment) if such violence had been in the provision on aggravating circumstances.¹⁰²

36. In several countries, both aggravating circumstances and aggravated forms of homicide include gender-related elements. In Colombia, for example, committing an offence motivated by intolerance or discrimination in relation to the victim's sex is

⁹¹ Penal Code, article 61(f).

⁹² Brazil, Penal Code, article 61(h); Italy, Penal Code, article 61(11-quinquies).

⁹³ See Canada, Criminal Code, section 718.2(a)(i); Chile, Penal Code, article 12(21); Colombia, Penal Code, article 58(3); Croatia, Criminal Code, article 87(20); Spain, Penal Code, article 22(4).

⁹⁴ Venezuela (Bolivarian Republic of), Penal Code, article 77(14).

⁹⁵ Brazil, Penal Code, article 61(f); Italy, Penal Code, article 61(11).

⁹⁶ Chile, Penal Code, article 12(6a); Venezuela (Bolivarian Republic of), Penal Code, article 77(8).

⁹⁷ Brazil, Penal Code, article 61(e).

⁹⁸ Italy, Penal Code, article 61(11-quinquies).

⁹⁹ Penal Code, article 121.

¹⁰⁰ Penal Code, article 121(2).

¹⁰¹ Penal Code, article 80(11).

¹⁰² Penal Code, article 79.

an aggravating circumstance¹⁰³ and the killing of a spouse is a form of aggravated homicide.¹⁰⁴ It may thus be possible to apply these different gender-related elements in combination when they both occur. A similar situation is covered by some of the aggravated forms of specific offences mentioned above. In Nicaragua and Ecuador, for example, the killing of a spouse motivated by misogyny or because she is a woman constitutes an aggravated form of “femicide” that is punishable by the maximum penalty foreseen for this offence.¹⁰⁵ By contrast, in the example of Colombia, the maximum penalty for aggravated homicide would not automatically apply, since the aggravating circumstance would be but one of the circumstances to be considered in determining the penalty.

D. Killing of the victim as aggravating factor in gender-related offences

37. An additional option to deal with gender-related killing is through specific offences relating to gender-based or family violence. In Italy, the provision on maltreatment of family members and cohabitants provides for aggravated penalties in case this offence leads to the victim’s death.¹⁰⁶ In many other countries, certain offences concerning sexual violence or rape are punishable more severely where the victim dies as a result.¹⁰⁷ In these cases, causing the death of the victim is an aggravating factor for a separate offence that addresses violence related to the killing but not the killing itself.

38. There are important differences between this option and the other ways of criminalizing gender-related killing of women and girls. First, the primary legal interest protected by the mentioned provisions is not the life of women and girls, but their physical and sexual integrity. Second, the scope of these provisions is limited to specific forms of violence that can lead to gender-related killing. In most cases, they concern the killing and related acts and in one case (maltreatment of family members and cohabitants) also the relationship between victim and perpetrator. Previous violence by the perpetrator, the characteristics of the victim or other circumstances are not covered.

39. The penalties foreseen by these provisions vary considerably. Only in one case it is lower than the penalty for simple homicide: the offence of maltreatment of family members and cohabitants in Italy is punishable by 12 to 24 years imprisonment where it leads to the victim’s death,¹⁰⁸ while simple homicide is

¹⁰³ Penal Code, article 58(3).

¹⁰⁴ Penal Code, article 104(1).

¹⁰⁵ Ecuador, Penal Code, articles 141 and 142(2); Nicaragua, Integral law against violence against women, article 9(b) and 9(f).

¹⁰⁶ Penal Code, article 572.

¹⁰⁷ Argentina, Penal Code, article 124; Belgium, Penal Code, article 376; Brazil, Penal Code, article 213(2); Croatia, Criminal Code, article 154(3); France, Penal Code, article 222-25; Guatemala, Penal Code, article 175; Peru, Penal Code, article 173-A; Russian Federation, Criminal Code, articles 131(4) and 132(4); Turkey, Penal Code, article 102(5).

¹⁰⁸ Penal Code, article 572.

punishable by at least 21 years imprisonment¹⁰⁹ and aggravated forms of homicide are punishable by life imprisonment.¹¹⁰

40. In most cases, the penalty for sexual violence and rape resulting in the death of the victim is either equal or higher than the penalty for simple forms of homicide. Both are punishable in Croatia by a minimum of 5 years imprisonment,¹¹¹ in Belgium by 20 to 30 years imprisonment¹¹² and in France by 30 years imprisonment.¹¹³ In other countries, the penalty is higher and equals the penalty for aggravated forms of homicide, which in Brazil is 12 to 30 years imprisonment,¹¹⁴ in Argentina life imprisonment¹¹⁵ and in Turkey aggravated life imprisonment.¹¹⁶

41. In some cases, the punishment may even be more severe than for aggravated forms of homicide. In the Russian Federation, rape and violent acts of a sexual character resulting in the death of the victim are punishable by 12 to 20 years imprisonment,¹¹⁷ whereas aggravated forms of homicide are punishable by 8 to 20 years imprisonment.¹¹⁸ In Guatemala, rape is punishable by 30 to 50 years imprisonment if the victim dies as a consequence,¹¹⁹ while aggravated forms of homicide and “femicide” are punishable by 25 to 50 years imprisonment.¹²⁰

III. Possible advantages and disadvantages of criminalization

42. There are different arguments in favour of criminalizing gender-related killing of women and girls. Such killing can be considered more blameworthy than other forms of killing because it constitutes a manifestation of inequality, abuse of power and discrimination against women. In addition, it violates multiple legal interests that the criminal law is expected to protect, including the right to life and to physical, psychological and sexual integrity. In the opinion of some experts, this is an “additional element of injustice” that demands the adoption of provisions that foresee not only harsher penalties but that are also woman-specific.¹²¹ The Follow-up Mechanism to the Belém do Pará Convention (MESECVI) even recommended that States parties “[e]liminate any regulation on violence against women that is gender neutral.”¹²²

43. A number of specific arguments support woman-specific provisions. Based on the expressive function of criminal law, such provisions may be considered necessary in order to render visible and publicly denounce gender-related killing of

¹⁰⁹ Ibid., article 575.

¹¹⁰ Ibid., article 576.

¹¹¹ Criminal Code, articles 110 and 154(3).

¹¹² Penal Code, articles 376 and 393.

¹¹³ Penal Code, articles 221-1 and 222-25.

¹¹⁴ Penal Code, articles 121(2) and 213(2).

¹¹⁵ Penal Code, articles 80 and 124.

¹¹⁶ Penal Code, articles 82 and 102(5)

¹¹⁷ Criminal Code, articles 131(4) and 132(4).

¹¹⁸ Ibid., article 105(2).

¹¹⁹ Penal Code, article 175.

¹²⁰ Ibid., article 132; Law against femicide and other forms of violence against women, article 6.

¹²¹ Patsilí Toledo Vásquez, *Feminicidio* (OHCHR Mexico, 2009), p. 72.

¹²² Second Conference of States Parties of the MESECVI, *Hemispheric Report* (Caracas, 2008), MESECVI/CEVI/doc.16/08 rev. 1, p. 44.

women and girls.¹²³ Some experts have even stressed that not using criminal law could be understood as a step towards condoning forms of violence that could contribute to the normalization of such crimes.¹²⁴ Another concern is that gender-neutral provisions may be used against woman victims of violence who resist their abusers.¹²⁵ In practice, separate woman-specific offences may facilitate data collection, investigation and prosecution by enabling more precise recording and tracking of cases and the creation of specialized units dealing with these offences.¹²⁶

44. On the other hand, there are also a number of arguments against woman-specific provisions. Such provisions may be considered to conflict with constitutional or other basic legal principles on non-discrimination and equality before the law, especially where the punishment for gender-related killing is higher than for other aggravated homicide offences. Moreover, in cases where the provisions do not specify the gender of the active subject, a lesbian offender might incur higher penalties for killing her intimate partner than a gay man who kills his intimate partner in the same circumstances.¹²⁷

45. Additional issues may arise in the application of woman-specific provisions, especially those creating separate offences. First, they may have the undesired effect of reinforcing existing stereotypes of women as victims by definition, especially among criminal justice professionals. Second, their application may negatively affect transgender, transsexual or intersex people if the term “woman” is understood in a narrow manner focusing on the biological sex rather than taking into account all people with a female gender identity. In addition, some experts have highlighted the risk that such provisions remain in a “normative ghetto” and are not applied, either because they are not widely understood or because they are not accepted by criminal justice officials.¹²⁸

46. Apart from the issue of gender-specificity, challenges may also arise in the application of some of the provisions examined in the previous section. Broad concepts like ‘unequal power relations’¹²⁹ or killing ‘because she is a woman’¹³⁰ may be considered as vague and insufficiently clear and may thus conflict with the principle of legality.¹³¹ Other broad terms may also be difficult to define, such as the concepts of partner relationship (“relación de pareja”),¹³² relationship of affection or intimacy

¹²³ Dora Inés Munévar M., “Delito de femicidio: Muerte violenta de mujeres por razones de género”, *Revista Estudios Socio-Jurídicos*, vol. 14, No.1 (January/June 2012), p. 151.

¹²⁴ Luciano Corsori, “El delito de femicidio y su constitucionalidad”, *Revista Pensamiento Penal*, No. 177 (June 2014), p. 54.

¹²⁵ Second Conference of States Parties of the MESECVI, *Hemispheric Report* (Caracas, 2008), MESECVI/CEVI/doc.16/08 rev. 1, p. 7.

¹²⁶ *Ibid.*, pp. 146-147.

¹²⁷ Patsilí Toledo Vásquez, *Feminicidio* (OHCHR Mexico, 2009), pp. 77-78.

¹²⁸ *Ibid.*, pp. 146-147.

¹²⁹ Ecuador, Penal Code, article 142(1); Guatemala, Law against femicide and other forms of violence against women, article 6; Nicaragua, Integral law against violence against women, article 9; Panama, Penal Code, article 132-A(10).

¹³⁰ See Colombia, Penal Code, article 104; Ecuador, Penal Code, article 142(1); Guatemala, Law against femicide and other forms of violence against women, article 6; Peru, Penal Code, article 108-B.

¹³¹ Patsilí Toledo Vásquez, *Feminicidio* (OHCHR Mexico, 2009), pp. 78-79.

¹³² Argentina, Penal Code, article 80(1).

(“relación de afectividad o intimidad”),¹³³ permanent partners (“compañeros permanentes”)¹³⁴ or de facto union (“unión de hecho”).¹³⁵ In relation to the latter, the competent courts have adopted a broad interpretation in light of the Belém do Pará Convention and held that the concept includes even short periods of cohabitation or situations where the couple was no longer living together, despite existing provisions of criminal and civil law envisaging certain minimum periods of cohabitation.¹³⁶

47. A number of issues also arise in relation to penalties for gender-related killing of women and girls. In most of the ways of criminalizing such killing, the penalties are higher than for simple homicide. This may be in the interest of victims and their families and may serve as a deterrent, but prolonged terms of imprisonment may also pose obstacles to rehabilitation and reintegration of offenders. In addition, aggravated penalties may conflict with constitutional or other basic legal principles on the proportionality of punishment. For example, it has been argued that this may be the case where the definition includes the killing of a former intimate partner without requiring further aspects of discrimination or violence against women.¹³⁷

IV. Conclusions and questions for discussion

48. As illustrated in section II above, there are at least four ways of criminalizing gender-related killing of women and girls: 1) to create specific offences, 2) to extend the definition of aggravated homicide, 3) to include gender-related elements into general aggravating circumstances, and 4) to establish the killing of the victim as aggravating factor in gender-related offences.

49. All of the specific offences examined in this paper are woman-specific and most encompass a broad range of objective and subjective elements related to the gender aspect of the killing. Similar elements can be found in the provisions on aggravated homicide or general aggravating circumstances, although most of them are less comprehensive than the specific offences and many are gender-neutral. By contrast, in cases where the killing of the victim is an aggravating factor for offences concerning sexual and family violence, the only gender-related element is the occurrence of these specific forms of violence, which affect women and girls disproportionately.

50. The definitional elements of the different provisions vary widely between countries. However, the analysis of the ways of criminalizing gender-related killing of women and girls has revealed a number of common elements concerning the gender aspect of the killing. Most provisions include objective elements that relate to the relationship between victim and perpetrator, specific characteristics of the victim that make her particularly vulnerable, previous violence committed by the perpetrator against the victim, or the particularly cruel or violent way in which the

¹³³ Bolivia (Plurinational State of), Penal Code, article 252bis(1).

¹³⁴ Colombia, Penal Code, article 104(1).

¹³⁵ Costa Rica, Law on the criminalization of violence against women, article 21.

¹³⁶ Costa Rica, Supreme Court of Justice, Sentences no. 1416-2010 and 1330-2011. See also Ana Isabel Garita Vilchez, *La regulación de delito de femicidio/feminicidio en América Latina y el Caribe* (Panama, UN Secretary General’s campaign UNiTE, 2012), pp. 31-34.

¹³⁷ Jorge Eduardo Bompadre, “Los delitos de género en la reforma penal (ley no 26.791)”, *Revista Pensamiento Penal*, No. 152 (February 2013), pp. 17-18.

killing was perpetrated. Several provisions also include subjective elements concerning the motives or the mental state of the perpetrator, such as misogyny, hatred or contempt for the victim because of her sex or gender.

