Specialised (in)security

Tapia Tapia, Silvana; Bedford, Kate

DOI:
10.29263/lar07.2021.02

Document Version
Publisher's PDF, also known as Version of record

Citation for published version (Harvard):
Tapia Tapia, S & Bedford, K 2021, 'Specialised (in)security: violence against women, criminal courts, and the gendered presence of the state in Ecuador', *Latin American Law Review*, vol. 2021, no. 7, pp. 21-42. https://doi.org/10.29263/lar07.2021.02

Specialised (in)security: violence against women, criminal courts, and the gendered presence of the state in Ecuador

Silvana Tapia Tapia*
Universidad del Azuay (Ecuador)

Kate Bedford**
University of Birmingham (United Kingdom)

Received: October 30, 2020 | Accepted: February 7, 2021 | Revised: March 4, 2021

How to cite: Tapia Tapia, Silvana and Kate Bedford. "Specialised (in)security: violence against women, criminal courts, and the gendered presence of the state in Ecuador". *Latin American Law Review*, no. 07 (2021): 21-42, doi: https://doi.org/10.29263/lar07.2021.02

Abstract

This article asks what the reliance on criminal law and policy to address violence against women (VAW) reveals about the gendered interaction between law, development, and security. Using empirical research on Ecuador's specialised courts for VAW, we argue that the state's turn to criminal law—often presented as evidence of taking violence seriously—has in practice resulted in reduced protection for women. The use of penality to address VAW allows courts to prove that women's safety and security are being taken seriously while concealing–and in some respects fuelling–state abandonment regarding effective protection and services for survivors. We conclude with a call to gender discussions of the turn to criminal law within development and security studies.

Keywords

Violence against women; Ecuador; gender and development; criminal law; citizen security; Latin America.

---

* Doctor of philosophy (PhD) in Socio-Legal Studies, University of Kent. Lecturer, researcher, and coordinator of research at the Faculty of Legal Sciences, University of Azuay, Cuenca, Ecuador. ORCID ID https://orcid.org/0000-0002-5598-7098. ✉ stapia@uazuay.edu.ec.

** Doctor of philosophy (PhD) in Political Science, Rutgers University. Professor of Law and Deputy Head of School (Research) at Birmingham Law School, University of Birmingham, United Kingdom. ORCID ID https://orcid.org/0000-0001-9204-2352. ✉ k.bedford@bham.ac.uk.

(In)seguridad especializada: violencia contra las mujeres, juzgados penales y la presencia engenerizada del Estado en Ecuador

Resumen

Este artículo pregunta qué nos revela el uso del derecho y la política criminal para abordar la violencia contra las mujeres (VCM) acerca de la interacción engenerizada entre la ley, el desarrollo y la seguridad. Utilizando investigaciones empíricas sobre los juzgados especializados en VCM en Ecuador, argumentamos que el giro del Estado hacia el derecho penal, el cual con frecuencia se presenta como evidencia de que se está tomando en serio a la violencia, ha resultado, en la práctica, en una reducción de la protección de las mujeres. El uso de la penalidad para abordar la VCM les permite a los juzgados demostrar que la seguridad y la protección de las mujeres se están tomando en serio, al tiempo que ocultan, y en algunos aspectos alimentan, el abandono estatal en cuanto a protección y servicios efectivos para las sobrevivientes. Concluimos con un llamado a discutir, con perspectiva de género, el giro hacia el derecho penal dentro de los estudios de desarrollo y seguridad.

Palabras clave

Violencia contra las mujeres; Ecuador; género y desarrollo; derecho penal; seguridad ciudadana; América Latina.

INTRODUCTION

"The legal and the lethal animate and inhabit one another".[1]

The conjoined turn to the law in development and security studies is premised on the claim that security is a prerequisite for development and that law is essential to attaining security. While the turn to law has been interrogated by critical legal and security studies scholars, insufficient attention has been paid to the role of gender. Even though awareness of the ubiquity of violence against women (VAW) was foundational to early debates about violence, security, and development, especially in Latin America, urban crime, youth criminality, terrorism, and gangs have received the lion's share of policy and academic attention. In this piece, we seek to augment critiques of law and securitisation by inquiring more deeply into VAW, and its role in the security/development nexus. In addition, using fieldwork on Ecuador's specialised criminal courts for VAW, we ask what the growing turn to criminal law and policy[2] as primary

1 Jean Comaroff and John L. Comaroff, eds., *Law and Disorder in the Postcolony* (Chicago: University of Chicago Press, 2006), 30. https://press.uchicago.edu/ucp/books/book/chicago/L/bo4094718.html

2 We use the terms criminal law and policy in a broad sense, comprising not only positive legislation, but also what critical scholars have termed "penality", that is, the whole of the penal apparatus and its instruments, including law, sanctions, institutions, practices, and discourses. See e.g. Mattia Pinto, "Sowing a ' Culture of Conviction' What Shall Domestic Criminal Justice Systems Reap from Coercive Human Rights?," in *Coercive*

mechanisms to tackle VAW reveals about the gendered interaction between law, development, and security.

