

REFLECTIONS ON DUE DILIGENCE AS A GUARANTEE OF ACCESS TO JUSTICE IN FEMICIDE CASES IN COLOMBIA (LAW 1761 OF 2015)

REFLEXIONES SOBRE LA DEBIDA DILIGENCIA COMO GARANTÍA DE ACCESO A LA JUSTICIA EN CASOS DE FEMINICIDIO EN COLOMBIA (LEY 1761 DE 2015)

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Resumen : Este artículo pone de manifiesto la responsabilidad internacional del Estado Colombiano por el incumplimiento del deber debida diligencia para la prevención, tratamiento y sanción de la violencia contra las mujeres, como garantía de acceso a la justicia en casos asociados al delito de feminicidio en Colombia a partir de la Ley 1761 de 2015. El estudio ubica su sustentación teórica en el paradigma de la teoría crítica del derecho y la teoría feminista. A través de un diseño cualitativo, el estudio determina cómo el Estado vulnera los derechos humanos de las mujeres con el incumplimiento del derecho internacional. El aporte al conocimiento se centra en la consolidación de medidas afirmativas efectivas propuestas por las mujeres como apuesta para la materialización formal de la debida diligencia en la vida de las mujeres en Colombia.

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Palabras clave: Debida diligencia, feminicidio, violencia contra las mujeres, obligación internacional, acceso a la justicia.

Summary: This article highlights the international responsibility of the Colombian State for failing to fulfill its duty of due diligence in preventing, addressing, and sanctioning violence against women as a guarantee of access to justice in cases related to the crime of femicide in Colombia under Law 1761 of 2015. The study grounds its theoretical framework in the paradigm of critical legal theory and feminist theory. Through a qualitative design, the research identifies how the State violates women's human rights by failing to comply with international law. The contribution to knowledge focuses on the consolidation of effective affirmative measures proposed by women as a strategy for the formal realization of due diligence in the lives of women in Colombia.

Keywords: Due diligence, femicide, violence against women, international obligation, access to justice, Law 1761 of 2015.

1. Introducción

Within the framework of the international responsibility of States under international human rights law, Colombia is obligated to prevent, investigate, sanction, and redress human rights violations, including gender-based violence against women, which is recognized as a human rights violation and an affront to human dignity.

In this context, women's right to live a life free from violence and discrimination is a principle of international human rights law, imposing legal duties on States related to eradicating violence and discrimination based on fundamental rights to equality, non-discrimination, life, and personal integrity. (UN Women, MESECVI 2022)

In this regard, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women represent binding legal instruments that establish obligations for the effective guarantee of women's rights.

Both treaties require States to act with due diligence to prevent, protect, investigate, punish, and redress any violation of women's human rights, and both have been ratified by Colombia.

Due diligence is defined as an enhanced obligation for States aimed at guaranteeing human rights. According to Burga (2016), this guarantee should not be understood solely as a negative action limited to the State refraining from violating rights, "but must also

involve the implementation of positive actions—those necessary to enable individuals under its jurisdiction to exercise and enjoy their rights and freedoms" (p.108).

Regarding gender-based violence, due diligence is understood both as a duty and as a guiding principle for establishing State responsibilities. As a principle, it defines the measures that States must implement to guarantee and protect the human rights of all individuals. "This includes the design, implementation, and oversight of policies and actions aimed at preventing and avoiding human rights violations, as well as the measures adopted once such violations have occurred" (García y Caravelos, 2015, p. 43).

Additionally, as a duty, it holds significant importance in determining the international responsibility of States within the framework of ratified international human rights treaties.

Specifically, there is agreement in the international community on the enhanced value of the principle of due diligence in cases of gender-based violence. At the universal level, in 1992 the CEDAW Committee had outlined in its General Recommendation No. 19 the relationship between discrimination and violence against women, and had stated that "under international law and specific human rights covenants, States may also be liable for private acts if they fail to take measures with due diligence to prevent the violation of rights or to investigate and punish acts of violence and provide compensation" (García and Caravelos, 2015, p. 45).