51. Most of the ways of criminalizing gender-related killing of women and girls give rise to higher penalties than for simple forms of homicide in the respective jurisdictions. A lower penalty is foreseen only in one of the offences that include the killing of the victim as an aggravating factor. In cases where gender-related aggravating circumstances may be applied to simple homicide, the penalty may be at the upper end but usually not beyond the sentencing range for this offence. By contrast, most of the specific offences and the gender-related forms of aggravated homicide entail a higher penalty, which is the same as for other forms of aggravated homicide in the respective jurisdiction. More severe penalties are foreseen only in some cases, for specific offences or for offences that include the killing of the victim as an aggravating factor.

52. The present paper has highlighted common elements and key differences of different types of provisions criminalizing gender-related killing of women and girls, both in terms of definitional elements and the corresponding penalty. It has also outlined possible advantages and disadvantages of criminalizing such killing, especially in relation to woman-specific provisions. A more detailed analysis of the different provisions, however, will require more information on their interpretation and application in the respective jurisdictions.

53. Thus, the expert group may wish to consider the following questions for further discussion:

(a) Is it possible to obtain data on gender-related killing of women and girls in the absence of specific provisions criminalizing such killing? Is such data available in countries where gender-related aggravating circumstances and/or gender-related forms of aggravated homicide exist, or where the killing of the victim is an aggravating factor in gender-related offences? Is gender-disaggregated data collected in countries where relevant provisions are gender-neutral? Are there any other ways of determining how many homicides are gender-related, especially in countries where similar provisions do not exist?

(b) How are the provisions interpreted in the different jurisdictions? Is the term “woman” understood narrowly in terms of the biological sex or broadly with reference to gender identity? What meaning have courts given to broad concepts referring to unequal power relations, gender-related reasons for the killing, or to relevant forms of intimate relationships?

(c) How are the provisions applied in the different jurisdictions? Are they widely understood, accepted and used by criminal justice officials? What challenges exist in relation to establishing the relevant gender-related definitional elements during the investigation and prosecution? Are some of these elements more difficult to prove than others?

(e) How many offenders have been charged, convicted and acquitted under the relevant provisions? What was the average term of imprisonment imposed on convicted offenders?

(f) In countries where gender-related aggravating circumstances exist, are they applied to simple and/or aggravated forms of homicide? If yes, how does this affect the penalties for these offences?

(g) In countries where specific offences exist, have they enabled more precise recording and tracking of cases? Have specialized units been created to deal with these offences?

Annex

Excerpts of national legislation¹

Argentina, Penal Code²

Article 79

“Se aplicará reclusión o prisión de ocho a veinticinco años, al que matare a otro siempre que en este código no se estableciere otra pena.”

Article 80³

“Se impondrá reclusión perpetua o prisión perpetua, pudiendo aplicarse lo dispuesto en el artículo 52, al que matare:

1° *A su ascendiente, descendiente, cónyuge, ex cónyuge, o a la persona con quien mantiene o ha mantenido una relación de pareja, mediar o no convivencia.*

2° Con ensañamiento, alevosía, veneno u otro procedimiento insidioso.

3° Por precio o promesa remuneratoria.

4° *Por placer, codicia, odio racial, religioso, de género o a la orientación sexual, identidad de género o su expresión.*

5° Por un medio idóneo para crear un peligro común.

6° Con el concurso premeditado de dos o más personas.

7° Para preparar, facilitar, consumir u ocultar otro delito o para asegurar sus resultados o procurar la impunidad para sí o para otro o por no haber logrado el fin propuesto al intentar otro delito.

8° A un miembro de las fuerzas de seguridad pública, policiales o penitenciarias, por su función, cargo o condición.

9° Abusando de su función o cargo, cuando fuere miembro integrante de las fuerzas de seguridad, policiales o del servicio penitenciario.

10° A su superior militar frente a enemigo o tropa formada con armas.

11° *A una mujer cuando el hecho sea perpetrado por un hombre y mediar violencia de género.*

12° *Con el propósito de causar sufrimiento a una persona con la que se mantiene o ha mantenido una relación en los términos del inciso 1°.*

Cuando en el caso del inciso 1° de este artículo, mediar en circunstancias extraordinarias de atenuación, el juez podrá aplicar prisión o reclusión de ocho (8) a veinticinco (25) años. Esto no será aplicable a quien anteriormente hubiera realizado actos de violencia contra la mujer víctima.”

¹ All excerpts are reproduced in the original language. An informal translation into English is provided in cases where the original language is not an official language of the United Nations.

² Available at the website of the *Centro de Documentación e Información, Ministerio de Economía y Finanzas Públicas*, www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm.

³ The highlighted text reflects the changes introduced by Law 26.791, adopted on 14 November 2012, promulgated on 11 December 2012.

Article 124

“Se impondrá reclusión o prisión perpetua, cuando en los casos de los artículos 119 y 120 [abuso sexual] resultare la muerte de la persona ofendida.”

Belgium, Penal Code⁴

Article 376

“Si le viol ou l’attentat à la pudeur a causé la mort de la personne sur laquelle il a été commis, le coupable sera puni de la réclusion de vingt ans à trente ans.

Si le viol ou l’attentat à la pudeur a été précédé ou accompagné des actes visés à l’article 417ter, alinéa premier, ou de séquestration, le coupable sera puni de la réclusion de quinze ans à vingt ans.

Si le viol ou l’attentat à la pudeur a été commis soit sur une personne dont la situation de vulnérabilité en raison de l’âge, d’un état de grossesse, d’une maladie, d’une infirmité ou d’une déficience physique ou mentale était apparente ou connue de l’auteur des faits, soit sous la menace d’une arme ou d’un objet qui y ressemble, le coupable sera puni de la réclusion de dix à quinze ans.”

Article 393

“L’homicide commis avec intention de donner la mort est qualifié meurtre. Il sera puni de la réclusion de vingt ans à trente ans.”

Article 394

“Le meurtre commis avec préméditation est qualifié assassinat. Il sera puni de la réclusion à perpétuité.”

Article 405 quater⁵

“Lorsqu’un des mobiles du crime ou du délit est la haine, le mépris ou l’hostilité à l’égard d’une personne en raison de sa prétendue race, de sa couleur de peau, de son ascendance, de son origine nationale ou ethnique, de sa nationalité, de son sexe, de son changement de sexe, de son orientation sexuelle, de son état civil, de sa naissance, de son âge, de sa fortune, de sa conviction religieuse ou philosophique, de son état de santé actuel ou futur, d’un handicap, de sa langue, de sa conviction politique, de sa conviction syndicale, d’une caractéristique physique ou génétique ou de son origine sociale, les peines seront les suivantes:

1° dans les cas visés à l’article 393, la peine sera la réclusion à perpétuité;

2° dans les cas visés aux articles 398, 399, 405 et 405bis, 1° à 3°, le maximum de la peine d’emprisonnement portée par ces articles sera doublé avec un maximum de cinq ans et le maximum de la peine d’amende sera doublé avec un maximum de cinq cents euros;

⁴ Available at the website of the *Service publique fédéral justice*, www.ejustice.just.fgov.be/.

⁵ Introduced by law of 25 February 2003, replaced by law of 10 May 2007 and last modified by law of 14 January 2013, published on 31 January 2013.

3° dans les cas visés aux articles 400, alinéa 1er, 402 et 405bis, 4°, la peine sera la réclusion de cinq ans à dix ans;

4° dans les cas visés aux articles 400, alinéa 2, 401, alinéa 1er, 403, 405bis, 5° et 9°, la peine sera la réclusion de dix ans à quinze ans;

5° dans les cas visés aux articles 401, alinéa 2, 405bis, 6°, 7° et 10°, la peine sera la réclusion de quinze ans à vingt ans;

6° dans les cas visés aux articles 404, 405bis, 8° et 11°, la peine sera la réclusion de vingt ans à trente ans.”

Bolivia (Plurinational State of), Penal Code⁶

Article 251

“(Homicidio). El que matare a otro, será sancionado con presidio de cinco a veinte años. Si la víctima del delito resultare ser Niña, Niño o Adolescente, la pena será de diez a veinticinco años.”

Article 252

“(Asesinato). Será sancionado con la pena de presidio de treinta años, sin derecho a indulto, el que matare:

1. A sus descendientes o cónyuge o conviviente, sabiendo que lo son.
2. Por motivos fútiles o bajos.
3. Con alevosía o ensañamiento.
4. En virtud de precio, dones o promesas.
5. Por medio de sustancias venenosas u otras semejantes.
6. Para facilitar, consumir u ocultar otro delito, o para asegurar sus resultados.
7. Para vencer la resistencia de la víctima o evitar que el delincuente sea detenido.”

Article 252 bis⁷

“(Feminicidio). Se sancionará con la pena de presidio de treinta (30) años sin derecho a indulto, a quien mate a una mujer, en cualquiera de las siguientes circunstancias:

1. El autor sea o haya sido cónyuge o conviviente de la víctima, esté o haya estado ligada a ésta por una análoga relación de afectividad o intimidad, aun sin convivencia;
2. Por haberse negado la víctima a establecer con el autor, una relación de pareja, enamoramiento, afectividad o intimidad;
3. Por estar la víctima en situación de embarazo;

⁶ Available at the website of the *Sistema de Información Legal del Estado Plurinacional*, <http://silep.vicepresidencia.gob.bo/SILEP/busador>.

⁷ Introduced by Law 348, adopted on 27 February 2013, promulgated on 9 March 2013.

4. La víctima que se encuentre en una situación o relación de subordinación o dependencia respecto del autor, o tenga con éste una relación de amistad, laboral o de compañerismo;
5. La víctima se encuentre en una situación de vulnerabilidad;
6. Cuando con anterioridad al hecho de la muerte, la mujer haya sido víctima de violencia física, psicológica, sexual o económica, cometida por el mismo agresor;
7. Cuando el hecho haya sido precedido por un delito contra la libertad individual o la libertad sexual;
8. Cuando la muerte sea conexas al delito de trata o tráfico de personas;
9. Cuando la muerte sea resultado de ritos, desafíos grupales o prácticas culturales.”

Article 253

“(Parricidio). El que matare a su padre o madre, o a su abuelo u otro ascendiente en línea recta, sabiendo quien es, será sancionado con presidio de 30 años, sin derecho a indulto.”

Brazil, Penal Code⁸

Article 61⁹

“São circunstâncias que sempre agravam a pena, quando não constituem ou qualificam o crime:

I - a reincidência;

II - ter o agente cometido o crime:

- a) por motivo fútil ou torpe;
- b) para facilitar ou assegurar a execução, a ocultação, a impunidade ou vantagem de outro crime;
- c) à traição, de emboscada, ou mediante dissimulação, ou outro recurso que dificultou ou tornou impossível a defesa do ofendido;
- d) com emprego de veneno, fogo, explosivo, tortura ou outro meio insidioso ou cruel, ou de que podia resultar perigo comum;
- e) contra ascendente, descendente, irmão ou cônjuge;
- f) *com abuso de autoridade ou prevalecendo-se de relações domésticas, de coabitação ou de hospitalidade, ou com violência contra a mulher na forma da lei específica;*

⁸ Available at the website of the *Presidency of the Republic of Brazil*, www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848.htm#art61iif.

⁹ The highlighted text reflects the changes introduced by Law 11.340, adopted on 7 August 2006, available at www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Lei/L11340.htm#art43.

- g) com abuso de poder ou violação de dever inerente a cargo, ofício, ministério ou profissão;
- h) contra criança, maior de 60 (sessenta) anos, enfermo ou mulher grávida;
- i) quando o ofendido estava sob a imediata proteção da autoridade;
- j) em ocasião de incêndio, naufrágio, inundação ou qualquer calamidade pública, ou de desgraça particular do ofendido;
- l) em estado de embriaguez preordenada.”

Informal translation:

“The following circumstances always aggravate the penalty when they do not constitute or qualify the crime:

I – recidivism;

II – where the agent committed the crime:

- a) with a futile or vile motive;
- b) to facilitate or ensure the commission, concealment, impunity or advantage of another crime;
- c) by treachery, ambush, or disguise, or another other feature that made it difficult or impossible to defend the victim;
- d) using poison, fire, explosives, torture or other cruel or insidious means, or that could result in common danger;
- e) against a parent, child, sibling or spouse;
- f) with abuse of authority or taking advantage of domestic relations, cohabitation or hospitality, or with violence against the woman in the form of the specific law;
- g) with abuse of power or breach of duty inherent in the post, function, ministry or profession;
- h) against a child, a person over 60 years of age, a sick person or a pregnant woman;
- i) where the victim was under the immediate protection of the authority;
- j) in case of fire, shipwreck, flooding or any public calamity, or particular misfortune of the victim;
- l) in a state of voluntary drunkenness.”

Article 121

“Matar alguém:

Pena - reclusão, de seis a vinte anos.

§ 1º Se o agente comete o crime impelido por motivo de relevante valor social ou moral, ou sob o domínio de violenta emoção, logo em seguida a injusta provocação da vítima, ou juiz pode reduzir a pena de um sexto a um terço.