Ecuador has a serious and growing problem with VAW. According to a 2019 national survey, the incidence of VAW is as high as 65%,[3] an increase compared to the previous 2012 data.[4] As we outline below, laws and institutions addressing VAW have developed dynamically in recent years. However, the criminalisation strategy has prevailed over other alternatives. It is underpinned by some feminists' conviction that criminal justice is fundamental to protecting women's human rights and that the existence of specific VAW offences enables accurate statistical monitoring of VAW.[5]

In 1994, Ecuador inaugurated its first commissariats dedicated to hearing VAW complaints. In 1995, the first specialised law on VAW (Act 103) passed, followed in 1998 by a new Con-stitution which recognised VAW as inimical to the human right to personal integrity (Art. 23). The 2008 Constitution included the expression "gender violence" (Article 77), within a provi-sion enabling survivors to make statements against their aggressors during a criminal trial. In 2013, courts specialising in VAW were established to replace the commissariats of the 1990s. In 2014, a new Penal Code categorised several VAW misdemeanours as crimes and intro-duced femicide. In 2018, the "Comprehensive Law To Prevent And Eradicate Violence Against Women" passed. This corpus reformed the Penal Code's articles on psychological VAW to facilitate prosecution,[6] it expanded the types of "minor" violence that are prosecutable as misdemeanours, and added "patrimonial" and "symbolic" violence, which had been omitted in the Penal Code. Largely due to these criminal laws, Ecuador has been highly rated by inter-national development agencies such as the World Bank for its success in protecting women from violence.[7] Research to ascertain how the specialised criminal justice system works on the ground therefore became a pressing issue for us, since it offers lessons not just for Ecuador but for other countries with a "criminal law first" approach to VAW.

To understand the impact of law reform on survivors of gender-based violence, over the course of 5 months in 2019 Tapia Tapia and her research team conducted fieldwork in Cuenca (Ecuador's third largest city, and the capital of Azuay, the province with the highest prevalence

---

Human Rights: Positive Duties to Mobilise the Criminal Law under the ECHR (Hart Studies in Security and Justice), ed. Laurens Lavrysen and Natasa Mavronicola (Hart Publishing, 2020); David Garland, "Penality and the Penal State: Penality and the Penal State," *Criminology; an Interdisciplinary Journal* 51, no. 3 (August 2013): 475–517; Adrian Howe, *Punish and Critique. Towards a Feminist Analysis of Penality* (London and New York: Routledge, 1994).

3 INEC, "Violencia de Género," Instituto Nacional de Estadística y Censos, 2019, https://www.ecuadorencifras.gob.ec/violencia-de-genero/.https://www.ecuadorencifras.gob.ec/violencia-de-genero/

4 INEC, "Encuesta Nacional de Relaciones Familiares Y Violencia de Género Contra Las Mujeres," https://www.ecuadorencifras.gob.ec/documentos/web-inec/Estadisticas_Sociales/sitio_violencia/presentacion.pdf.

5 Silvana Tapia Tapia, "Feminism and Penal Expansion: The Role of Rights-Based Criminal Law in Post-Neoliberal Ecuador," *Feminist Legal Studies* 26, no. 3 (2018): 285–306.

6 Originally, the Penal Code had established a "damage scale" to set the sanctions for psychological violence, which made it difficult to prove and measure. This was abolished by the new Comprehensive Law. Also, the added misdemeanours such as "physical violence that does not cause visible injury".

7 Sarah Iqbal, "Women, Business, and the Law 2018" (The World Bank, April 11, 2018), http://documents.worldbank.org/curated/en/926401524803880673/Women-Business-and-the-Law-2018.

of VAW, at 79.2%.).[8] We conducted in-depth interviews with 12 survivors of VAW, 6 specialised judges (out of 7 in the jurisdiction), 6 case-workers from a university pro-bono law clinic (all of those assisting VAW cases), and 3 first-contact judicial officers (all of those working in this capacity) who attend to women when they first approach the courts. Documentary research included the analysis of 80 case-files from the law clinic, and analysis of quantitative data from the Judicial Council, to ascertain the proportion of cases that receive a resolution against those that are dropped. Qualitative data analysis paid particular attention to the reasons why women approached the courts, what they expected to achieve in so doing, and what they envisioned as justice in the context of VAW.[9]

Our fieldwork showed that most women approached specialised courts seeking protection from ongoing violence. However, access to a protection order —a judicial instrument prohibiting the aggressor from approaching the complainant— was difficult, being contingent on pursuing, and winning at, a criminal trial. Most lawsuits were dropped, for reasons that we explain below, and women were held responsible for the fact that they subsequently lacked legal protection. Our contention, in brief, is that the state's turn to penality as a primary response —often considered evidence of taking VAW more seriously—has, in practice, resulted in reduced protection for women. At the same time, penality, understood as the whole of the penal apparatus and its instruments, obscures other forms of state response that could better address survivors' material needs, such as providing them with financial assistance, housing, childcare, and other social services.

While these findings are unlikely to surprise VAW specialists, who have long questioned the efficacy of criminal justice to tackle gender-based violence,[10] we suggest that the state's failure to provide protection, including by police, highlights the *gendered* nature of criminal law-first efforts to offset insecurity. We hereby make three interventions into broader debates about the role of law—especially criminal law—in development and security. First, we add our voices to those urging a socio-legal approach to law and development beyond attempts to bridge the "law on the books/law in action" gap. A focal point of Latin American socio-legal studies has been the "instrumental inefficacy of law".[11] One of our hopes is that we can move past what Fionnuala Ni Aolain calls the "lost in translation" critique,[12] whereby, rather than theorise or critically analyse the demand for more law, legal scholars and practitioners identify

---

8 INEC, "Violencia de Género."

9 For a detailed account of fieldwork findings, see Silvana Tapia Tapia, "Beyond Carceral Expansion: Survivors' Experiences of Using Specialised Courts for Violence Against Women in Ecuador," *Social & Legal Studies*, December 7, 2020, 0964663920973747.

10 E.g. E. Castelli and J. Jakobsen, eds., *Interventions: Activists and Academics Respond to Violence* (New York: Palgrave Macmillan, 2004); Teresita de Barbieri and Gabriela Cano, "Ni Tanto Ni Tan Poco: Las Reformas Penales Relativas a La Violencia Sexual," *Debate Feminista* 2 (1990): 345–56; Holly Johnson, "Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault," in *Sexual Assault in Canada: Law, Legal Practice and Women's Activism*, ed. Elizabeth A. Sheehy (Ottawa: University of Ottawa Press, 2012), 613–34.