In 1993, the United Nations Declaration on the Elimination of Violence against Women established that "States shall exercise due diligence to prevent, investigate and, in accordance with national legislation, punish all acts of violence against women, whether perpetrated by the State or by individuals" (Art. 4. c). The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, known as the Belém do Pará Convention in 1994, declared in its preamble that "violence against women constitutes a violation of human rights" and that "violence against women is an offense to human dignity," with States agreeing to act with due diligence to prevent, investigate and punish violence against women (Art. 7).

In the social and legal context that addresses gender violence (Buitrago, 2020), due diligence is taken as an instrument to guide legal processes, to guarantee the materialization of the right to access justice, and to protect the Human Rights of women victims of gender violence and femicide. In this context, the duty of due diligence constitutes a fundamental frame of reference to analyze the actions or omissions of the responsible State and evaluate compliance with its international obligations.

According to UN Women, violence against women is one of the most widespread violations of human rights in the world. This violence takes different forms (physical violence, sexual violence, psychological violence, economic violence, institutional violence, vicarious violence), with femicide being the most extreme form of violence, the murder of a woman for the fact that she is a woman.

Femicide, as a social phenomenon, is not new. Agatón, in *Si Adelita se Fuera con Otro del Feminicidio y Otros Asuntos* (2017), identifies moments in history in which men were legally granted the power to become judges of women and, with that, condemn them to the death penalty. For this reason, the visibility of femicide as the most extreme form of violence against women and the consequences of this conduct in society as a whole has been the work of academics (Russell and Radford, 1990; Lagarde, 2006; Monárrez 2010; Segato, 2016) and feminist movements.

In light of this, the article presents some reflections based on the experiences of victims, women survivors and family members of victims of femicide, with respect to the materialization of the duty of due diligence understood as a reinforced obligation in terms of Human Rights as a guarantee of access to justice for victims. This implies the obligation to prevent, investigate, punish and restore, to the extent possible, any violation that may occur to the right to access justice and other related rights, such as life, human dignity, equality, equity and all those related to the protection of the person or persons in cases associated with the crime of femicide.

Due diligence is a substantial right, and the reality of violence suffered by women represents the scenario for putting it into practice through the configuration of founding principles that structure legal and social processes.

According to the United Nations, violence against women "is universal, as there is no region of the world, no country and no culture in which women have been made free from violence; "the ubiquity of violence against women, which transcends the boundaries of nations, cultures, races, classes and religions, indicates that its roots lie in patriarchy – the systemic domination of women by men" (UN, 2006).

The study reveals the complex entry into the justice administration system for women victims and the panorama of impunity to which they are subjected, a reality contrary to international standards which require that "the authorities who have had knowledge of the case take charge of the investigation with determination and efficiency, so that their actions are a strong message to society of the rejection of violence against women" (Gómez and Herrera, 2018, p. 90).

According to the Latin American Protocol Model for the investigation of violent deaths of women, the adoption of a gender perspective is essential to differentiate femicides from the deaths of women that have occurred in other contexts and to address them not as a temporary and circumstantial event but as a systematic crime, the investigation of which requires due diligence from State institutions (OAS and UN Women, 2022, p. 59).

According to the literature review, femicide is a widely studied phenomenon from the Social Sciences, whose transcendence to the field of Law has been progressive as a response of the State to the denunciation and demand of the feminist movements for the protection of the life and integrity of women in the face of the serious context of violence they face as documented by various investigations (Prieto et al, 2012, Huertas et al, 2013; Tejeda, 2014; Córdoba, 2021; Pensado, 2024),

In this regard, the research *Crime of Femicide. Violent Death of Women for Gender Reasons* (Munévar, 2012) indicates, regarding the gender-specific penalization of the violent death of women, that these are criminal behaviors that deeply affect the Human Rights of women, reproduce violence and prevent, delay or undermine access to justice.

In relation to the above, the literature review highlights the challenges of applying the penal measures adopted by the State. Among the challenges are the little or no training of officials, weaknesses in the application of protocols, judicial congestion, and the lack of doctrinal debates that provide elements that facilitate the understanding of conduct in the field of law (Toledo, 2009; Jiménez, 2011; Laguna, 2016).

Heim's research, *Women and Access to Justice* (2016) documents how obstacles experienced by women in accessing justice can be caused by a combination of factors, including at least the following: The masculinity of the law and the formality of the courts, The punitive response as a priority, Sexist prejudices, lack of awareness and/or ignorance of their rights by victims, fear and/or mistrust.