§ 2º Se o homicídio é cometido:

I - mediante paga ou promessa de recompensa, ou por outro motivo torpe;

II - por motivo fútil;

III - com emprego de veneno, fogo, explosivo, asfixia, tortura ou outro meio insidioso ou cruel, ou de que possa resultar perigo comum;

IV - à traição, de emboscada, ou mediante dissimulação ou outro recurso que dificulte ou torne impossível a defesa do ofendido;

V - para assegurar a execução, a ocultação, a impunidade ou vantagem de outro crime:

Pena - reclusão, de doze a trinta anos.

§ 3º Se o homicídio é culposo:

Pena - detenção, de um a três anos.”

Informal translation:

“To kill someone:

Penalty - imprisonment of 6 to 20 years.

Case of a reduction of the penalty

§ 1 If the agent commits the crime impelled by reason of relevant social or moral value, or in the grip of violent emotion, immediately after the unjust provocation by the victim, the judge can reduce the penalty by one-sixth to one-third.

§ 2 If the homicide is committed:

I - through payment or promise of reward, or other unworthy motive;

II - for a futile motive;

III - with the use of poison, fire, explosion, asphyxiation, torture or other cruel or insidious means, or which may result common danger;

IV - by treachery, ambush, or by concealment or other feature that makes it difficult or impossible to defend the victim;

V - to ensure the commission, concealment, impunity or advantage of another crime:

Penalty - imprisonment from 12 to 30 years.

§ 3 If the homicide is involuntary:

Penalty - detention of 1 to 3 years.”

Article 213

“Constranger alguém, mediante violência ou grave ameaça, a ter conjunção carnal ou a praticar ou permitir que com ele se pratique outro ato libidinoso:

Pena - reclusão, de 6 (seis) a 10 (dez) anos.

§ 1o Se da conduta resulta lesão corporal de natureza grave ou se a vítima é menor de 18 (dezoito) ou maior de 14 (catorze) anos:

Pena - reclusão, de 8 (oito) a 12 (doze) anos.

§ 2o Se da conduta resulta morte:

Pena - reclusão, de 12 (doze) a 30 (trinta) anos.”

Informal translation:

“To coerce someone by violence or serious threat, to have sexual intercourse or to perform or to submit to any other sexual act:

Penalty - imprisonment of 6 to 10 years.

§ 1. If the conduct results in bodily injury of a serious nature or if the victim is under 18 or over 14 years old:

Penalty - imprisonment from 8 to 12 years.

§ 2. If the conduct results in death:

Penalty - imprisonment of 12 to 30 years.”

Canada, Criminal Code¹⁰

Section 230

“Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit high treason or treason or an offence mentioned in section 52 (sabotage), 75 (piratical acts), 76 (hijacking an aircraft), 144 or subsection 145(1) or sections 146 to 148 (escape or rescue from prison or lawful custody), section 270 (assaulting a peace officer), section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm), 273 (aggravated sexual assault), 279 (kidnapping and forcible confinement), 279.1 (hostage taking), 343 (robbery), 348 (breaking and entering) or 433 or 434 (arson), whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if

(a) he means to cause bodily harm for the purpose of

(i) facilitating the commission of the offence, or

(ii) facilitating his flight after committing or attempting to commit the offence, and the death ensues from the bodily harm;

(b) he administers a stupefying or overpowering thing for a purpose mentioned in paragraph (a), and the death ensues therefrom; or

(c) he wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (a), and the death ensues therefrom.”

Section 234

“Culpable homicide that is not murder or infanticide is manslaughter.”

Section 235

“(1) Every one who commits first degree murder or second degree murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

(2) For the purposes of Part XXIII, the sentence of imprisonment for life prescribed by this section is a minimum punishment.”

Section 236

“Every person who commits manslaughter is guilty of an indictable offence and liable

(a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

¹⁰ Available at the website of the Department of Justice, <http://laws-lois.justice.gc.ca/eng/acts/C-46>.

(b) in any other case, to imprisonment for life.”

Section 718.2

“A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,

(ii) evidence that the offender, in committing the offence, abused the offender’s spouse or common-law partner,

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or

(v) evidence that the offence was a terrorism offence

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.”

Chile, Penal Code¹¹

Article 12

“Son circunstancias agravantes:

1a. Cometer el delito contra las personas con alevosía, entendiéndose que la hay cuando se obra a traición o sobre seguro.

2a. Cometerlo mediante precio, recompensa o promesa.

¹¹ Available at the website of the *Biblioteca del Congreso Nacional de Chile*, www.leychile.cl/Navegar?idNorma=1984&idVersion=2013-12-01.

- 3a. Ejecutar el delito por medio de inundación, incendio, veneno u otro artificio que pueda ocasionar grandes estragos o dañar a otras personas.
- 4a. Aumentar deliberadamente el mal del delito causando otros males innecesarios para su ejecución.
- 5a. En los delitos contra las personas, obrar con premeditación conocida o emplear astucia, fraude o disfraz.
- 6a. Abusar el delincuente de la superioridad de su sexo o de sus fuerzas, en términos que el ofendido no pudiera defenderse con probabilidades de repeler la ofensa.
- 7a. Cometer el delito con abuso de confianza.
- 8a. Prevalerse del carácter público que tenga el culpable.
- 9a. Emplear medios o hacer que concurren circunstancias que añadan la ignominia a los efectos propios del hecho.
- 10a. Cometer el delito con ocasión de incendio, naufragio, sedición, tumulto o conmoción popular u otra calamidad o desgracia.
- 11a. Ejecutarlo con auxilio de gente armada o de personas que aseguren o proporcionen la impunidad.
- 12a. Ejecutarlo de noche o en despoblado. El tribunal tomará o no en consideración esta circunstancia, según la naturaleza y accidentes del delito.
- 13a. Ejecutarlo en desprecio o con ofensa de la autoridad pública o en el lugar en que se halle ejerciendo sus funciones.
- 14a. Cometer el delito mientras cumple una condena o después de haberla quebrantado y dentro del plazo en que puede ser castigado por el quebrantamiento.
- 15a. Haber sido condenado el culpable anteriormente por delitos a que la ley señale igual o mayor pena.
- 16a. Haber sido condenado el culpable anteriormente por delito de la misma especie.
- 17a. Cometer el delito en lugar destinado al ejercicio de un culto permitido en la República.
- 18a. Ejecutar el hecho con ofensa o desprecio del respeto que por la dignidad, autoridad, edad o sexo mereciere el ofendido, o en su morada, cuando él no haya provocado el suceso.
- 19a. Ejecutarlo por medio de fractura o escalamiento de lugar cerrado.
- 20.^a Ejecutarlo portando armas de fuego o de aquellas referidas en el artículo 132.
- 21.^a Cometer el delito o participar en él motivado por la ideología, opinión política, religión o creencias de la víctima; la nación, raza, etnia o grupo social a que pertenezca; su sexo, orientación sexual, identidad de género, edad, filiación, apariencia personal o la enfermedad o discapacidad que padezca.”

Article 63

“No producen el efecto de aumentar la pena las circunstancias agravantes que por sí mismas constituyen un delito especialmente penado por la ley, o que ésta haya expresado al describirlo y penarlo.

Tampoco lo producen aquellas circunstancias agravantes de tal manera inherentes al delito que sin la concurrencia de ellas no puede cometerse.”

Article 390¹²

“El que, conociendo las relaciones que los ligan, mate a su padre, madre o hijo, a cualquier otro de sus ascendientes o descendientes o a *quien es o ha sido su cónyuge o su conviviente*, será castigado, como parricida, con la pena de presidio mayor en su grado máximo a presidio perpetuo calificado.

Si la víctima del delito descrito en el inciso precedente es o ha sido la cónyuge o la conviviente de su autor, el delito tendrá el nombre de femicidio.”

Article 391

“El que mate a otro y no esté comprendido en el artículo anterior, será penado:

1° Con presidio mayor en su grado medio a presidio perpetuo, si ejecutare el homicidio con alguna de las circunstancias siguientes:

Primera. Con alevosía.

Segunda. Por premio o promesa remuneratoria.

Tercera. Por medio de veneno.

Cuarta. Con ensañamiento, aumentando deliberada e inhumanamente el dolor al ofendido.

Quinta. Con premeditación conocida.

2° Con presidio mayor en sus grados mínimo a medio en cualquier otro caso.”

Colombia, Penal Code¹³

Article 58

“Circunstancias de mayor punibilidad.

Son circunstancias de mayor punibilidad, siempre que no hayan sido previstas de otra manera:

1. Ejecutar la conducta punible sobre bienes o recursos destinados a actividades de utilidad común o a la satisfacción de necesidades básicas de una colectividad.
2. Ejecutar la conducta punible por motivo abyecto, fútil o mediante precio, recompensa o promesa remuneratoria.
3. Que la ejecución de la conducta punible esté inspirada en móviles de intolerancia y discriminación referidos a la raza, la etnia, la ideología, la religión, o las creencias, sexo u orientación sexual, o alguna enfermedad o minusvalía de la víctima.
4. Emplear en la ejecución de la conducta punible medios de cuyo uso pueda resultar peligro común.
5. Ejecutar la conducta punible mediante ocultamiento, con abuso de la condición de superioridad sobre la víctima, o aprovechando circunstancias de tiempo, modo, lugar que dificulten la defensa del ofendido o la identificación del autor o partícipe.
6. Hacer más nocivas las consecuencias de la conducta punible.

¹² The highlighted text reflects the changes introduced by Law 20.480, adopted on 19 November 2010, entered into force on 18 December 2010.

¹³ Available at the website of the *Secretaría General de la Alcaldía Mayor de Bogotá*, www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6388#104.

7. Ejecutar la conducta punible con quebrantamiento de los deberes que las relaciones sociales o de parentesco impongan al sentenciado respecto de la víctima.
8. Aumentar deliberada e inhumanamente el sufrimiento de la víctima, causando a ésta padecimientos innecesarios para la ejecución del delito.
9. La posición distinguida que el sentenciado ocupe en la sociedad, por su cargo, posición económica, ilustración, poder, oficio o ministerio.
10. Obrar en coparticipación criminal.
11. Ejecutar la conducta punible valiéndose de un inimputable.
12. Cuando la conducta punible fuere cometida contra servidor público por razón del ejercicio de sus funciones o de su cargo, salvo que tal calidad haya sido prevista como elemento o circunstancia del tipo penal.
13. Cuando la conducta punible fuere dirigida o cometida total o parcialmente desde el interior de un lugar de reclusión por quien estuviere privado de su libertad, o total o parcialmente fuera del territorio nacional.
14. Cuando se produjere un daño grave o una irreversible modificación del equilibrio ecológico de los ecosistemas naturales.
15. Cuando para la realización de la conducta punible se hubieren utilizado explosivos, venenos u otros instrumentos o artes de similar eficacia destructiva.
16. Cuando la conducta punible se realice sobre áreas de especial importancia ecológica o en ecosistemas estratégicos definidos por la ley o los reglamentos.
17. Cuando la conducta punible fuere cometida total o parcialmente en el interior de un escenario deportivo, o en sus alrededores, o con ocasión de un evento deportivo, antes, durante o con posterioridad a su celebración.”

Article 103

“El que matare a otro, incurrirá en prisión de trece (13) a veinticinco (25) años.”

Article 104¹⁴

“Circunstancias de agravación. La pena será de veinticinco (25) a cuarenta (40) años de prisión, si la conducta descrita en el artículo anterior se cometiere:

1. *En los cónyuges o compañeros permanentes; en el padre y la madre de familia, aunque no convivan en un mismo hogar; en los ascendientes o descendientes de los anteriores y los hijos adoptivos; y en todas las demás personas que de manera permanente se hallare integrada a la unidad doméstica.*
2. Para preparar, facilitar o consumir otra conducta punible; para ocultarla, asegurar su producto o la impunidad, para sí o para los copartícipes.
3. Por medio de cualquiera de las conductas previstas en el Capítulo II del Título XII y en el Capítulo I del Título XIII, del libro segundo de este código.
4. Por precio, promesa remuneratoria, ánimo de lucro o por otro motivo abyecto o fútil.
5. Valiéndose de la actividad de inimputable.

¹⁴ The highlighted text reflects the changes introduced by Law 1.257, adopted and entered into force on 4 December 2008.

6. Con sevicia.
7. Colocando a la víctima en situación de indefensión o inferioridad o aprovechándose de esta situación.
8. Con fines terroristas o en desarrollo de actividades terroristas.
9. En persona internacionalmente protegida diferente a las contempladas en el Título II de éste Libro y agentes diplomáticos, de conformidad con los Tratados y Convenios Internacionales ratificados por Colombia.
10. Si se comete en persona que sea o haya sido servidor público, periodista, juez de paz, Defensor de Derechos Humanos, miembro de una organización sindical legalmente reconocida, político o religioso en razón de ello
11. *Si se cometiere contra una mujer por el hecho de ser mujer.*”

Croatia, Criminal Code¹⁵

Article 87(20)

“Zločin iz mržnje je kazneno djelo počinjeno zbog rasne pripadnosti, boje kože, vjeroispovijesti, nacionalnog ili etničkog podrijetla, invaliditeta, spola, spolnog opredjeljenja ili rodnog identiteta druge osobe. Takvo postupanje uzet će se kao otegotna okolnost ako ovim Zakonom nije izričito propisano teže kažnjavanje.”