11 Mauricio García Villegas and César Rodríguez Garavito, "Derecho y sociedad en América Latina: propuesta para la consolidación de los estudios jurídicos críticos," in *Derecho y Sociedad En América Latina: Un Debate Sobre Los Estudios Jurídicos Críticos*, ed. Mauricio García Villegas and César Rodríguez Garavito (Bogotá: Universidad Nacional de Colombia, 2003), 15–66.

12 Fionnuala Ní Aoláin, "Gendered Harms and Their Interface with International Criminal Law," *International Feminist Journal of Politics* 16, no. 4 (October 2, 2014): 622–46.

the implementation gap, and try to reduce it with "law plus" measures that leave law itself, and its role within uneven development and gender inequality, uninterrogated. By contrast, we show how turning to specialised law and courts disempowered violence survivors while bolstering the state.

Secondly, we seek to *gender* the discussions of the turn to law within development and security studies by asking what the Ecuadorian example adds to existing work on the state's uneven presence and absence in the lives of underprivileged women. To this end, we invoke the concept of the "absent present" state, crafted in Daniel Goldstein's ethnographic work in Cochabamba,[13] alongside other work on state abandonment, recognition, and neglect.[14] This scholarship centres on the *dual* role of law and police in everyday (in)security for those who exist outside the protection of the state yet are subjected to its constraints, such that they can be abandoned and burdened at the same time. In line with other work analysing state *performances* of protecting women from violence,[15] we highlight the ineffective nature of the "courtroom show" in terms of supporting survivors while tracing its other, troubling effects.

Thirdly and finally, we augment some critiques of "carceral feminism"[16] and its role in producing penal expansion. There is a growing consensus within counter-hegemonic feminisms that carcerality harms people who are already subject to stigma and marginalisation[17]— although the way in which feminist anti-violence campaigns have themselves caused an increase in incarceration is a matter of debate.[18] The turn to penality has also been criticised by feminist scholars and activists who point to the inadequacy of criminal proceedings in attending to survivors' needs.[19] Others have explored how certain modes of "governance feminism" amplify and normalise carceral narratives via feminist campaigns to criminalise and punish

---

13 Daniel M. Goldstein, *Outlawed: Between Security and Rights in a Bolivian City* (Durham and London: Duke University Press, 2012).

14 Elizabeth Povinelli, *Economies of Abandonment. Social Belonging and Endurance in Late Liberalism* (Durham and London: Duke University Press, 2011); Luis Eslava and Lina Buchely, "Security and Development? A Story about Petty Crime, the Petty State and Its Petty Law," *Revista de Estudios Sociales*, no. 67 (January 1, 2019): 40–55.

15 Rosalind C. Morris, "The Mute and the Unspeakable," in *Law and Disorder in the Postcolony*, ed. Jean Comaroff and John Comaroff (Chicago: University of Chicago Press, 2006), 57–101.

16 Elizabeth Bernstein, "Carceral Politics as Gender Justice? The 'traffic in Women' and Neoliberal Circuits of Crime, Sex, and Rights," *Theory and Society* 41, no. 3 (2012): 233–59.

17 Julia Sudbury, ed., *Global Lockdown: Race, Gender, and the Prison-Industrial Complex* (New York and London: Routledge, 2005); Moira Pérez and Blas Radi, "Gender Punitivism: Queer Perspectives on Identity Politics in Criminal Justice," *Criminology & Criminal Justice: The International Journal of Policy and Practice*, July 14, 2020, 1748895820941561; Elizabeth Whalley and Colleen Hackett, "Carceral Feminisms: The Abolitionist Project and Undoing Dominant Feminisms," *Contemporary Justice Review* 20, no. 4 (October 2, 2017): 456–73.

18 For an overview of stances in this regard see Janet Halley et al., "From the International to the Local in Feminist Legal Responses to Rape, Prostitution/sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism," *Harvard Journal of Law & Gender* 29 (2006): 335–423; Lise Gotell, "A Critical Look at State Discourse on 'Violence against Women': Some Implications for Feminist Politics and Women's Citizenship," Women and Political Representation in Canada (University of Ottawa Press, 1998), 39; Rose Corrigan, *Up Against a Wall: Rape Reform and the Failure of Success* (New York and London: NYU Press, 2013); Tapia Tapia, "Feminism and Penal Expansion: The Role of Rights-Based Criminal Law in Post-Neoliberal Ecuador.".

19 Leigh Goodmark, *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence*, First edition (Oakland, California: University of California Press, 2018); Johnson, "Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault"; Elena Larrauri, *Criminología Crítica Y Violencia de Género* (Madrid: Trotta, 2007).

sexual violence.[20] This article does not centre the topic of governance feminism in Latin America, although we draw on work that has done so.[21] However, in our discussion, we note that criminal laws on VAW did not result in more people being subject to police surveillance or put in prison in Ecuador. By contrast, criminal trials relating to VAW are characterised by high attrition levels: a high number of lawsuits are dropped before a sentence is issued. We thus seek to contribute to a gender-aware, empirically informed critique of penal expansion, which accounts for the *other* downsides of criminalisation, such as the loss of forms of protection and assistance for women.

In making these interventions, we trace the implications of re- or misdirecting the turn to the state for support as involving a demand for criminal law punishment, such that asking for services and protection has come to be (mis)heard as asking for a trial. We show what this entails for survivors, for their ability to access justice as they envision it, and for a broader understanding of the link between security, gender, law, and development. We show that the state is increasingly absent in terms of key support for women but increasingly present in a criminal law-centred fashion that often causes harm. The failures of the trial-centred solution are then blamed on women and, as a consequence, discussions of VAW tend to revolve around the need for women's legal education, 'empowerment' (understood as willingness to pursue a criminal conviction), and strategies to better implement the rule of law. Urgent redistributive policies that would allow women to access shelters, housing, healthcare, therapy, financial support, childcare, and other services, are displaced. In part, the state's presence, via criminal law, enables its absence in these other key realms.