Although Abdul and Moussa (2014) argue that the principle of due diligence is not a new concept, they also identify its relevance in the context of International Law given the determination of principles that are assumed as guiding, concrete and measurable for all regions. In view of this, it is pertinent that these take into account civil society organizations specifically made up of women, based on their experiences and testimonies. For women, it is the possibility of participating in processes of construction of social, legal and judicial instruments as active social subjects.

Starting with Law 1761 of 2015, the Rosa Elvira Cely Law, the crime of femicide is introduced into the Colombian Criminal System, establishing the crime of femicide as an

autonomous crime that can be committed according to three different perspectives: instrumentalization, objectification and domination.

Instrumentalization involves exercising over the body and life of a woman acts that show that she has been used as an instrument to achieve a certain end. Killing a woman by objectification is turning her into a kind of object owned by another, with the intention of using her or what she represents without dignifying her as a person or as a woman. At the same time, the events can occur in a context of domination, where the power relations exercised over her are used as a sign of hierarchy, marking a wide distance between her and her victimizer in economic, social, political, military, cultural or sexual terms to generate fear and degrade her as a woman (Vasquez-Escobar, et al., 2017, p. 10).

The aforementioned rule is explicit in its objective of "guaranteeing the investigation and punishment of violence against women based on gender and discrimination (Art. 1) and also incorporates the guiding principles of due diligence in the investigation and prosecution of the crime of femicide in order to guarantee the conduct of a technical, specialized, exhaustive, impartial, agile, timely and effective investigation into the commission of the crime of femicide, as well as the prompt prosecution of those presumed responsible. (Art. 6)

Therefore, it is relevant to ask: how is the principle of due diligence applied in cases of femicide to guarantee access to justice for women victims in Colombia based on Law 1761 of 2015? Below are some theoretical and methodological references that support the study, placing the emphasis of the article on the development of results related to the international responsibility of the Colombian State.

2. Theoretical references

In this context, the concept of Russell and Radford (1992) feminicide is proposed as a category of analysis, studied and redefined by Lagarde (2006) who established a connection with impunity that addresses violence against women and the fracture of the Social Rule of Law proposed by feminist theory. In relation to this, the study presents three theoretical foundations as central elements to support it: the Critical Theory of Law (Wolkmer, 2006; Cárcova, 2000; Facio, 2000), the Theory of Access to Justice (Rawls, 1971; Heim, 2016; Facio, 2000) and, the Theory of constitutional pluralism and the category of constitutionalism of criminal law (Häberle, 2007; Ferrajoli, 2007), associated and thought from the feminist paradigm of Russell and Harmes (2001) and Lagarde, on state responsibility.

The duty of due diligence as a mandatory instrument for the protection of women's human rights is assumed to be the central core of the study, associated with the feminist

and critical paradigm of law (Lagarde, 2006). The process of theoretical and legal contextualization of the concept of due diligence in cases associated with the crime of femicide is mainly framed within the development of international human rights law, with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (General Assembly of American States, Belem Do Para, 1994). Hence, Colombia as a subject of international law ratified these international instruments and issued Law 1761 of 2015, through which it transfers the duty of due diligence to the internal legal system.

The category of *femicide* is proposed as a paradigm from which it is possible to think about the duty of due diligence inside and outside of criminal proceedings where the right to a life free of violence for women is protected. In this sense, for the theoretical construct of the research, the Critical Theory of Law (Wolkmer, 2006; Cárcova, 2000; Facio, 2000) provides elements of analysis on the transcendence of women's demands and claims to the formal world of law, the Theory of Access to Justice (Rawls, 2002 Heim, 2016; Facio, 2000) which, from a gender perspective, allows to nourish the analysis from the representation of a structural system of equity and equality, as the main values that materialize fundamental rights; and the Theory of constitutional pluralism, conceived from the category of constitutionalism of criminal law (Häberle, 2007; Ferrajoli, 2007) that allow an approach to International Law and, therefore, to the duty of due diligence and the principles that compose it.

In this way, the duty of due diligence is incorporated into various instruments in a binding manner for States, such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (General Assembly of American States, Belem Do Para, 1994), which represents the international paradigm of the Colombian Femicide Law, which is binding on the State.