Informal translation:

“A hate crime is a crime committed because of race, skin color, religion, national or ethnic origin, disability, sex, sexual orientation or gender identity of another person. Such action shall be taken as an aggravating circumstance unless this law expressly stipulates heavier punishment.”

Article 110

“Tko ubije drugoga, kaznit će se kaznom zatvora najmanje pet godina.”

Informal translation:

“Whoever kills another, shall be punished by imprisonment of at least five years.”

Article 111

“Kaznom zatvora najmanje deset godina ili kaznom dugotrajnog zatvora kaznit će se:

1. tko drugoga ubije na okrutan ili podmukao način,
2. tko ubije osobu posebno ranjivu zbog njezine dobi, teže tjelesne ili duševne smetnje ili trudnoće,
3. tko ubije člana obitelji kojeg je već ranije zlostavljao,
4. tko drugoga ubije iz koristoljublja, bezobzirne osvete, mržnje ili iz drugih niskih pobuda,
5. tko drugoga ubije radi počinjenja ili prikrivanja drugog kaznenog djela,
6. tko ubije službenu osobu u vezi s njezinim obavljanjem službene dužnosti.”

¹⁵ Available at the website of the official gazette (*Narodne Novine*), <http://narodne-novine.nn.hr>.

Informal translation:

“Imprisonment of not less than ten years or long-term imprisonment shall be imposed on:

1. The person who kills another in a cruel or insidious way,
2. The person who kills a person particularly vulnerable because of age, serious physical or mental disorders or pregnancy,
3. The person who kills a family member who was previously abused,
4. The person who kills another out of greed, ruthless revenge, hatred, or other base motives,
5. The person who kills another in order to commit or conceal another crime,
6. The person who kills an officer in connection with his or her performance of official duties.”

Article 154

“(1) Kaznom zatvora od jedne do deset godina kaznit će se tko djelo iz članka 152. stavka 1. ovoga Zakona počini:

1. prema članu obitelji,
 2. prema žrtvi posebno ranjivoj zbog njezine dobi, bolesti, ovisnosti, trudnoće, invaliditeta, teške tjelesne ili duševne smetnje,
 3. na osobito okrutan ili osobito ponižavajući način,
 4. iz mržnje,
 5. zajedno s jednim ili više počinitelja, pri čemu je prema istoj osobi izvršeno više spolnih odnošaja ili s njim izjednačenih spolnih radnji,
 6. uz uporabu oružja ili opasnog oruđa,
 7. na način da je silovana osoba teško tjelesno ozlijeđena ili je ostala trudna.
- (2) Tko djelo iz članka 153. stavka 1. ovoga Zakona počini pod okolnostima iz stavka 1. ovoga članka, kaznit će se kaznom zatvora od tri do petnaest godina.
- (3) Ako je kaznenim djelom iz članka 152. stavka 1. [spolni odnošaj bez pristanka] ili članka 153. stavka 1. [Silovanje] ovoga Zakona prouzročena smrt silovane osobe, počinitelj će se kazniti kaznom zatvora od najmanje pet godina.”

Informal translation:

“(1) The sentence of imprisonment of one to ten years shall be imposed on whoever commits the offence under Article 152, paragraph 1 of this Act:

1. against a family member,
2. against a victim particularly vulnerable because of age, illness, addiction, pregnancy, disability, serious bodily or mental disorders,
3. in a particularly cruel or humiliating manner,
4. out of hatred,
5. together with one or more perpetrators, where according to the same person committed sexual intercourse or equivalent sexual act,
6. using weapons or dangerous instruments,

7. in a way that the victim was raped, suffered grievous bodily harm or becomes pregnant.

(2) Whoever commits the offense under Article 153, paragraph 1 of this Act in the circumstances referred to in paragraph 1 of this Article, shall be punished by imprisonment for three to fifteen years.

(3) If the offense referred to in Article 152, paragraph 1 [sexual intercourse without consent] and Article 153, paragraph 1 [rape] of this Act caused the death of the raped person, the offender shall be punished by imprisonment of at least five years.”

Costa Rica, Law on the criminalization of violence against women¹⁶

Article 21

“Se le impondrá pena de prisión de veinte a treinta y cinco años a quien dé muerte a una mujer con la que mantenga una relación de matrimonio, en unión de hecho declarada o no.”

Costa Rica, Penal Code¹⁷

Article 111

“Quien haya dado muerte a una persona, será penado con prisión de doce a dieciocho años.”

Article 112

“Se impondrá prisión de veinte a treinta y cinco años, a quien mate:

- 1) A su ascendiente, descendiente o cónyuge, hermanos consanguíneos, a su manceba o concubinario, si han procreado uno o más hijos en común y han llevado vida marital, por lo menos durante los dos años anteriores a la perpetración del hecho.
- 2) A uno de los miembros de los Supremos Poderes y con motivo de sus funciones.
- 3) A una persona menor de doce años de edad.
- 4) A una persona internacionalmente protegida, de conformidad con la definición establecida en la Ley N.º 6077, Convención sobre la prevención y el castigo de delitos contra las personas internacionalmente protegidas, inclusive agentes diplomáticos, de 11 de agosto de 1977, y otras disposiciones del Derecho internacional.
- 5) Con alevosía o ensañamiento.
- 6) Por medio de veneno suministrado insidiosamente.
- 7) Por un medio idóneo para crear un peligro común.
- 8) Para preparar, facilitar, consumir u ocultar otro delito o para asegurar sus resultados o procurar, para sí o para otro, la impunidad o por no haber logrado el fin propuesto al intentar otro delito.

¹⁶ Law 8589, adopted on 25 April 2007, entered into force on 30 May 2007, available at the website of the *Sistema Costarricense de Información Jurídica*, www.pgrweb.go.cr/scij/avanzada_pgr.aspx.

¹⁷ Available at the website of the *Sistema Costarricense de Información Jurídica*, www.pgrweb.go.cr/scij/avanzada_pgr.aspx.

9) Por precio o promesa remuneratoria.

10) A un miembro de los cuerpos policiales del Estado, municipal y de las demás fuerzas de policía públicas, cuya competencia esté prevista por ley, siempre que sea en ejercicio, por causa o en razón de sus funciones.”

Ecuador, Penal Code¹⁸

Article 140

“Asesinato.

La persona que mate a otra será sancionada con pena privativa de libertad de veintidós a veintiséis años, si concurre alguna de las siguientes circunstancias:

1. A sabiendas, la persona infractora ha dado muerte a su ascendiente, descendiente, cónyuge, conviviente, hermana o hermano.
2. Colocar a la víctima en situación de indefensión, inferioridad o aprovecharse de esta situación.
3. Por medio de inundación, envenenamiento, incendio o cualquier otro medio se pone en peligro la vida o la salud de otras personas
4. Buscar con dicho propósito, la noche o el despoblado.
5. Utilizar medio o medios capaces de causar grandes estragos.
6. Aumentar deliberada e inhumanamente el dolor a la víctima.
7. Preparar, facilitar, consumir u ocultar otra infracción.
8. Asegurar los resultados o impunidad de otra infracción.
9. Si la muerte se produce durante concentraciones masivas, tumulto, conmoción popular, evento deportivo o calamidad pública.
10. Perpetrar el acto en contra de una o un dignatario o candidato a elección popular, elementos de las Fuerzas Armadas o la Policía Nacional, fiscales, jueces o miembros de la Función Judicial por asuntos relacionados con sus funciones o testigo protegido.”

Article 141

“Femicidio.

La persona que, como resultado de relaciones de poder manifestadas en cualquier tipo de violencia, dé muerte a una mujer por el hecho de serlo o por su condición de género, será sancionada con pena privativa de libertad de veintidós a veintiséis años.”

¹⁸ Available at the website of the *Asamblea Nacional, República del Ecuador*, www.asambleanacional.gob.ec/legislamos/leyes-aprobadas.

Article 142

“Circunstancias agravantes del femicidio.

Cuando concurren una o más de las siguientes circunstancias se impondrá el máximo de la pena prevista en el artículo anterior:

1. Haber pretendido establecer o restablecer una relación de pareja o de intimidad con la víctima.
2. Exista o haya existido entre el sujeto activo y la víctima relaciones familiares, conyugales, convivencia, intimidad, noviazgo, amistad, compañerismo, laborales, escolares o cualquier otra que implique confianza, subordinación o superioridad.
3. Si el delito se comete en presencia de hijas, hijos o cualquier otro familiar de la víctima.
4. El cuerpo de la víctima sea expuesto o arrojado en un lugar público.”

Article 144

“Homicidio.

La persona que mate a otra será sancionada con pena privativa de libertad de diez a trece años.”

El Salvador, Special integral law on a life free from violence against women¹⁹

Article 45

“Feminicidio

Quien le causare la muerte a una mujer mediando motivos de odio o menosprecio por su condición de mujer, será sancionado con pena de prisión de veinte a treinta y cinco años.

Se considera que existe odio o menosprecio a la condición de mujer cuando ocurra cualquiera de las siguientes circunstancias:

- a) Que a la muerte le haya precedido algún incidente de violencia cometido por el autor contra la mujer, independientemente que el hecho haya sido denunciado o no por la víctima.
- b) Que el autor se hubiere aprovechado de cualquier condición de riesgo o vulnerabilidad física o psíquica en que se encontraba la mujer víctima.
- c) Que el autor se hubiere aprovechado de la superioridad que le generaban las relaciones desiguales de poder basadas en el género.
- d) Que previo a la muerte de la mujer el autor hubiere cometido contra ella cualquier conducta calificada como delito contra la libertad sexual.
- e) Muerte precedida por causa de mutilación.”

¹⁹ Decree 520, adopted on 25 November 2010, entered into force on 1 January 2012, available at the website of the *Asamblea Legislativa de El Salvador, Centro de Documentación Legislativa*, www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-especial-integral-para-una-vida-libre-de-violencia-para-las-mujeres.

Article 46

“Feminicidio Agravado

El delito de feminicidio será sancionado con pena de treinta a cincuenta años de prisión, en los siguientes casos:

- a) Si fuere realizado por funcionario o empleado público o municipal, autoridad pública o agente de autoridad.
- b) Si fuere realizado por dos o más personas.
- c) Si fuere cometido frente a cualquier familiar de la víctima.
- d) Cuando la víctima sea menor de dieciocho años de edad, adulta mayor o sufre discapacidad física o mental.
- e) Si el autor se prevaleciere de la superioridad originada por relaciones de confianza, amistad, doméstica, educativa o de trabajo.”

Article 48

“Suicidio Feminicida por Inducción o Ayuda

Quien indujere a una mujer al suicidio o le prestare ayuda para cometerlo, valiéndose de cualquiera de las siguientes circunstancias, será sancionado con prisión de cinco a siete años:

- a) Que le preceda cualquiera de los tipos o modalidades de violencia contemplados en la presente ley ó en cualquier otra ley.
- b) Que el denunciado se haya aprovechado de cualquier situación de riesgo o condición física o psíquica en que se encontrare la víctima, por haberse ejercido contra ésta, cualquiera de los tipos o modalidades de violencia contemplados en la presente ó en cualquier otra ley.
- c) Que el inductor se haya aprovechado de la superioridad generada por las relaciones preexistentes o existentes entre él y la víctima.”

El Salvador, Penal Code²⁰

Article 128

“El que matare a otro será sancionado con prisión de diez a veinte años.”

Article 129

“Se considera homicidio agravado el cometido con alguna de las circunstancias siguientes:

- 1) En ascendiente o descendiente, adoptante o adoptado, hermano, cónyuge o persona con quien se conviviere maritalmente;
- 2) CUANDO EL HOMICIDIO OCURRIERE, EN SU CASO, PARA PREPARAR, FACILITAR, CONSUMAR U OCULTAR LOS DELITOS DE SECUESTRO,

²⁰ Available at the website of the *Asamblea Legislativa de El Salvador, Centro de Documentación Legislativa*, www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/codigo-penal.

VIOLACIÓN, AGRESIÓN SEXUAL, ROBO, EXTORSIÓN, ACTOS DE TERRORISMO, ASOCIACIONES ILÍCITAS, COMERCIO ILEGAL Y DEPÓSITO DE ARMAS, CONTRABANDO, LAVADO DE DINERO Y ACTIVOS Y LOS COMPRENDIDOS EN EL CAPÍTULO II DE ESTE CÓDIGO RELATIVO A LOS DELITOS DE LA CORRUPCIÓN Y CAPÍTULO IV DE LA LEY REGULADORA DE LAS ACTIVIDADES RELATIVAS A LAS DROGAS O PARA ASEGURAR LOS RESULTADOS DE CUALQUIERA DE ELLOS O LA IMPUNIDAD PARA EL AUTOR O PARA SUS CÓMPLICES O POR NO HABER LOGRADO LA FINALIDAD PERSEGUIDA AL INTENTAR CUALQUIERA DE LOS DELITOS MENCIONADOS;

3) CON ALEVOSÍA, PREMEDITACIÓN, O CON ABUSO DE SUPERIORIDAD;

4) Con veneno u otro medio insidioso;

5) Con ensañamiento o aumento deliberado del dolor del ofendido;

6) Por precio, recompensa, o promesa remuneratoria;

7) Por motivos abyectos o fútiles;

8) Cuando fuere ejecutado por autoridad civil o militar, prevaleciéndose de talcalidad;

9) Cuando estuviere precedido de desaparición forzada de personas; y,

10) CUANDO FUERE EJECUTADO EN LA PERSONA DE UN FUNCIONARIO PÚBLICO, AUTORIDAD PÚBLICA, AGENTE DE AUTORIDAD, O EN MIEMBROS DEL PERSONAL PENITENCIARIO, SEA QUE SE ENCUENTREN O NO EN EL EJERCICIO DE SUS FUNCIONES O CON OCASIÓN DE LAS MISMAS.