1. VIOLENCE AGAINST WOMEN, SECURITY, AND THE TURN TO CRIMINAL LAW IN DEVELOPMENT

> "Impunity for violence against women suggests impunity for criminal behaviour and the disintegration of the rule of law".[22]

As Rajagopal and others note, since the 1990s, the law has become central to global development efforts to secure democracy, human rights, and markets, meaning that a wide range of actors shares an enthusiasm for strengthening the role (and the rule) of law.[23] Moreover, security

---

20 Janet Halley et al., *Governance Feminism: An Introduction* (Minneapolis and London: University of Minnesota Press, 2018).

21 See, for instance: Sonia E. Alvarez, "Translating the Global Effects of Transnational Organizing on Local Feminist Discourses and Practices in Latin America," *Meridians* 1, no. 1 (2000): 29–67; Lina María Céspedes Báez, "Far beyond What Is Measured: Governance Feminism and Indicators in Colombia," *International Law: Revista Colombiana de Derechos Internacional* 12, no. 25 (October 15, 2014): 311–74.

22 UNIFEM, *Not a Minute More: Ending Violence Against Women* (New York: Kumarian Press, 2003), 7.

23 Richard Falk, Balakrishnan Rajagopal, and Jacqueline Stevens, eds., *International Law and the Third World: Reshaping Justice*, 1 edition, Routledge Research in International Law (Oxon: Routledge-Cavendish, 2008). See inter alia David Kennedy, "The 'Rule of Law,' Political Choices, and Development Common Sense," in *The New Law and Economic Development: A Critical Appraisal*, ed. David M. Trubek and Alvaro Santos

is a key lens through which the demand for more and better law is mediated. From the World Bank to UN-Habitat, development agencies have come to see violence, crime, and insecurity as within their remit. For example, citing Jeffrey Sachs, leading development specialists noted in 2006 that "governments, civil society, and the private sector alike increasingly prioritise violence as a development constraint".[24]

In their influential collection on crime in the Global South, Comaroff and Comaroff link this fetishization of the rule of law and law enforcement to a growing anxiety about violence.[25] They note that rulers –themselves often compromised by corruption– stage police dramas and crackdowns when they come under pressure to act in the face of unrest. The fetishism of law is more than an enchanted faith in new constitutions;[26] the culture of legality infuses everyday life, and manifests in citizenship education programmes, the explosion in law-oriented NGOs, and appeals to the police and judiciary to restore order: "Lawfulness has replaced justice as the measure of ethical action" in the world.[27]

As others in this collection and elsewhere note, the turn to violence and (in)security as development concerns was especially pronounced in Latin America. The World Bank's work on crime and violence as development issues originated in its Latin America and the Caribbean region, including via extensive research in Guatemala and Colombia.[28] The Inter-American Development Bank played a leading role in the regional promotion of national and city-level programmes to achieve peace and security.[29] Literature about the region has often characterised it as violent, with above-average homicide rates (especially in urban areas).[30] It is widely accepted that greater inequality is correlated with the worsening of violence and that Latin

---

(Cambridge University Press, 2006), 95–173; Liliana Lizarazo-Rodriguez, "Mapping Law and Development," *The Indonesian Journal of International & Comparative Law* IV, no. 4 (October 1, 2017): 761–895.

24 Caroline Moser and Cathy McIlwaine, "Latin American Urban Violence as a Development Concern: Towards a Framework for Violence Reduction," *World Development* 34, no. 1 (2006): 107; Mark Duffield, "The Liberal Way of Development and the Development—Security Impasse: Exploring the Global Life-Chance Divide," *Security Dialogue* 41, no. 1 (February 1, 2010): 53–76.

25 Comaroff and Comaroff, *Law and Disorder in the Postcolony*. For more on law as a fetish see: Julieta Lemaitre, *El Derecho Como Conjuro: Fetichismo Legal, Violencia Y Movimientos Sociales* (Bogotá: Siglo del Hombre Editores, 2009). Lemaitre explains one sense of the term "legal fetishism" as the condition of not accounting for the gap that separates the passing of a law from its application, that is, being deceived by the ritualism of legal rules, indefinitely postponing the confrontation with its lack of application

26 "Aspirational constitutionalism" is the subject of multiple studies in Latin America, addressing the fetishization of constitutions as a means to re-create and re-make the nation. See Mauricio García Villegas, "Constitutionalism Aspirational: Law, Democracy and Social Change in Latin America," *Análisis Político* 25, no. 75 (2012): 89–110.

27 Comaroff and Comaroff, *Law and Disorder in the Postcolony*, 21.

28 Cathy McIlwaine and Caroline Moser, "Violence and Social Capital in Urban Poor Communities: Perspectives from Colombia and Guatemala," *Journal of International Development* 13, no. 7 (2001): 965.

29 Moser and McIlwaine, "Latin American Urban Violence as a Development Concern: Towards a Framework for Violence Reduction," 107; Oliver Jütersonke, Robert Muggah, and Dennis Rodgers, "Gangs, Urban Violence, and Security Interventions in Central America," *Security Dialogue* 40, no. 4-5 (August 1, 2009): 373–97.

30 Robert Muggah and Katherine Aguirre Tobón, "Citizen Security in Latin America: Facts and Figures" (Igarapé Institute, 2018); Peter Imbusch, Michel Misse, and Fernando Carrión, "Violence Research in Latin America and the Caribbean: A Literature Review," *International Journal of Conflict and Violence* 5, no. 1 (June 6, 2011): 87–154.