Based on the above, this document is based on three theoretical perspectives to understand the dynamics of criminal proceedings and the experience of women survivors with respect to the materialization of the duty of due diligence. These proposals are made up of the approaches of Facio and Heim, which address the theory of impunity, the structure of societies, the patriarchal system, and state responsibility with respect to the women's agenda. Likewise, the ideas on the alternative use of Law (natural law) proposed by Wolkmer in her text *Introduction to Critical Legal Thought* (2006) and her conceptual proposal on a different use of Law in the field of knowledge, discourse and behavior, carrying out a reflective exercise of questioning positivist law and thinking about it from a more pluralist, democratic and anti-dogmatic legal vision.

3. Methodology

The research was developed from a qualitative design of hermeneutic cut, with a non-probabilistic sampling of intentional type, which entails not only an effort of understanding, but also opens the possibility of constructing interpretive keys that allow to understand the common aspects to many people and human groups in the process of production and appropriation of their social and cultural reality. (Sandoval C., 2002, p. 32). As qualitative research, sustained in the postulates of the grounded theory (Glaser, 1967; 1978; 1992) it was decisive to take into account the habitus (Bourdieu, 1997; Bourdieu and Teubner, 2000) of the officials, female victims and relatives of female victims, since in the results emerge concepts supported by their experience.

From these methodological assumptions, the study focused its interest on the intrinsic characteristics of violence against women and the State's actions regarding the phenomenon, in an attempt to understand the socio-legal reality of the judicial processes where feminicide is investigated, sanctioned, and prosecuted. "The understanding of social reality is assumed under the metaphor of a text, which is susceptible to being interpreted through the use of methodological paths with very specific characteristics that make it different from other research alternatives" (Sandoval, 2002, p. 67). Hermeneutics, the understanding of the social reality of violence against women, allowed us to understand and know their experiences in the judicial sphere.

In the process of collecting information, it was essential to respect the availability of the social actors, due to the sensitivity of the data. This led to determining three cases as exemplary and deciding to carry out the information collection process with these. The data analysis was built through the formulation of reports and databases. In this process, emerging theoretical postulates and categories emerged that were not considered from the beginning of the research. This shows that, in the development of these procedures, women and their relationship with the State were the protagonists.

The sampling for this research was non-probabilistic and intentional, since "selective searches in specific cases" were carried out (Patton, 1988, cited in Sandoval, 2002, 91-92). The selection criterion consisted of identifying a common characteristic or experience in relation to the application of due diligence, as the thematic core to which the study is directed. In this case, women survivors and relatives of women victims who live in the city of Barranquilla-Colombia and who interact with officials from the police station and the prosecutor's office through judicial processes. For this, "semi-structured interviews were applied as a technique for collecting private knowledge" (Alonso, 1999, p. 228).

The interviews, as explained above, were guided by the selection criteria, which operated to stop the data collection. According to Sandoval, "the researcher seeks to reach content saturation in which only a few new incidents can be added to the categories that will demonstrate a new dimension of the problem" (2002, p. 88). Therefore, an essential task was to analyze the information and organize it to determine whether or not it provides data consistent with the research.

The data obtained from the testimonies of the participating women was systematized through an open and axial categorization exercise. A super family anchored to the category of Femicide was identified, and two families were identified as being those of Due Diligence and Justice. The coding carried out was emergent, protecting the way of understanding the world expressed in the testimonies of the women.

4. Results and analysis

The analysis of the results has been divided into two stages aimed at reviewing the application of due diligence based on the provisions of Law 1761 of 2015 in Colombia in accordance with the standards of international human rights law for access to justice for victims of femicide. The first stage diagnoses whether the principles contemplated in Law 1761 of 2015 are applied from the perspective of judicial operators. The second stage involves documenting the narratives and/or experiences of female victims with respect to the decisions adopted by the state.

4.1. Deficiencies in the judicial performance of the State that lead to the occurrence of new rights violations.

On the way to constructing a diagnosis that will allow determining whether or not the principles contemplated by Law 1761 of 2015 for the investigation and prosecution of femicide cases are applied, some partial realities that determine the current state of the application of due diligence are revealed. In effect, officials attached to the judicial police identify as one of the main factors that they must face during the investigation or prosecution process are the "emotional problems" that are generally linked to these cases (judicial operator).