EN LOS CASOS DE LOS NUMERALES 3, 4 Y 7 LA PENA SERÁ DE VEINTE A TREINTA AÑOS DE PRISIÓN, EN LOS DEMÁS CASOS LA PENA SERÁ DE TREINTA A CINCUENTA AÑOS DE PRISIÓN.”

France, Penal Code²¹

Article 221-1

“Le fait de donner volontairement la mort à autrui constitue un meurtre. Il est puni de trente ans de réclusion criminelle.”

Article 221-4

“Le meurtre est puni de la réclusion criminelle à perpétuité lorsqu’il est commis:

1° Sur un mineur de quinze ans;

2° Sur un ascendant légitime ou naturel ou sur les père ou mère adoptifs;

3° Sur une personne dont la particulière vulnérabilité, due à son âge, à une maladie, à une infirmité, à une déficience physique ou psychique ou à un état de grossesse, est apparente ou connue de son auteur;

4° Sur un magistrat, un juré, un avocat, un officier public ou ministériel, un militaire de la gendarmerie nationale, un fonctionnaire de la police nationale, des douanes, de l’administration pénitentiaire ou toute autre personne dépositaire de l’autorité

²¹ Available at the website of the *Secrétariat général du Gouvernement*, www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719.

publique, un sapeur-pompier professionnel ou volontaire, un gardien assermenté d'immeubles ou de groupes d'immeubles ou un agent exerçant pour le compte d'un bailleur des fonctions de gardiennage ou de surveillance des immeubles à usage d'habitation en application de l'article L. 271-1 du code de la sécurité intérieure, dans l'exercice ou du fait de ses fonctions, lorsque la qualité de la victime est apparente ou connue de l'auteur;

4° bis Sur un enseignant ou tout membre des personnels travaillant dans les établissements d'enseignement scolaire, sur un agent d'un exploitant de réseau de transport public de voyageurs ou toute personne chargée d'une mission de service public, ainsi que sur un professionnel de santé, dans l'exercice ou du fait de ses fonctions, lorsque la qualité de la victime est apparente ou connue de l'auteur;

4° ter Sur le conjoint, les ascendants ou les descendants en ligne directe ou sur toute autre personne vivant habituellement au domicile des personnes mentionnées aux 4° et 4° bis, en raison des fonctions exercées par ces dernières;

5° Sur un témoin, une victime ou une partie civile, soit pour l'empêcher de dénoncer les faits, de porter plainte ou de déposer en justice, soit en raison de sa dénonciation, de sa plainte ou de sa déposition;

6° A raison de l'appartenance ou de la non-appartenance, vraie ou supposée, de la victime à une ethnie, une nation, une race ou une religion déterminée;

7° A raison de l'orientation ou identité sexuelle de la victime;

8° Par plusieurs personnes agissant en bande organisée;

9° Par le conjoint ou le concubin de la victime ou le partenaire lié à la victime par un pacte civil de solidarité;

10° Contre une personne en raison de son refus de contracter un mariage ou de conclure une union.

Les deux premiers alinéas de l'article 132-23 relatif à la période de sûreté sont applicables aux infractions prévues par le présent article. Toutefois, lorsque la victime est un mineur de quinze ans et que le meurtre est précédé ou accompagné d'un viol, de tortures ou d'actes de barbarie ou lorsque le meurtre a été commis en bande organisée sur un magistrat, un fonctionnaire de la police nationale, un militaire de la gendarmerie, un membre du personnel de l'administration pénitentiaire ou toute autre personne dépositaire de l'autorité publique, à l'occasion de l'exercice ou en raison de ses fonctions, la cour d'assises peut, par décision spéciale, soit porter la période de sûreté jusqu'à trente ans, soit, si elle prononce la réclusion criminelle à perpétuité, décider qu'aucune des mesures énumérées à l'article 132-23 ne pourra être accordée au condamné; en cas de commutation de la peine, et sauf si le décret de grâce en dispose autrement, la période de sûreté est alors égale à la durée de la peine résultant de la mesure de grâce."

Article 222-25

"Le viol est puni de trente ans de réclusion criminelle lorsqu'il a entraîné la mort de la victime.

Les deux premiers alinéas de l'article 132-23 relatif à la période de sûreté sont applicables à l'infraction prévue par le présent article."

Guatemala, Law against femicide and other forms of violence against women²²

Article 6

“Femicidio.

Comete el delito de femicidio quien, en el marco de las relaciones desiguales de poder entre hombres y mujeres, diere muerte a una mujer, por su condición de mujer, valiéndose de cualquiera de las siguientes circunstancias:

- a. Haber pretendido infructuosamente establecer o restablecer una relación de pareja o de intimidad con la víctima.
- b. Mantener en la época en que se perpetre el hecho, o haber mantenido con la víctima relaciones familiares, conyugales, de convivencia, de intimidad o noviazgo, amistad, compañerismo o relación laboral.
- c. Como resultado de la reiterada manifestación de violencia en contra de la víctima.
- d. Como resultado de ritos grupales usando o no armas de cualquier tipo.
- e. En menosprecio del cuerpo de la víctima para satisfacción de instintos sexuales, o cometiendo actos de mutilación genital o cualquier otro tipo de mutilación.
- f. Por misoginia.
- g. Cuando el hecho se cometa en presencia de las hijas o hijos de la víctima.
- h. Concurriendo cualquiera de las circunstancias de calificación contempladas en el artículo 132 del Código Penal.

La persona responsable de este delito será sancionada con pena de prisión de veinticinco a cincuenta años, y no podrá concedérsele la reducción de la pena por ningún motivo. Las personas procesadas por la comisión de este delito no podrán gozar de ninguna medida sustitutiva.”

Guatemala, Penal Code²³

Article 123

“Comete homicidio quien diere muerte a alguna persona. Al homicida se le impondrá prisión de 15 á 40 años.”

Article 131

“Quien conociendo el vínculo, matare a cualquier ascendiente o descendiente, a su cónyuge o a la persona con quien hace vida marital, será castigado como parricida con prisión de 25 a 50 años. Se le impondrá pena de muerte, en lugar del máximo de prisión, si por las circunstancias del hecho, la manera de realizarlo y los móviles determinantes, se revelare una mayor y particular peligrosidad en el agente.

A quienes no se les aplique la pena de muerte por este delito, no podrá concedérseles rebaja de pena por ninguna causa.”

²² Decree 22-2008, adopted on 9 April 2008, entered into force on 15 May 2008, available at the website of the *Centro Nacional de Análisis y Documentación Judicial*, www.oj.gob.gt/es/queesoj/estructuraoj/unidadesadministrativas/centroanalisisdocumentacionjudicial/cenadoj.html.

²³ Available at the website of the *Centro Nacional de Análisis y Documentación Judicial*, www.oj.gob.gt/es/queesoj/estructuraoj/unidadesadministrativas/centroanalisisdocumentacionjudicial/cenadoj.html.

Article 132

“Comete asesinato quien matare a una persona:

- 1) Con alevosía
- 2) Por precio, recompensa, promesa, ánimo de lucro
- 3) Por medio o en ocasión de inundación, incendio, veneno, explosión, desmoronamiento, derrumbe de edificio u otro artificio que pueda ocasionar gran estrago
- 4) Con premeditación conocida
- 5) Con ensañamiento
- 6) Con impulso de perversidad brutal
- 7) Para preparar, facilitar, consumir y ocultar otro delito o para asegurar sus resultados o la inmunidad para si o para copartícipes o por no haber obtenido el resultado que se hubiere propuesto al intentar el otro hecho punible
- 8) Con fines terroristas o en desarrollo de actividades terroristas.

Al reo de asesinato se le impondrá prisión de 25 a 50 años, sin embargo se le aplicará la pena de muerte en lugar del máximo de prisión, si por las circunstancias del hecho y de la ocasión, la manera de realizarlo y los móviles determinantes, se revelare una mayor particular peligrosidad del agente.

A quienes no se les aplique la pena de muerte por este delito, no podrá concedérsele rebaja de pena por ninguna causa.”

Article 175

“Si con motivo o a consecuencia de la violación, resultare la muerte de la ofendida, se impondrá prisión de 30 a 50 años.

Se le impondrá pena de muerte, si la víctima no hubiere cumplido 10 años de edad.”

Honduras, Penal Code²⁴

Article 116

“Quien dé muerte a una persona sin concurrir las circunstancias que se mencionan en los siguientes Artículos del presente Capítulo, comete el delito de homicidio simple e incurrirá en la pena de quince (15) a veinte (20) años de reclusión.”

Article 117

“Es reo de asesinato, quien dé muerte a una persona ejecutándola con la concurrencia de cualquiera de las circunstancias siguientes:

- 1) Alevosía;
- 2) Con premeditación conocida;
- 3) Por medio de inundación, incendio, envenenamiento, explosión, descarrilamiento, volcamiento, varamiento o avería de buque u otro artificio que pueda ocasionar grandes estragos, siempre que haya dolo e intencionalidad; y,

²⁴ Available at the website of the *Poder Judicial, República de Honduras*, www.poderjudicial.gob.hn/Juris/Codigos.aspx.

4) Con ensañamiento, aumentado deliberada e inhumanamente el dolor del ofendido.

La pena por asesinato será de veinte (20) a treinta (30) años de reclusión y cuando se cometiese mediante pago, recompensa o promesa remuneratoria, o se acompañase de robo o violación, la pena será de treinta (30) años a privación de por vida de la libertad.”

Article 118

“Es reo de parricidio quien diere muerte a alguno de sus ascendientes o descendientes, a su cónyuge o a la persona con quien hace vida marital, y sufrirá la pena de treinta (30) a cuarenta (40) años de reclusión.”

Article 118-A²⁵

“Incorre en el delito de femicidio, el o los hombres que den muerte a una mujer por razones de género, con odio y desprecio por su condición de mujer y se castigará con una pena de treinta (30) a cuarenta (40) años de reclusión, cuando concurren una o varias de las circunstancias siguientes:

- 1) Cuando el sujeto activo del delito mantenga o haya mantenido con la víctima una relación de pareja, ya sea matrimonial, de hecho, unión libre o cualquier otra relación afín en la que medie, haya mediado o no cohabitación, incluyendo aquellas en las que se sostiene o se haya sostenido una relación sentimental;
- 2) Cuando el delito esté precedido de actos de violencia doméstica o intrafamiliar, exista o no antecedente de denuncia;
- 3) Cuando el delito esté precedido de una situación de violencia sexual, acoso, hostigamiento o persecución de cualquier naturaleza; y,
- 4) Cuando el delito se comete con ensañamiento o cuando se hayan infligido lesiones infamantes, degradantes o mutilaciones previas o posteriores a la privación de la vida.”

India, Penal Code²⁶

Section 299

“Culpable homicide.

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

²⁵ Introduced by Decree 22-2013, adopted on 25 February 2013, entered into force on 26 April 2013, available at the website of the *Tribunal Superior de Cuentas*, www.tsc.gob.hn/leyes/Reformas_art_27-321_codigo_penal_2013.pdf.

²⁶ Available at the website of the *Ministry of Law and Justice, Legislative Department*, <http://indiacode.nic.in>.

Section 300

“Murder.

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly. If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly. If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly. If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. (...)”

Section 302

“Punishment for murder.

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.”

Section 304

“Punishment for culpable homicide not amounting to murder.

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

Section 304B²⁷

“Dowry death.

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. (...)

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

²⁷ Inserted by the Dowry Prohibition Act (no. 43) of 1986.

Italy, Penal Code²⁸Article 61²⁹

“Circostanze aggravanti comuni.