America is the most unequal region in the world. These accounts are often based on quantitative studies looking at the incidence of violence and its correlation to poverty.[31]

That said, there have been shifts in understanding the link between development, security, and the rule of law in the region. The "*mano dura*" approach that proliferated in the 1990s resulted in a significant expansion of imprisonment in some countries (e.g., El Salvador; Honduras; Nicaragua). However, as Muggah and others suggest, the current generation of citizen security work has a more complex relationship with penal expansion.[32] The "*mano amiga/ mano extendida*" approach focuses on prevention, rehabilitation, reform, skills-training, etc. Nevertheless, some critics have noted that this less punitive, more "inclusive" approach can mask the state's continued abandonment of marginalised groups. For example, Eslava and Buchley's analysis of citizen security initiatives in Colombia[33] highlights the complex synergy between inclusion and neglect, drawing on Elizabeth Povinelli's concept of orchestrated state abandonment. Their research on programmes targeting at-risk youths in Cali found that most interventions misfire: the fixes offered —such as workshops on self-esteem — fail to address economic redistribution and lack of access to basic social services, leaving the roots of social violence untouched. These programmes expose young people to the state, but in a limited, petty way: the state is never robust enough to actually solve any problems.

Contrary to the claims of some law and development specialists, in these accounts, the law creates uncertainty and insecurity for underprivileged people. Daniel Goldstein's ethnography of the "present absent" Bolivian state in a low-income *barrio* reveals that the state is there — but in law-first ways that often make matters worse:

> The law operates […] to erect obstacles, sometimes to the very security that people so desperately crave; it strains to impose its own conception of order, which may not conform well to the kinds of social order that barrio residents desire. The law excludes people by failing to attend to their needs while including them in select regulatory regimes of its own devising—a double outlawing that leaves people both outside the law and problematically within it, but in neither sense secure.[34]

Against this state, present primarily in the form of legalism, citizens dreamed of an alternative, involved state, able to provide the services that are essential for everyday security.

These debates are helpful for our focus on VAW for a number of reasons. Although today VAW is understood globally through medical and psychological discourses, security technologies, and criminal law and policy until the mid-1980s, it was broadly considered a

---

31 Augusto De la Torre, Julian Messina, and Joana Silva, "The Inequality Story in Latin America and the Caribbean: Searching for an Explanation," in *Has Latin American Inequality Changed Direction?* (Springer, Cham, 2017), 317–38; Jeffrey G. Williamson, "Latin American Inequality: Colonial Origins, Commodity Booms or a Missed Twentieth-Century Leveling?," *Journal of Human Development and Capabilities* 16, no. 3 (July 3, 2015): 324–41.

32 Robert Muggah, "The Rise of Citizen Security in Latin America and the Caribbean," *Revue Internationale de Politique de Développement* 9, no. 9 (October 10, 2017): 291–322; Jütersonke, Muggah, and Rodgers, "Gangs, Urban Violence, and Security Interventions in Central America.".

33 Eslava and Buchely, "Security and Development? A Story about Petty Crime, the Petty State and Its Petty Law."

34 Goldstein, *Outlawed: Between Security and Rights in a Bolivian City*, 6.

manifestation of social inequality to be remedied via access to resources and services. For instance, the 1980 Copenhagen World Conference on Women referred to "battered women and violence in the family" as a problem requiring the intervention of states to provide assistance, shelters, rehabilitation, child care, employment, healthcare, and housing.[35] Likewise, a 1984 report presented to UNESCO by Ecuadorian researchers, entitled "Problems That Concern Women And Their Consideration In Development Planning: The Case Of Ecuador," showed that women in lower-income neighbourhoods of Quito did not see criminal justice or police as pathways to address domestic abuse. Instead, women demanded access to basic services, education, and training for better jobs, adequate transportation links, and more medical centres. The authors of this report did not centre criminal justice as the key response to gender-based violence.[36] Even in early work on gender, security, and development, we see a broader lens on VAW, not focused on criminal law enforcement. For instance, the pioneering work of Caroline Moser, who framed violence and insecurity as development issues, had a strong gender component from the outset. She was a Gender and Development (GAD) specialist, and her participatory approach to defining violence foregrounded women's and children's experiences of intra-family abuse.[37] Moser did not advocate a "criminal law first" strategy for VAW; instead, she de-centred criminal policy, mainly because the most affected people did not themselves see police as a solution. Her analysis of perceptions of violence in Guatemala featured more discussion of poverty than crime.[38]

Between the 1980s and the 1990s, however, the emphasis on law reform as a solution intensified. Key here were the efforts of the US-based Center for Women's Global Leadership (CWGL), which focused on the failure of the international human rights movement to consider women's rights as human rights.[39] These arguments often converged with ideas stemming from the Anglo-American battered women's movement, as well as some radical feminist thinking on sexual violence.[40] Such encounters facilitated a link between fighting VAW and demanding its criminalization. In turn, in part as a result of the influence of these feminist-inspired human rights framings,[41] international law and policy responses to VAW have become more focused

35 United Nations, "Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace, Copenhagen, July 1980" (United Nations, 1980).

36 UNESCO, "Problems That Concern Women and Their Consideration in Development Planning" (UNESCO, 1984), 44, http://unesdoc.unesco.org/images/0006/000632/063207eb.pdf.

37 Caroline Moser and Elizabeth Shrader, *A Conceptual Framework for Violence Reduction* (World Bank, Latin America and Caribbean Region, 1999); Moser and McIlwaine, "Latin American Urban Violence as a Development Concern: Towards a Framework for Violence Reduction."

38 McIlwaine and Moser, "Violence and Social Capital in Urban Poor Communities: Perspectives from Colombia and Guatemala."

39 Charlotte Bunch and Roxanna Carrillo, *Gender Violence: A Development and Human Rights Issue* (Center for Women's Global Leadership, 1991).