Between 2020 and 2022, a year of pandemic and confinement, the highest rate of femicides in the country was generated; violence against women increased in every sense, since this gender violence or in this case against women became fully visible in the confinement caused by the covid-19 pandemic. At this time, there was a strong need to seek public policies that comprehensively allow preventing the expansion of this crime (Rico-Garzón, 2024, p. 358)

Likewise, when dealing with the information provided by judicial operators, it was identified that among the factors that are relevant to these officials and that affect the judicial management of the process is the lack of knowledge about the conduct of femicide that is seen in society "there is the little knowledge of society on the subject of femicide, since these are concepts that are not very clear to society and they are often confused or tend to give erroneous concepts about this criminal behavior" (judicial operator). In this context, for some officials, legal training is related to the effective application of the duty of due diligence in cases related to gender violence, for which they propose "carrying out training for staff since some officials are not clear about the crime of femicide" (judicial operator).

Judicial operators agree that in order to carry out a "serious, impartial and effective" investigation (Case Juan Humberto Sánchez v. Honduras, 2003, p. 79), the skills that an official who assists the Attorney General's Office in clarifying punishable acts related to gender violence must have must revolve around full and adequate knowledge of the subject and, for this, it is necessary to receive periodic training and/or updating to broaden concepts on gender violence and femicide, which allows them to formally and materially make investigative approaches and strategies.

Therefore, the public official who handles this type of investigation must be competent to assist victims in the different stages of the criminal process and especially in the different psychological and emotional aspects of the victim, as well as know how to handle and adapt to the victim, know specifically the legal regulations for cases of gender violence and know how to use the appropriate logistical means to advance the different actions of the case.

In addition, in the criminal proceedings related to gender violence and femicide that were reviewed, the activation of excessive procedural guarantees that favor the rights of the possible author, participant or instigator was evident, clarifying that these guarantees are the same in the development of any criminal investigation. Likewise, the lack of stability, continuity and permanence on the part of the prosecutors in the development of the investigative processes, since for different reasons there are continuous changes of the lead prosecutor of the investigation, which implies the referral to other offices to be aware of the rest of the process, causing the loss of the behavioral thread or alteration in the methodological program.

The above occurs by order of the internal directives of the investigative body, "when a certain stage is reached, the prosecutor must refer to another office so that they know the rest, losing the behavioral thread that will be carried out and this has been worrying and traumatic in the judgment stage. The prosecutor who takes the case does not assist it with

the same initiative and if we add to that that he receives a case of national significance, the prosecutor looks for the argument to be prevented or to take it once again to distribution. Finally, this failure of the system is in favor of the criminal (judicial operator)

However, this affecting factor goes against the principle of speed established in Law 1761 of 2015. However, the judicial operators interviewed emphasize that a positive factor for the investigation and judgment occurs at the moment in which, based on the principle of immediacy from the very moment of the presence of the fact and the intervention of a group of specialized judicial police articulated with a public prosecutor's office, it will undoubtedly lead to the clarification of the conduct, a stage in which the full investigation of the alleged perpetrator of the femicide conduct takes place.

Regarding the application of differentiating protocols that contribute to the investigation and prosecution of the crime of femicide in a technical, specialized, exhaustive, impartial, agile, timely and effective manner, it was found that in practice the protocols implemented are those used for the development of any investigative process in the matter of homicide, "taking into account that the condition of femicide can be established once there is full knowledge of the perpetrator and the reasons for carrying out the conduct" (judicial operator). Even when the protocols indicate the presumption of femicide in cases of murders of women.

The above demonstrates a fragile, diffuse and unstructured judicial management that hinders due diligence in cases of femicide. The treatment of femicide as a "homicide of women" without understanding the motivation of gender and discrimination makes it impossible to provide a differentiated judicial treatment that contributes to achieving gender justice that transforms the reality of violence faced by women. The prevalence of administrative decisions and directives ignores the specific protocols and guidelines for the investigation of the crime of femicide, negatively impacting the continuity of the investigation and prosecution processes. And the procedural guarantees for the perpetrators undermine the dignity of the victims, exacerbating the context of vulnerability and precarious rights.