Aggravano il reato quando non ne sono elementi costitutivi o circostanze aggravanti speciali le circostanze seguenti:

- 1) l’aver agito per motivi abietti o futili;
 - 2) l’aver commesso il reato per eseguirne od occultarne un altro, ovvero per conseguire o assicurare a sé o ad altri il prodotto o il profitto o il prezzo ovvero la impunità di un altro reato;
 - 3) l’aver, nei delitti colposi, agito nonostante la previsione dell’evento;
 - 4) l’aver adoperato sevizie, o l’aver agito con crudeltà verso le persone;
 - 5) l’aver profittato di circostanze di tempo, di luogo o di persona, anche in riferimento all’età, tali da ostacolare la pubblica o privata difesa;
 - 6) l’aver il colpevole commesso il reato durante il tempo, in cui si è sottratto volontariamente alla esecuzione di un mandato o di un ordine di arresto o di cattura o di carcerazione, spedito per un precedente reato;
 - 7) l’aver, nei delitti contro il patrimonio o che comunque offendono il patrimonio, ovvero nei delitti determinati da motivi di lucro, cagionato alla persona offesa dal reato un danno patrimoniale di rilevante gravità;
 - 8) l’aver aggravato o tentato di aggravare le conseguenze del delitto commesso;
 - 9) l’aver commesso il fatto con abuso dei poteri, o con violazione dei doveri inerenti a una pubblica funzione o a un pubblico servizio, ovvero alla qualità di ministro di un culto;
 - 10) l’aver commesso il fatto contro un pubblico ufficiale o una persona incaricata di un pubblico servizio, o rivestita della qualità di ministro del culto cattolico o di un culto ammesso nello Stato, ovvero contro un agente diplomatico o consolare di uno Stato estero, nell’atto o a causa dell’adempimento delle funzioni o del servizio;
 - 11) l’aver commesso il fatto con abuso di autorità o di relazioni domestiche, ovvero con abuso di relazioni di ufficio, di prestazione d’opera, di coabitazione, o di ospitalità;
 - 11-bis) l’aver il colpevole commesso il fatto mentre si trova illegalmente sul territorio nazionale;
 - 11-ter) l’aver commesso un delitto contro la persona ai danni di un soggetto minore all’interno o nelle adiacenze di istituti di istruzione o formazione;
 - 11-quater) l’aver il colpevole commesso un delitto non colposo durante il periodo in cui era ammesso ad una misura alternativa alla detenzione in carcere;
- 11-quinquies) l’aver, nei delitti non colposi contro la vita e l’incolumità individuale, contro la libertà personale nonché nel delitto di cui all’articolo 572, commesso il fatto in presenza o in danno di un minore di anni diciotto ovvero in danno di persona in stato di gravidanza.”*

Informal translation:

“Common aggravating circumstances.

²⁸ Available at www.altalex.com/?idnot=36653.

²⁹ The highlighted text reflects the changes introduced by decree-law no. 93 of 14 August 2013 and law no. 119 of 15 October 2013.

The following circumstances aggravate the offence when they are not constitutive elements or special aggravating circumstances of the offence:

- 1) to have acted for abject or futile reasons;
- 2) to have committed the offense to commit or conceal another, or to obtain or secure for oneself or others, the product or the profit or the price or the impunity of another offence;
- 3) to have, in non-intentional crimes, acted despite the anticipation of the event;
- 4) to have used torture, or to have acted with cruelty towards the people;
- 5) to have taken advantage of the circumstances of time, place or person, also in reference to the age, such as to obstruct the public or private defense;
- 6) to have committed the offence during the time in which the perpetrator voluntarily eluded the execution of a warrant or order of arrest or capture or imprisonment for a previous offence;
- 7) to have, in property crimes or crimes otherwise violating property, or in crimes for reasons of profit, caused the victim a property damage of relevant severity;
- 8) to have aggravated or attempted to aggravate the consequences of the crime committed;
- 9) to have committed the act with abuse of authority, or violation of the duties inherent in a public function or public service, or the quality of a minister of religion;
- 10) to have committed the offense against a public official or a person entrusted with a public service, or a minister of the Catholic faith or another religion permitted in the State, or against a diplomatic or consular officer of a foreign State, in the act or because of the fulfillment of functions or services;
- 11) to have committed the act with abuse of authority or of domestic relations, or with abuse of office relationships, work relationships, cohabitation, or hospitality;
- 11-bis) when the offender committed the offense while being illegally on the national territory;
- 11-ter) to have committed a crime against the person against a minor within or in the vicinity of educational or training institutions;
- 11-quater) when the offender committed an intentional crime while benefitting from an alternative measure to imprisonment;
- 11-quinquies) to have, in the case of intentional crimes against life and limb, against personal freedom as well as in the crime referred to in Article 572, committed the crime in the presence or against a minor under the age of eighteen or against a person in a state of pregnancy.”*

Article 572

“Maltrattamenti contro familiari e conviventi.

Chiunque, fuori dei casi indicati nell’articolo precedente, maltratta una persona della famiglia o comunque convivente, o una persona sottoposta alla sua autorità o a lui affidata per ragioni di educazione, istruzione, cura, vigilanza o custodia, o per l’esercizio di una professione o di un’arte, è punito con la reclusione da due a sei anni.

Se dal fatto deriva una lesione personale grave, si applica la reclusione da quattro a nove anni; se ne deriva una lesione gravissima, la reclusione da sette a quindici anni; se ne deriva la morte, la reclusione da dodici a ventiquattro anni.”

Informal translation:

“Maltreatment of family members and cohabitants.

Whoever, apart from the cases mentioned in the previous article, mistreats a person in the family or other cohabitant, or a person under his or her authority or entrusted to him or her for the sake of education, education, care, supervision or custody, or in the exercise of a profession or art, is punished with imprisonment from two to six years.

If the act causes a severe personal injury, the punishment is imprisonment from four to nine years; if it results in a very serious injury, imprisonment from seven to fifteen years; if it results in death, imprisonment from twelve to twenty-four years.”

Article 575

“Omicidio.

Chiunque cagiona la morte di un uomo è punito con la reclusione non inferiore ad anni ventuno.”

Informal translation:

“Homicide.

Whoever causes the death of a person is punished with imprisonment not inferior to 21 years.”

Article 576

“Circostanze aggravanti. Ergastolo.

Si applica la pena dell’ergastolo se il fatto preveduto dall’articolo precedente è commesso:

1. col concorso di taluna delle circostanze indicate nel n. 2 dell’articolo 61;
 2. contro l’ascendente o il discendente, quando concorre taluna delle circostanze indicate nei numeri 1 e 4 dell’articolo 61 o quando è adoperato un mezzo venefico o un altro mezzo insidioso, ovvero quando vi è premeditazione;
 3. dal latitante, per sottrarsi all’arresto, alla cattura o alla carcerazione ovvero per procurarsi i mezzi di sussistenza durante la latitanza;
 4. dall’associato per delinquere, per sottrarsi all’arresto, alla cattura o alla carcerazione;
 5. in occasione della commissione di taluno dei delitti previsti dagli articoli 572, 600-bis, 600-ter, 609-bis, 609-quater e 609-octies;
 - 5.1) dall’autore del delitto previsto dall’articolo 612-bis [atti persecutori] nei confronti della stessa persona offesa.
 - 5-bis) contro un ufficiale o agente di polizia giudiziaria, ovvero un ufficiale o agente di pubblica sicurezza, nell’atto o a causa dell’adempimento delle funzioni o del servizio.
- È latitante, agli effetti della legge penale, chi si trova nelle condizioni indicate nel n. 6 dell’articolo 61.”

Informal translation:

“Aggravating circumstances. Life imprisonment.

The punishment of life imprisonment applies if the offense foreseen in the previous article is committed:

1. in the presence of any of the circumstances mentioned in paragraph 2 of Article 61;

2. against the ascendant or descendant, when any of the circumstances listed in paragraphs 1 and 4 of Article 61 is present or when poison or other insidious means are used, or when there is premeditation;
 3. by the fugitive, to escape arrest, capture or imprisonment or to procure the means of subsistence during hiding;
 4. by the associate criminal, to escape arrest, capture or imprisonment;
 5. during the commission of any of the crimes referred to in Articles 572, 600-bis, 600-ter, 609-bis, 609-quater and 609-octies;
 - 5.1) by the author of the crime provided for in Article 612-bis [stalking] against the same victim.
 - 5-bis) against an officer or judicial police officer, or an officer or agent of public safety, or in performing or because of the functions or services.
- A fugitive, for the purposes of criminal law, is a person in the terms set out in paragraph 6 of Article 61.”

Mexico, Federal Penal Code³⁰

Article 302

“Comete el delito de homicidio: el que priva de la vida a otro.”

Article 307

“Al responsable de cualquier homicidio simple intencional que no tenga prevista una sanción especial en este Código, se le impondrán de doce a veinticuatro años de prisión.”

Article 315

“Se entiende que las lesiones y el homicidio, son calificados, cuando se cometen con premeditación, con ventaja, con alevosía o a traición.

Hay premeditación: siempre que el reo cause intencionalmente un lesión, después de haber reflexionado sobre el delito que va a cometer.

Se presumirá que existe premeditación cuando las lesiones o el homicidio se cometan por inundación, incendio, minas, bombas o explosivos; por medio de venenos o cualquiera otra sustancia nociva a la salud, contagio venéreo, asfixia o enervantes o por retribución dada o prometida; por tormento, motivos depravados o brutal ferocidad.”

Article 315 bis

“Se impondrá la pena del artículo 320 de este Código, cuando el homicidio sea cometido intencionalmente, a propósito de una violación o un robo por el sujeto activo de éstos, contra su víctima o víctimas.

También se aplicará la pena a que se refiere el artículo 320 de este Código, cuando el homicidio se cometiera intencionalmente en casa-habitación, habiéndose penetrado en la misma de manera furtiva, con engaño o violencia, o sin permiso de la persona autorizada para darlo.”

³⁰ Available at the website of the *Cámara de Diputados del H. Congreso de la Unión*, www.diputados.gob.mx/LeyesBiblio/ref/cpf.htm.

Article 320

“Al responsable de un homicidio calificado se le impondrán de treinta a sesenta años de prisión.”

Article 323

“Al que prive de la vida a su ascendiente o descendiente consanguíneo en línea recta, hermano, cónyuge, convivente, compañera o compañero civil, concubina o concubinario, adoptante o adoptado, con conocimiento de esa relación se le impondrá prisión de treinta a sesenta años.

Si faltare dicho conocimiento, se estará a la punibilidad prevista en el artículo 307, sin menoscabo de observar alguna circunstancia que agrave o atenúe la sanción a que se refieren los capítulos II y III anteriores.”

Article 325³¹

“Comete el delito de feminicidio quien priva de la vida a una mujer por razones de género. Se considera que existen razones de género cuando concorra alguna de las siguientes circunstancias:

- I. La víctima presente signos de violencia sexual de cualquier tipo;
- II. A la víctima se le hayan infligido lesiones o mutilaciones infamantes o degradantes, previas o posteriores a la privación de la vida o actos de necrofilia;
- III. Existan antecedentes o datos de cualquier tipo de violencia en el ámbito familiar, laboral o escolar, del sujeto activo en contra de la víctima;
- IV. Haya existido entre el activo y la víctima una relación sentimental, afectiva o de confianza;
- V. Existan datos que establezcan que hubo amenazas relacionadas con el hecho delictuoso, acoso o lesiones del sujeto activo en contra de la víctima;
- VI. La víctima haya sido incomunicada, cualquiera que sea el tiempo previo a la privación de la vida;
- VII. El cuerpo de la víctima sea expuesto o exhibido en un lugar público.

A quien cometa el delito de feminicidio se le impondrán de cuarenta a sesenta años de prisión y de quinientos a mil días multa.

Además de las sanciones descritas en el presente artículo, el sujeto activo perderá todos los derechos con relación a la víctima, incluidos los de carácter sucesorio.

En caso de que no se acredite el feminicidio, se aplicarán las reglas del homicidio.

Al servidor público que retarde o entorpezca maliciosamente o por negligencia la procuración o administración de justicia se le impondrá pena de prisión de tres a ocho años y de quinientos a mil quinientos días multa, además será destituido e inhabilitado de tres a diez años para desempeñar otro empleo, cargo o comisión públicos.”

³¹ Introduced by Decree, adopted on 30 April 2012, entered into force on 15 June 2012, available at www.diputados.gob.mx/LeyesBiblio/ref/cpf.htm.

Nicaragua, Integral law against violence against women³²

Article 9

“Femicidio

Comete el delito de femicidio el hombre que, en el marco de las relaciones desiguales de poder entre hombres y mujeres, diere muerte a una mujer ya sea en el ámbito público o privado, en cualquiera de la siguientes circunstancias:

- a) Haber pretendido infructuosamente establecer o restablecer una relación de pareja o de intimidad con la víctima;
- b) Mantener en la época en que se perpetre el hecho, o haber mantenido con la víctima relaciones familiares, conyugales, de convivencia, de intimidad o noviazgo, amistad, compañerismo o relación laboral, educativa o tutela;
- c) Como resultado de la reiterada manifestación de violencia en contra de la víctima;
- d) Como resultado de ritos grupales usando o no armas de cualquier tipo;
- e) Por el menosprecio del cuerpo de la víctima para satisfacción de instintos sexuales, o la comisión de actos de mutilación genital o cualquier otro tipo de mutilación;
- f) Por misoginia;
- g) Cuando el hecho se cometa en presencia de las hijas o hijos de la víctima;
- h) Cuando concurra cualquiera de las circunstancias de calificación contempladas en el delito de asesinato en el Código Penal.

Cuando el hecho se diera en el ámbito público la pena será de quince a veinte años de prisión. Si ocurre en el ámbito privado la pena será de veinte a veinticinco años de prisión. En ambos casos si concurriera dos o más de las circunstancias mencionadas en los incisos anteriores se aplicará la pena máxima.

Las penas establecidas en el numeral anterior serán aumentadas en un tercio cuando concurra cualquiera de las circunstancias del asesinato, hasta un máximo de treinta años de prisión.”

³² Law 779, adopted on 26 January 2012, entered into force on 21 June 2012, available at the website of the *Poder Judicial de la Republica de Nicaragua*, www.poderjudicial.gob.ni/w2013/default.asp.