40 Catharine MacKinnon, "Sexuality, Pornography, and Method: Pleasure under Patriarchy," *Ethics* 99, no. 2 (1989): 314–46; Elizabeth M. Schneider, *Battered Women and Feminist Lawmaking* (New Haven and London: Yale University Press, 2000).

41 Feminist work on VAW as a human rights issue has not always centred criminal law. Some campaigners highlighted how legal systems facilitated the violence to which women were subjected: see, for example, Diana Russell and Nicole Van de Ven, *Crimes against Women: Proceedings of the International Tribunal* (USA: Les Femmes, 1976). We address the growing turn to law within gender and development, and violence against

on state responsibility to prosecute and punish. In this understanding, criminalising VAW signified progress toward gender equality.

This revised approach to security, development, human rights, and VAW, is exemplified in UNIFEM's flagship 2003 report "Not a minute more: ending violence against women". Here, the measure of progress is that women come forward and demand justice; that governments recognise VAW to be "not cultural but criminal",[42] and that VAW be recognised as "the most universal and unpunished crime of all".[43] Noting approvingly that many countries have increased penalties for domestic violence, the report declared that moving misdemeanours into the realm of criminality "helps ensure that violence will not be treated as an acceptable societal norm, and can serve as a deterrent when assailants realize they will face punishment".[44] UNIFEM also highlighted the role of criminal law as a measure of human rights progress:

> By placing gender-based violence in a human rights framework, advocates have been able to put pressure on governments to fulfil their obligations under international law to punish and prevent such violence. In response, governments have introduced new legislation and strengthened old laws, making domestic violence, rape, sexual harassment, FGM, trafficking and other forms of violence against women criminal offences. As of this writing, forty-five nations have laws that explicitly prohibit domestic violence and twenty-one more are drafting new laws to do so, while in many others criminal assault laws have been amended to cover domestic violence.[45]

Importantly, the report did not position legal change as the *sole* priority when combating VAW. It noted that governments have changed laws without resourcing services such as legal aid, counselling, shelters, health care, and housing, and without putting in place measures to protect the women who are most exposed to the predictable backlash that ensues when societies begin to tackle misogyny.[46] However, the emphasis on law reform *plus* effective implementation keeps law itself unchallenged as the starting point. This is, in short, a classic "law-plus" strategy.

Such law-heavy frameworks were, in many respects, forged within the Inter-American Human Rights system. The Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belem Do Pará Convention), defined VAW as a violation of human rights. Article 7, which establishes member states' duties, prioritises law reform: six out of eight items refer to states' commitment to legal change, including the creation of criminal laws and sanctions for VAW. Likewise, the case law of the Inter-American Court of Human Rights (IACtHR)

---

women activism, elsewhere: Kate Bedford, "Law, Gender, and Development: Potent Hauntings," *Law and Development Review* 13, no. 1 (February 25, 2020), https://doi.org/10.1515/ldr-2019-0066; Tapia Tapia, "Feminism and Penal Expansion: The Role of Rights-Based Criminal Law in Post-Neoliberal Ecuador."

42 UNIFEM, *Not a Minute More: Ending Violence Against Women*, 11.

43 Ibid., 15.

44 Ibid., 39.

45 Ibid., 10.

46 Ibid., 34.

emphasises states' duties to investigate and punish perpetrators of VAW. State accountability primarily takes the form of law reform and effective prosecution to avoid impunity.[47]

Moreover, a VAW strategy focused on criminal law resonated with some Latin American states. The Beijing processes, for instance, were quite influential: the 1995 Platform for Action impacted on the creation of new legislation on VAW in virtually every country in the region.[48] In Ecuador, largely due to the commitments acquired after Beijing 1995, "women's affairs" offices were given institutional autonomy, gaining a better position to propose criminal law reform on VAW, usually with the input of women's NGOs.[49]

Similarly, addressing insecurity in Latin American cities, a more recent UNIFEM publication, "Cities without Violence against Women, Safe Cities for All" (2017),[50] identifies growing violence and insecurity in Latin America as closely related to VAW. Adequate measures to tackle the problem, according to UNIFEM, include stronger laws and policies against VAW in public spaces. One of the pilot cities for UNIFEM's intervention was Quito; as a result of their fieldwork, UNIFEM allied with the local municipality to introduce a mobile app for women who use public transport. This allows them to report sexual harassment via text message, with some messages subsequently referred for action within the court system.

In sum, gender was historically central to the development and security field, but VAW was not always addressed primarily through criminal law reform and enforcement. Now, however, many states (and NGOs) have embraced a criminal law first approach to show that VAW is being taken seriously. We thus confront the paradox identified by Comaroff and Comaroff and others, in which the state performs attentiveness to violated women through criminal law, in order to restore public belief in the state's capacity to tackle violence and insecurity, while reducing social services. In the remainder of this article, we ask what effect this paradox has on survivors of assault themselves. When states show that they are taking insecurity, violence, and human rights seriously by advancing penal responses to VAW, what are the impacts on women? And what do their experiences of the state's presence and absence reveal about the gendered nature of the nexus between criminal law, violence, and security? The next section shows how the Ecuadorian case can help us answer these questions.

---

47 See for example: Maria da Penha Maia Fernandes Vs Brazil (2001), in which the Court called for the penal prosecution of perpetrators of domestic violence. See also Gonzáles and others Vs Mexico (Campo Algodonero case, 2009). Available in Liliana Tojo, Pilar Elizalde, and Federico Taboada, eds., *Herramientas Para La Protección de Los Derechos Humanos. Sumarios de Jurisprudencia. Violencia de Género*, segunda (Buenos Aires: CEJIL, 2011).