4.2. Re-victimized women exposed to endless, exhausting and uninformed processes

The exercise of documenting the narratives and experiences of victims of femicide with respect to the decisions adopted by the State in their cases, contemplated the analysis of the restoration of their violated rights and compliance with the routes, protocols, programs and policies adopted by the State for the prevention and attention to violence against women in Colombia based on Law 1761 of 2015. According to the responses received, there

is a perception that there is no progress in the processes once they are brought to the attention of the authorities.

However, it is assumed that one of the main obligations of the State in cases of femicide is to investigate the facts quickly, thoroughly and in a timely manner. Contrary to what the law establishes, in practice, the processes for the women interviewed were "requested" processes due to the lack of willingness of the intervening institutions, which makes them slow and dependent on the impulse that the victims can give them.

Since I started the process for violence from my partner, I don't see any progress. The first time I went, my mother was told that they didn't handle those cases and that she didn't have the authority to handle my case. Then, when they advised us on the subject and we argued that she did, and that she had to act, she agreed. But I think that if you start a process like that, it's not the best way to carry it out. (Female survivor, interview, 2023).

I never received any response from the entities in charge of the process, therefore, I want to express that they were not agile in my situation no matter how much I insisted. (Female survivor, interview, 2023).

In relation to what the women mentioned, the judicial processes become endless and exhausting for the victims, where they are the ones who insistently proceed to obtain action from the competent authorities in their proceedings. When by legal mandate, it is up to the competent authorities to investigate *ex officio* the continuum of violence against women in order to organize and support the theory of the cases, taking into account that femicide is mostly the result of contexts of continued violence suffered by women.

On the other hand, when asked about guarantees of access to the administration of justice related to humane and dignified treatment, security guarantees to participate in the process, protection of the privacy of both the victim and their family, reparation for damages suffered, the possibility of being heard, the provision of evidence, to be informed about the procedure, to have a lawyer during the process, to participate in the different hearings of the process, to know the truth about the facts, to receive compensation for damages caused, below are some of the responses of the women interviewed:

At first I felt bad, like my case was not important, and that I should not continue with it, because as I said, if I had not sought advice, I would not continue with this. And one has to fight in a good way, so that they attend to you, so I feel that there is a kind of prevention from the official who attends to you. But that is why it is important to know about the subject. (Female survivor, interview, 2023)

They never offered any treatment, they only re-victimize and always try to find an excuse to say that we women endure because we want to. Our guarantees are not

respected in our cases, which produces re-victimizing situations for us women. (Female survivor, interview, 2023)

The above demonstrates the absence of the State in the development of the process, given the little or no support in it. On the contrary, it reinforces the thesis related to re-victimization by the system in general, that is, from the beginning of the process to the point that it manages to take place, which for the women interviewed becomes a true fight for their Human Rights.

The statements made by the victims are in deep contradiction with the obligation of adequate, dignified and humane treatment that the State must guarantee to women victims of violence. This practice materialises behaviours that violate the Human Rights of the victims and reaffirms the gender stereotypes present in the judicial system and that are transferred to society in general.

In order to refer to the obligations of the State in relation to the obligation of due diligence, it is necessary to refer to the State's action, through which the discourse of guaranteeing the protection of women in their public and private spheres becomes real. During the development of the study, situations were identified that allowed us to know that some stages of the judicial process require greater effort on the part of the victims, and that they cause the abandonment or withdrawal of the process by the woman or family members of the victims.

The complaint. Because in order to receive it we had to argue that they wanted to kill me so that they would pay attention to me, and in addition to arguing why they should attend to me, it was almost like having to convince them to attend to me. So what has happened so far, which has not been much, because it is still in the investigation stage, that has been the most difficult. (Female survivor, interview, 2023)

It is imperative that the State recognizes the voices of women in the judicial process, which must be heard from their perspectives and experiences. These statements and responses make it clear that activating the State's judicial apparatus for women who survived femicide or those family members of the victim of the crime of femicide is an attempt to seek justice that can fail, and not a right that the State must protect and guarantee.