Nicaragua, Penal Code³³

Article 138

“Homicidio

Quien prive de la vida a otro será sancionado con pena de diez a quince años de prisión.”

Article 139

“Parricidio

Quien, a sabiendas del vínculo que lo une, prive de la vida a su ascendiente, descendiente, hermano, cónyuge o conviviente en unión de hecho estable, será sancionado con una pena de quince a veinte años de prisión.

Si concurriera alguna de las circunstancias de asesinato, la pena será de veinte a veinticinco años de prisión.”

Article 140

“Asesinato

El que prive de la vida a otro concurriendo alguna de las circunstancias siguientes:

- a) Alevosía;
- b) Ensañamiento;
- c) Precio, recompensa o promesa remuneratoria.

Se le impondrá una pena de quince a veinte años de prisión.

Cuando concurren dos o más de las circunstancias señaladas en este artículo, el responsable de asesinato será penado con prisión de veinte a treinta años.”

Panama, Penal Code³⁴

Article 131

“Quien cause la muerte a otro será sancionado con prisión de diez a veinte años.”

Article 132³⁵

“El delito previsto en el artículo anterior será sancionado con pena de veinte a treinta años de prisión cuando se ejecute:

1. En la persona de un pariente cercano o de quien se encuentre bajo la tutela del autor, aun cuando esta no hubiera sido declarada judicialmente.
- ~~2. Como consecuencia de un acto de violencia doméstica.~~
3. Con conocimiento, en una mujer grávida, en niños de doce años de edad o menos o en un adulto de setenta años o más, o en acto de discriminación o racismo.

³³ Available at the website of the *Poder Judicial de la Republica de Nicaragua*, www.poderjudicial.gob.ni/w2013/default.asp.

³⁴ Available at the website of the *Gazeta Oficial Digital*, www.gacetaoficial.gob.pa.

³⁵ The text in strkethrough reflects the changes introduced by Law 86 adopted on 24 October 2013, published on 25 October 2013.

4. Con premeditación.
5. Con alevosía, uso de veneno, por precio, recompensa o promesa remunerativa
6. Por motivo intrascendente, medio de ejecución atroz, utilización de fuego, inmersión o asfixia u otro delito contra la seguridad colectiva que implique peligro común.
7. En la persona de un servidor público, por motivo de las funciones que desempeña.
- ~~8. Para preparar, facilitar o consumir otro delito, aun cuando este no se realice.~~
9. Inmediatamente después de haberse cometido un delito, para asegurar su ocultación o la impunidad o porque no se pudo alcanzar el fin propuesto.
10. Mediante arma de fuego disparada, en un lugar frecuentado por personas al momento del hecho, contra otro sin que medie motivo lícito.
11. Con el fin de extraer un órgano vital a la víctima.”

Article 132-A³⁶

“Quien cause la muerte a una mujer, en cualquiera de las siguientes circunstancias, será sancionado con pena de veinticinco a treinta años de prisión:

1. Cuando exista una relación de pareja o hubiera intentado infructuosamente establecer o restablecer una relación de esta naturaleza o de intimidad afectiva o existan vínculos de parentesco con la víctima.
2. Cuando exista relación de confianza con la víctima o de carácter laboral, docente o cualquiera que implique subordinación o superioridad.
3. Cuando el hecho se comete in presencia de los hijos o hijas de la víctima.
4. Cuando el autor se hubiera aprovechado de cualquier condición de riesgo o vulnerabilidad física o psíquica de la víctima.
5. Como resultado de ritos grupales o por venganza.
6. Por el menosprecio o abuso del cuerpo de la víctima, para la satisfacción de instintos sexuales o la comisión de actos de mutilación genital o cualquier otro tipo de mutilación.
7. Cuando el cuerpo de la víctima sea expuesto, depositado o arrojado en un lugar público o privado o cuando esta haya sido incomunicada, cualquiera que sea el tiempo, previo a su fallecimiento.
8. Para encubrir una violación.
9. Cuando la víctima se encuentre en estado de gravidez.
10. Por cualquier móvil generado por razón de su condición de mujer o en un contexto de relaciones desiguales de poder.”

Peru, Penal Code³⁷

Article 106

“El que mata a otro será reprimido con pena privativa de libertad no menor de seis ni mayor de veinte años.”

³⁶ Introduced by Law 82, adopted on 24 October 2013, published on 25 October 2013.

³⁷ Available at the website of the *Sistema Peruano de Información Jurídica*, <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-codpenal.htm&vid=Ciclope:CLPdemo>.

Article 107

“Parricidio

El que, a sabiendas, mata a su ascendiente, descendiente, natural o adoptivo, o a una persona con quien sostiene o haya sostenido una relación conyugal o de convivencia, será reprimido con pena privativa de libertad no menor de quince años.

La pena privativa de libertad será no menor de veinticinco años, cuando concurra cualquiera de las circunstancias agravantes previstas en los numerales 1, 2, 3 y 4 del artículo 108.”

Article 108

“Homicidio calificado-asesinato

Será reprimido con pena privativa de libertad no menor de quince años el que mate a otro concurriendo cualquiera de las circunstancias siguientes:

1. Por ferocidad, por lucro o por placer;
2. Para facilitar u ocultar otro delito;
3. Con gran crueldad o alevosía;
4. Por fuego, explosión, veneno o por cualquier otro medio capaz de poner en peligro la vida o salud de otras personas.”

Article 108-B³⁸

“Feminicidio

Será reprimido con pena privativa de libertad no menor de quince años el que mata a una mujer por su condición de tal, en cualquiera de los siguientes contextos:

1. Violencia familiar;
2. Coacción, hostigamiento o acoso sexual;
3. Abuso de poder, confianza o de cualquier otra posición o relación que le confiera autoridad al agente;
4. Cualquier forma de discriminación contra la mujer, independientemente de que exista o haya existido una relación conyugal o de convivencia con el agente.

La pena privativa de libertad será no menor de veinticinco años, cuando concurra cualquiera de las siguientes circunstancias agravantes:

1. Si la víctima era menor de edad;
2. Si la víctima se encontraba en estado de gestación;
3. Si la víctima se encontraba bajo cuidado o responsabilidad del agente;
4. Si la víctima fue sometida previamente a violación sexual o actos de mutilación;
5. Si al momento de cometerse el delito, la víctima padeciera cualquier tipo de discapacidad;
6. Si la víctima fue sometida para fines de trata de personas;
7. Cuando hubiera concurrido cualquiera de las circunstancias agravantes establecidas en el artículo 108.

³⁸ Introduced by Law 30.068, adopted on 25 June 2013, published on 18 July 2013.

La pena será de cadena perpetua cuando concurren dos o más circunstancias agravantes.”

Article 173-A

“Violación sexual de menor de edad seguida de muerte o lesión grave.

Si los actos previstos en los incisos 2 y 3 del artículo anterior causan la muerte de la víctima o le producen lesión grave, y el agente pudo prever este resultado o si procedió con crueldad, la pena será de cadena perpetua.”

Russian Federation, Criminal Code³⁹

Article 105

“Убийство

1. Убийство, то есть умышленное причинение смерти другому человеку, - наказывается лишением свободы на срок от шести до пятнадцати лет с ограничением свободы на срок до двух лет либо без такового.

2. Убийство:

а) двух или более лиц;

б) лица или его близких в связи с осуществлением данным лицом служебной деятельности или выполнением общественного долга;

в) малолетнего или иного лица, заведомо для виновного находящегося в беспомощном состоянии, а равно сопряженное с похищением человека;

г) женщины, заведомо для виновного находящейся в состоянии беременности;

д) совершенное с особой жестокостью;

е) совершенное общеопасным способом;

е-1) по мотиву кровной мести;

ж) совершенное группой лиц, группой лиц по предварительному сговору или организованной группой;

з) из корыстных побуждений или по найму, а равно сопряженное с разбоем, вымогательством или бандитизмом;

и) из хулиганских побуждений;

к) с целью скрыть другое преступление или облегчить его совершение, а равно сопряженное с изнасилованием или насильственными действиями сексуального характера;

л) по мотивам политической, идеологической, расовой, национальной или религиозной ненависти или вражды либо по мотивам ненависти или вражды в отношении какой-либо социальной группы;

м) в целях использования органов или тканей потерпевшего

наказывается лишением свободы на срок от восьми до двадцати лет с ограничением свободы на срок от одного года до двух лет, либо пожизненным лишением свободы, либо смертной казнью.”

³⁹ Available at the official internet-portal of legal information of the state system of legal information, <http://pravo.gov.ru>.

Article 131

“Изнасилование

1. Изнасилование, то есть половое сношение с применением насилия или с угрозой его применения к потерпевшей или к другим лицам либо с использованием беспомощного состояния потерпевшей, - наказывается лишением свободы на срок от трех до шести лет.

2. Изнасилование:

а) совершенное группой лиц, группой лиц по предварительному сговору или организованной группой;

б) соединенное с угрозой убийством или причинением тяжкого вреда здоровью, а также совершенное с особой жестокостью по отношению к потерпевшей или к другим лицам;

в) повлекшее заражение потерпевшей венерическим заболеванием, - наказывается лишением свободы на срок от четырех до десяти лет с ограничением свободы на срок до двух лет либо без такового.

3. Изнасилование:

а) несовершеннолетней;

б) повлекшее по неосторожности причинение тяжкого вреда здоровью потерпевшей, заражение ее ВИЧ-инфекцией или иные тяжкие последствия, - наказывается лишением свободы на срок от восьми до пятнадцати лет с лишением права занимать определенные должности или заниматься определенной деятельностью на срок до двадцати лет или без такового и с ограничением свободы на срок до двух лет.

4. Изнасилование:

а) повлекшее по неосторожности смерть потерпевшей;

б) потерпевшей, не достигшей четырнадцатилетнего возраста, - наказывается лишением свободы на срок от двенадцати до двадцати лет с лишением права занимать определенные должности или заниматься определенной деятельностью на срок до двадцати лет или без такового и с ограничением свободы на срок до двух лет.

5. Деяние, предусмотренное пунктом “б” части четвертой настоящей статьи, совершенное лицом, имеющим судимость за ранее совершенное преступление против половой неприкосновенности несовершеннолетнего, - наказывается лишением свободы на срок от пятнадцати до двадцати лет с лишением права занимать определенные должности или заниматься определенной деятельностью на срок до двадцати лет либо пожизненным лишением свободы.

Примечание. К преступлениям, предусмотренным пунктом “б” части четвертой настоящей статьи, а также пунктом “б” части четвертой статьи 132 настоящего Кодекса, относятся также деяния, подпадающие под признаки преступлений, предусмотренных частями третьей – пятой статьи 134 и частями второй - четвертой статьи 135 настоящего Кодекса, совершенные в отношении лица, не достигшего двенадцатилетнего возраста, поскольку такое лицо в силу возраста находится в беспомощном состоянии, то есть не может понимать характер и значение совершаемых с ним действий.”

Article 132

“Насильственные действия сексуального характера

1. Мужеложство, лесбиянство или иные действия сексуального характера с применением насилия или с угрозой его применения к потерпевшему (потерпевшей) или к другим лицам либо с использованием беспомощного состояния потерпевшего (потерпевшей) - наказываются лишением свободы на срок от трех до шести лет.
2. Те же деяния:
 - а) совершенные группой лиц, группой лиц по предварительному сговору или организованной группой;
 - б) соединенные с угрозой убийством или причинением тяжкого вреда здоровью, а также совершенные с особой жестокостью по отношению к потерпевшему (потерпевшей) или к другим лицам;
 - в) повлекшие заражение потерпевшего (потерпевшей) венерическим заболеванием, - наказываются лишением свободы на срок от четырех до десяти лет с ограничением свободы на срок до двух лет либо без такового.
3. Деяния, предусмотренные частями первой или второй настоящей статьи, если они:
 - а) совершены в отношении несовершеннолетнего (несовершеннолетней);
 - б) повлекли по неосторожности причинение тяжкого вреда здоровью потерпевшего (потерпевшей), заражение его (ее) ВИЧ-инфекцией или иные тяжкие последствия, - наказываются лишением свободы на срок от восьми до пятнадцати лет с лишением права занимать определенные должности или заниматься определенной деятельностью на срок до двадцати лет или без такового и с ограничением свободы на срок до двух лет.
4. Деяния, предусмотренные частями первой или второй настоящей статьи, если они:
 - а) повлекли по неосторожности смерть потерпевшего (потерпевшей);
 - б) совершены в отношении лица, не достигшего четырнадцатилетнего возраста, - наказываются лишением свободы на срок от двенадцати до двадцати лет с лишением права занимать определенные должности или заниматься определенной деятельностью на срок до двадцати лет или без такового и с ограничением свободы на срок до двух лет.
5. Деяния, предусмотренные пунктом “б” части четвертой настоящей статьи, совершенные лицом, имеющим судимость за ранее совершенное преступление против половой неприкосновенности несовершеннолетнего, - наказываются лишением свободы на срок от пятнадцати до двадцати лет с лишением права занимать определенные должности или заниматься определенной деятельностью на срок до двадцати лет либо пожизненным лишением свободы.”

Spain, Penal Code⁴⁰Article 22⁴¹

“Son circunstancias agravantes:

1.^a Ejecutar el hecho con alevosía.