48 Fiona Macaulay, "Judicialising and (de) Criminalising Domestic Violence in Latin America," *Social Policy Report / Society for Research in Child Development* 5, no. 1 (2006): 103.. Specialised Laws on domestic violence were enacted in Peru in 1993 and 1997; Chile and Argentina in 1994; Bolivia in 1995, Colombia, Costa Rica, El Salvador, Guatemala and Mexico in 1996; and Venezuela in 1998.

49 Silvana Tapia Tapia, "Criminalising Violence against Women: Feminism, Penality, and Rights in Post Neoliberal Ecuador" (PhD, University of Kent, 2017), https://kar.kent.ac.uk/62463/; Amy Lind, *Gendered Paradoxes. Women's Movements, State Restructuring and Global Development in Ecuador* (USA: Pennsylvania State University Press, 2005).

50 UN Women, "Safe Cities and Safe Public Spaces: Global Results Report" (UN Women, 2017).

2. A CASE STUDY OF THE ABSENT-PRESENT STATE: ECUADOR'S SPECIALISED COURTS FOR VIOLENCE AGAINST WOMEN

As noted above, Ecuador's VAW law and policy is to a large extent the result of state commitments stemming from human rights instruments. As elsewhere, the lack of national political will to adopt gender equality legislation has resulted in women's movements turning to international law and policy to leverage local legal change.[51] However, while there has been a "cascading"[52] from the international to the domestic in matters of VAW, Ecuador's post-2008 reforms were also facilitated by internal processes, including the Citizen's Revolution's[53] efforts to implement a "post-neoliberal" development model. Although Correa's regime was criticised for its reluctance to promote sexual and reproductive rights,[54] the reformed state agencies enabled some women, including self-identified feminists, to participate in law and policymaking. Diverse strands of the women's movement thus took part in debating the 2014 Penal Code, and its provisions on VAW. Tensions amongst feminists surfaced, partly due to some groups' concerns that a criminal trial would be too onerous for most complainants to pursue. Nevertheless, a majority agreed that criminalisation was indispensable to ensure an effective protection of rights.

We have documented the making of the 2014 Penal Code elsewhere,[55] and further reforms on VAW have passed since, resulting in multiple and intricate procedural rules. Suffice to recap here that, presently, specialised judges are competent to hear misdemeanours and criminal offences concerning VAW, including physical and psychological violence, femicide, and sexual violence.[56] Most domestic violence infractions are judged as misdemeanours, and the majority of women we interviewed were survivors of domestic violence.

A key finding of our research is that women turned to the courts mainly seeking safety through a protection order that is issued *ex parte* after filing a complaint. For instance, when asked what her primary motivation was to report domestic abuse, one participant resolutely

---

51 Francesca Miller, "Latin American Feminism and the Transnational Arena," Women, Culture, and Politics in Latin America (Berkeley: University of California Press, 1992), 10–26.

52 Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics (The Norton Series in World Politics)*, 1 edition (W. W. Norton & Company, 2011).

53 The term Citizen's Revolution was adopted by the government of Rafael Correa (2007-2017) to refer to its "post-neoliberal" programme. The regime sought to differentiate itself from the "long neoliberal night", a term describing past regimes that implemented the Washington Consensus.

54 Amy Lind and Christine Keating, "Navigating the Left Turn: Sexual Justice and the Citizen Revolution in Ecuador," *International Feminist Journal of Politics* 15, no. 4 (2013): 515–33.

55 Tapia Tapia, "Criminalising Violence against Women: Feminism, Penality, and Rights in Post Neoliberal Ecuador."

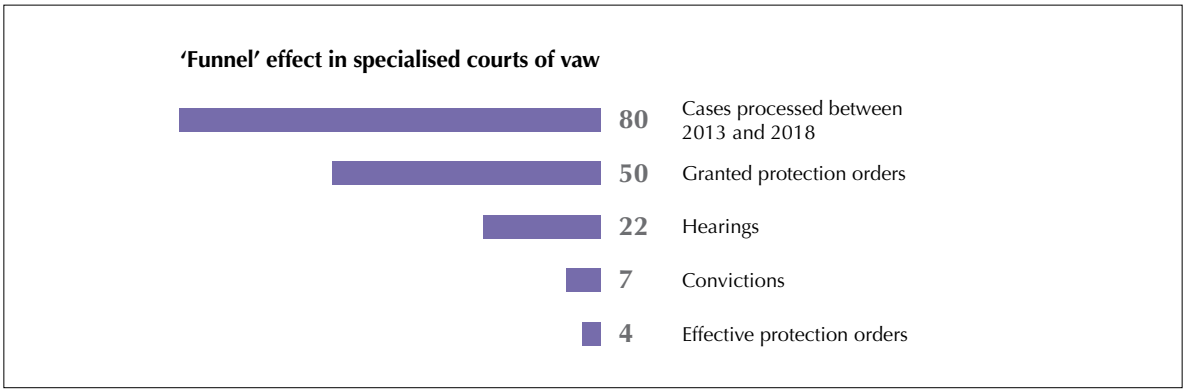
56 Misdemeanours are judged using an "expedited procedure for the misdemeanour of violence against the woman or members of the nuclear family" (Penal Code Art. 643). Specialised judges hear all stages of the trial. Until late 2019, criminal offences were judged using the ordinary procedural rules for all crimes. Feminist lawyers presented a constitutional action denouncing the National Assembly's failure to provide a specialised procedure for VAW. As a result, the Constitutional Court commanded the Assembly to create such rules, which passed in December of 2019. How these new rules will operate is still to be assessed empirically: specialised judges hear criminal offences of VAW only during the pre-trial stage, after which the case file is sent to an ordinary penal tribunal, suggesting that the new procedure is neither specialised nor expedited.