While it is true that criminal proceedings in cases of femicide must respond to the principle of due diligence by legal mandate and as an obligation derived from International Human Rights Law, the victims recognize that this precept was not fulfilled in their cases; on the contrary, the State's actions were re-victimizing, a situation that exacerbates their condition of vulnerability.

In the context of gender-based violence, the Colombian judicial system often faces significant delays and bureaucracy that makes it difficult to respond quickly to cases of gender-based violence, leaving victims unprotected for long periods of time; the lack of effective sanctions for the aggressors contributes to the feeling of impunity and the perpetuation of violence (Rico-Garzón, 2024, p. 357).

5. Conclusions

Taking into account the concepts of the categories of *femicide*, *access to justice* and *due diligence* (Russell and Radford, 1992; Legarde, 2006; Toledo 2014, Heim, 2016; Agatón, 2017) proposed in the study, it is relevant to insist on the thesis that the State's obligation to act with due diligence is essential for the materialization of access to justice for victims of femicide and thus transform the structures of power and discrimination that have historically violated the lives and rights of women.

According to Agatón (2017), the obligation of due diligence is a relevant legacy in the protection of women's rights. In its absence, regulatory frameworks, even if well thought out, become enunciative mandates that by themselves do not transform the reality of violence against women. For Toledo, a "State that does not prevent, investigate or sanction with due diligence feminicide or femicide, whether committed in the public or private sphere, fails to comply with its obligation to guarantee women's right to life." (2009, p. 40)

Women as a subject of special protection (UN, 2013) from their daily lives are protagonists of experiences that legitimize the international responsibility of the Colombian State for failing to comply with international instruments and internal legislation on the guarantees to which women victims of gender violence and femicide are entitled as the most extreme form of violence against women (Galeano, 2017) the death of a woman due to the fact of being a woman.

From the above, two pieces of evidence emerge: first, the difficult entry for women victims into the justice administration system, and second, the predominant panorama of impunity. The aforementioned situation is in negative contrast to what has been established by international organizations on the due diligence that States must have in these types of situations, since this reinforced State obligation must be made up of practices that allow it to act in an effective manner in response to complaints; given that its absence in the investigation from the first phases results in impunity for the violations (Gómez and Herrera, 2018, p. 87).

Due diligence is not merely an instrument that requires the application of guiding principles for the prevention and treatment of violence against women before, during and after socio-legal processes; it also functions as a state obligation for the materialization of the right to access justice and other related rights that are exposed in a process, avoiding transgressions, impunity and re-victimization for victims of the crime of femicide.

For Heim (2016), legislation and public policies aimed at preventing, punishing and eradicating gender violence have not managed to break the traditional, formal and androcentric nature of access to justice. This situation is evident in the persistent obstacles that women face when they dare to activate the justice system, creating a reality of "begged justice" for victims that exposes them to re-victimizing situations and greater risk.

In this context, the Committee of Experts of the Follow-up Mechanism of the Belém Do Pará Convention (MESECVI) has focused its efforts on making recommendations to States focused on repairing damage that has already been caused to humanity, "including adequate economic reparation to victims and their families, with a gender perspective so as to take into account the specific needs and priorities of women victims with a human rights approach" (OAS and UN Women, 2022, p. 87).

However, violence against women continues to increase, particularly in relation to cases of femicide. This situation highlights the inadequacy of the measures adopted by the State. Consequently, a systematic and permanent violation of women's rights could constitute international liability for failure to comply with due diligence (Facio, 2000) in cases of violence against women.

In light of this, interdisciplinary work is suggested that involves different sectors of society, including academia, as a mechanism to strengthen pedagogical processes on the subject in different instances of society and at the judicial level, always with the aim of improving the processes of prevention and restoration of rights of female victims.

Likewise, it is imperative to strengthen the implementation of mechanisms beyond the judicial scenario that contribute to the prevention of violence against women and that Law 1761 of 2025 contemplates, such as, for example, the implementation of transversal pedagogical projects based on principles of interdisciplinarity, intersectionality, and interinstitutionality in preschool, basic, secondary and higher institutions. (Art. 10). The training in gender, human rights and international humanitarian law of public servants of the Executive and Judicial Branches who have functions or competencies in the prevention, investigation, prosecution, punishment and reparation of all forms of violence against women. As well as the improvement of the National Statistics System on Gender-Based Violence.

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