Hay alevosía cuando el culpable comete cualquiera de los delitos contra las personas empleando en la ejecución medios, modos o formas que tiendan directa o especialmente a asegurarla, sin el riesgo que para su persona pudiera proceder de la defensa por parte del ofendido.

2.^a Ejecutar el hecho mediante disfraz, con abuso de superioridad o aprovechando las circunstancias de lugar, tiempo o auxilio de otras personas que debiliten la defensa del ofendido o faciliten la impunidad del delincuente.

3.^a Ejecutar el hecho mediante precio, recompensa o promesa.

4.^a *Cometer el delito por motivos racistas, antisemitas u otra clase de discriminación referente a la ideología, religión o creencias de la víctima, la etnia, raza o nación a la que pertenezca, su sexo, orientación o identidad sexual, la enfermedad que padezca o su discapacidad.*

5.^a Aumentar deliberada e inhumanamente el sufrimiento de la víctima, causando a ésta padecimientos innecesarios para la ejecución del delito.

6.^a Obrar con abuso de confianza.

7.^a Prevalerse del carácter público que tenga el culpable.

8.^a Ser reincidente.

Hay reincidencia cuando, al delinquir, el culpable haya sido condenado ejecutoriamente por un delito comprendido en el mismo título de este Código, siempre que sea de la misma naturaleza.

A los efectos de este número no se computarán los antecedentes penales cancelados o que debieran serlo.”

Article 67

“Las reglas del artículo anterior no se aplicarán a las circunstancias agravantes o atenuantes que la Ley haya tenido en cuenta al describir o sancionar una infracción, ni a las que sean de tal manera inherentes al delito que sin la concurrencia de ellas no podría cometerse.”

Turkey, Penal Code⁴²

Article 81

“Bir insanı kasten öldüren kişi, müebbet hapis cezası ile cezalandırılır.”

Informal translation:

⁴⁰ Available at the website of the *Agencia Estatal Boletín Oficial del Estado*, www.boe.es/buscar/act.php?id=BOE-A-1995-25444.

⁴¹ The highlighted text reflects the changes introduced by organic law 5/2010, adopted on 22 June 2010, entered into force on 23 December 2010.

⁴² Available on the website of the Official Gazette (*Resmî Gazete*), www.resmigazete.gov.tr/default.aspx.

“Any person who deliberately kills a person shall be sentenced to life imprisonment.”

Article 82

“Kasten öldürme suçunun;

- a) Tasarlayarak,
 - b) Canavarca hisle veya eziyet çektirerek,
 - c) Yangın, su baskını, tahrip, batırma veya bombalama ya da nükleer, biyolojik veya kimyasal silah kullanmak suretiyle,
 - d) Üstsoy veya altsoydan birine ya da eş veya kardeşe karşı,
 - e) Çocuğa ya da beden veya ruh bakımından kendisini savunamayacak durumda bulunan kişiye karşı,
 - f) Gebe olduğu bilinen kadına karşı,
 - g) Kişinin yerine getirdiği kamu görevi nedeniyle,
 - h) Bir suçu gizlemek, delillerini ortadan kaldırmak veya işlenmesini kolaylaştırmak amacıyla,
 - i) Bir suçu işleyememekten dolayı duyduğu infialle,
 - j) Kan gütme saikiyle,
 - k) Töre saikiyle,
- İşlenmesi halinde, kişi ağırlaştırılmış müebbet hapis cezası ile cezalandırılır.”

Informal translation:

“In case this offense is committed:

- a) With premeditation,
 - b) Ferociously or with brutality,
 - c) By means of fire, flood, destruction, sinking or bombing, or by using nuclear, biological or chemical weapons,
 - d) Against an ascendant or descendant relative, a spouse or a sibling,
 - e) Against a child or a person who cannot protect himself due to physical or mental disability,
 - f) Against a pregnant woman,
 - g) By virtue of public office,
 - h) In order to conceal or facilitate the commission of an offense, to destroy evidence or to avoid capture,
 - i) As a consequence of anger at being frustrated in the commission of a crime,
 - j) Due to motives of blood feud,
 - k) Due to motives of honour or custom,
- the offender shall be sentenced to aggravated life imprisonment.”

Article 102

“(1) Cinsel davranışlarla bir kimsenin vücut dokunulmazlığını ihlâl eden kişi, mağdurun şikâyeti üzerine, beş yıldan on yıla kadar hapis cezası ile cezalandırılır. Cinsel davranışın sarkıntılık düzeyinde kalması hâlinde iki yıldan beş yıla kadar hapis cezası verilir.

(2) Fiilin vücuda organ veya sair bir cisim sokulması suretiyle gerçekleştirilmesi durumunda, on iki yıldan az olmamak üzere hapis cezasına hükmolunur. Bu fiilin eşe karşı işlenmesi hâlinde, soruşturma ve kovuşturmanın yapılması mağdurun şikâyetine bağlıdır.

(3) Suçun;

- a) Beden veya ruh bakımından kendisini savunamayacak durumda bulunan kişiye karşı,
- b) Kamu görevinin, vesayet veya hizmet ilişkisinin sağladığı nüfuz kötüye kullanılmak suretiyle,
- c) Üçüncü derece dâhil kan veya kayın hısımlığı ilişkisi içinde bulunan bir kişiye karşı ya da üvey baba, üvey ana, üvey kardeş, evlat edinen veya evlatlık tarafından,
- d) Silahla veya birden fazla kişi tarafından birlikte,
- e) İnsanların toplu olarak bir arada yaşama zorunluluğunda bulunduğu ortamların sağladığı kolaylıktan faydalanmak suretiyle, işlenmesi hâlinde, yukarıdaki fıkralara göre verilen cezalar yarı oranında artırılır.

(4) Cinsel saldırı için başvuru cebir ve şiddetin kasten yaralama suçunun ağır neticelerine neden olması hâlinde, ayrıca kasten yaralama suçuna ilişkin hükümler uygulanır.

(5) Suç sonucu mağdurun bitkisel hayata girmesi veya ölümü hâlinde, ağırlaştırılmış müebbet hapis cezasına hükmolunur.”

Informal translation:

“(1) Any person who violates the physical integrity of another person by means of sexual behaviour shall be imprisoned for a term of from five to ten years, upon the complaint of the victim.

(2) Where the act is committed by means of inserting an organ or other object into the body, the perpetrator shall be imprisoned for a term of not less than twelve years. If the act is committed against a spouse, legal investigation and prosecution shall be initiated provided that the victim lodges a complaint.

(3) If the offence is committed,

- a) Against a person who is physically or mentally incapable of defending themselves,
- b) By a breach of duty and/or abuse of official status,
- c) Against a person of first, second or third degree blood relation or a relative by marriage or adoption,
- d) By using a weapon or with the cooperation of more than one person,
- e) Against people living together as a community to benefit from the ease of the environment,

the penalty imposed in accordance with the paragraphs above shall be increased by one half.

(4) If, during the commission of the offence, the perpetrator applies force and violence greater than that necessary to overcome the victim’s resistance, the perpetrator shall also be punished for deliberate wounding.

(5) If as a result of the crime the victim enters a vegetative state or dies, the sentence shall be aggravated life imprisonment”

Venezuela (Bolivarian Republic of), Organic law on the right of women to a life free from violence⁴³

Article 65

“Parágrafo Unico: En los casos de homicidio intencional en todas sus calificaciones, tipificados en el Código Penal, cuando el autor sea el cónyuge, ex conyuge, concubino, ex concubino, persona con quien la víctima mantuvo vida marital, unión estable de hecho o relación de afectividad, con o sin convivencia, la pena a imponer será de veintiocho a treinta años de presidio.”

Venezuela (Bolivarian Republic of), Penal Code⁴⁴

Article 77

“Son circunstancias agravantes de todo hecho punible las siguientes:

1. Ejecutarlo con alevosía. Hay alevosía cuando el culpable obra a traición o sobre seguro.
2. Ejecutarlo mediante precio, recompensa o promesa.
3. Cometerlo por medio de inundación, incendio, veneno, explosión, varamiento de nave, avería causada de propósito, descarrilamiento de locomotora o por medio del uso de otro artificio que pueda ocasionar grandes estragos.
4. Aumentar deliberadamente el mal del hecho, causando otros males innecesarios para su ejecución.
5. Obrar con premeditación conocida.
6. Emplear astucia, fraude o disfraz.
7. Emplear medios o hacer concurrir circunstancias que añadan la ignominia a los efectos propios del delito.
8. Abusar de la superioridad del sexo, de la fuerza, de las armas, de la autoridad o emplear cualquier otro medio que debilite la defensa del ofendido.
9. Obrar con abuso de confianza.
10. Cometer el hecho punible aprovechándose del incendio, naufragio, inundación u otra calamidad semejante.
11. Ejecutarlo con armas o en unión de otras personas que aseguren o proporcionen la impunidad.
12. Ejecutarlo en despoblado o de noche. Esta circunstancia la estimaran los Tribunales atendiendo a las del delincuente y a los efectos del delito.
13. Ejecutarlo en desprecio o en ofensa de la autoridad pública o donde esta se halle ejerciendo sus funciones.
14. Ejecutarlo con ofensa o desprecio del respeto que por su dignidad, edad o sexo mereciere el ofendido, o en su morada, cuando éste no haya provocado el suceso.
15. Ejecutarlo con escalamiento. Hay escalamiento cuando se entra por vía que no es la destinada al efecto.

⁴³ Adopted on 16 March 2007, entered into force on 23 April 2007, available at the website of the *Ministerio Público de la República Bolivariana de Venezuela*, www.mp.gob.ve/web/guest/buscador/-/journal_content/56/10136/40039.

⁴⁴ Available at the website of the *Ministerio Público de la República Bolivariana de Venezuela*, www.mp.gob.ve/web/guest/buscador/-/journal_content/56/10136/39928.

16. Ejecutarlo con rompimiento de pared, techo o pavimento o con fractura, entendiéndose por esta toda fuerza, rotura, descomposición, demolición, derribo o agujeramiento de paredes, terrenos o pavimentos, puertas, ventanas, cerraduras, candados u otros utensilios o instrumentos que sirvan para cerrar o impedir el paso o la entrada y de toda especie de cerraduras, sean las que fueren.

17. Ser agraviado cónyuge del ofensor, o su ascendiente o hermano legítimo, natural o adoptivo; o cónyuge de estos; o ascendientes, descendientes o hermano legítimo de su cónyuge; o su pupilo, discípulo, amigo íntimo o bienhechor.

18. Que el autor, con ocasión de ejecutar el hecho y para prepararse a perpetrarlo, se hubiere embriagado deliberadamente, conforme se establece en la numeral 1 del artículo 64.

19. Ser vago el culpable.

20. Ser por carácter pendenciero.”

Article 79

“No producirán el efecto de aumentar la pena las circunstancias agravantes que por si misma constituyeron un delito especialmente penado por la ley, expresado al describirlo o penarlo, ni aquellas de tal manera inherentes al delito, que, sin su concurrencia, no pudiera cometerse.”

Article 405

“El que intencionalmente haya dado muerte a alguna persona será penado con presidio de doce a dieciocho años.”

Article 406

“En los casos que se enumeran a continuación se aplicarán las siguientes penas:

1. Quince años a veinte años de prisión a quien cometa el homicidio por medio de veneno o de incendio, sumersión u otro de los delitos previstos en el Título VII de este libro, con alevosía o por motivos fútiles o innobles, o en el curso de la ejecución de los delitos previstos en los artículos 449, 450, 451, 453, 456 y 458 de este Código.

2. Veinte años a veintiséis años de prisión si concurrieren en el hecho dos o más de las circunstancias indicadas en el numeral que antecede.

3. De veintiocho años a treinta años de prisión para los que lo perpetren:

a. En la persona de su ascendiente o descendiente o en la de su cónyuge.

b. En la persona del Presidente de la República o de quien ejerciere interinamente las funciones de dicho cargo.

Parágrafo único: Quienes resulten implicados en cualquiera de los supuestos expresados en los numerales anteriores, no tendrán derecho a gozar de los beneficios procesales de ley ni a la aplicación de medidas alternativas del cumplimiento de la pena.

Article 407

“ La pena del delito previsto en el artículo 405 de este Código, será de veinte años a veinticinco años de presidio:

1. Para los que lo perpetren en la persona de su hermano.
2. Para los que lo cometan en la persona del Vicepresidente Ejecutivo de la República, de alguno de los Magistrados o Magistradas del Tribunal Supremo de Justicia, de un Ministro del Despacho, de un Gobernador de estado, de un diputado o diputada de la Asamblea Nacional, del Alcalde Metropolitano, de los Alcaldes, o de algún rector o rectora del Consejo Nacional Electoral, o del Defensor del Pueblo, o del Procurador General, o del Fiscal General o del Contralor General de la República, o de algún miembro del Alto Mando Militar, de la Policía, o de algún otro funcionario público, siempre que respecto a estos últimos el delito se hubiere cometido a causa de sus funciones.

Parágrafo único: Quienes resulten implicados en cualquiera de los supuestos expresados en los numerales anteriores, no tendrán derecho a gozar de los beneficios procesales de ley ni a la aplicación de medidas alternativas del cumplimiento de la pena.”