affirmed: "My intention was to protect myself".[57] The protection order usually includes a prohibition on the aggressor approaching the complainant, or an order for him to leave the shared home. The ever-present hope for protection is also illustrated in the following excerpt, in which an interviewee commented:

> At that moment I wanted him to leave the house [...]. Because I had heard more or less what the process was like: that if I filed the complaint the police would go and take him out of the house; then, that is what I expected.[58]

However, protection orders are valid only as long as criminal proceedings move forward. They do not become permanent unless sufficient evidence of abuse is submitted. In other words, the protection order is subordinated to the progress and outcome of the trial. If complainants do not attend a hearing, or otherwise "fail" to advance the process, the order can be revoked due to lack of legal grounds to maintain restrictions on the defendant's rights. As a result, a majority of survivors lose protection, since most do not return to the court after reporting violence. Both our own dataset and the official statistics revealed that only a marginal percentage of lawsuits ever receive a judicial decision — 11% according to the Judicial Council's data. Moreover, as Figure 1 illustrates, very few complainants obtain a permanent protection order. Out of 80 law clinic-sponsored complaints, between 2013 and 2018, only 22 hearings took place, and only 4 protection orders were secured after the hearings.

Figure 1. "Funnel" effect in the specialised courts



Source: dataset compiling the law clinic's case files.

Complainants withdraw from trials for various reasons. The qualitative information we extracted from the case files, alongside the interview data, revealed that women do not return to the courts mainly due to fears of retaliation, of rejection by friends and family, and of losing the economic support the aggressor provides. A trial requires many resources in short supply for low-income women, including time, legal advice, transportation, and childcare. In addition,

57 Violence survivor, personal interview, Cuenca, July 22, 2019.

58 Violence survivor, personal interview, Cuenca, May 14, 2019.

the specialised court proceedings, despite being termed "expedited", are difficult for survivors to navigate. They told us stories of alienation from public institutions, and disorienting procedural requirements:

> I had thought that the paperwork would be quick, because if one requests the protection order it is because one needs it soon, and it has already been over a month [...] and I have not received [the protection order] to this day.[59]

> I had gone to another institution, but they told me 'no', that that was not [the right office], that I had to look elsewhere. When I got to another place, I was told that it was not there, and well, in the end I had to, as I always say, continue searching.[60]

> Judges too acknowledged that a criminal trial is usually onerous for complainants:

> [...] The entire process causes difficulties [*es conflictivo*] for the victims... There is no criminal trial that I consider to be friendly for a victim: first, because they are required to provide information when filing the complaint, and later because they have to choose to give their anticipated testimony or appear in a hearing.[61]

Additionally, interviewees mentioned the absence of financial assistance, social security, health services, and publicly funded shelters to assist them and their children when they decide to leave the abuser. This lack of services was acknowledged as a key barrier by some judges; one of them, when asked about why attrition is so prevalent, answered:

> [one reason is] the lack of public policy so that there are other institutions and not necessarily the justice administration, to support these processes. There are people who do not have access to any type of service…Rural women, women who have no information, have no way to access the justice services. They do not have networks to help them conduct themselves, to be supported.[62]

Given the widely acknowledged fact that women approach the courts primarily seeking protection and services, it is jarring that access to services is disconnected from the specialised courts. The only shelter for battered women and their children operating in Cuenca is not state-funded, hardly meets the demand for refuge, and is not institutionally connected to the courts. Moreover, many survivors *only* want the protection order, not a trial:

> I obtained the protection order but... I mean, as I was telling [the aggressor]: 'hey I don't want to hurt you, you are the father of my children, I don't want to hurt you for the sake of the children', but he did not listen to me.[63]

---

59 Violence survivor, personal interview, Cuenca, February 19, 2019.

60 Violence survivor, personal interview, Cuenca, February 15, 2019.

61 Specialised judge, personal interview, Cuenca, April 16, 2019.

62 Specialised judge, personal interview, Cuenca, February 20, 2019.

63 Violence survivor, personal interview, Cuenca, July 22, 2019.

A first-contact judicial officer agreed that women often withdrew from the specialised process, and lost protection orders, because they did not want a trial:

> We explained [to the complainant] what the procedure was like, and so she was one of the people who said, "I don't want to, I don't want to, and I don't want the hearing, I just want the protection order".[64]

These examples suggest a gap between what women envision as protection, and what the state offers via its judicial system. Women want violence to stop. The absent-present state offers a Penal Code, courts, and a protection order that only becomes durable if the goals of the criminal proceedings (i.e., establishing criminal responsibility) are pursued and achieved. Furthermore, judges, caseworkers, and judicial officers regard conviction as the utmost goal of the process. Consequently, some legal professionals consider violence survivors responsible for "abandoning" the proceedings and becoming, as a consequence, unprotected. This is illustrated by the following account offered by a first-contact judicial officer:

> The protocol is explained [to the complainant]: what route is to be followed after filing a complaint, how this becomes a criminal trial, the stages it has, the evidence that they have to present, and obviously the consequences of not attending the hearing, for instance, that the judge will dismiss the complaint when [...] the complainant is not there, and then the [protective] measures will be revoked. [The complainants] are always told very clearly and precisely what this is about, how it is carried out and that they have to comply with the legal procedure that this entails.[65]

In addition, many legal professionals think that attrition results from women's reconciliation with the aggressor. In reality, none of the survivors interviewed for this research said they had reunited with their abusers. By contrast, they withdrew from the trial because they did not have a place to go, or financial security to ensure their own, and their children's, subsistence. However, the idea of a cycle of abuse whereby women, at some point, forgive and forget, was recurrent in lawyers' narratives. This reinforced the idea that lack of access to justice results from women's own "negligence" or emotional dependence. Thus, most lawyers consider that assistance for women should take the form of "empowerment" to ensure they bring the trial to a conclusion. As a specialised judge put it: "That is a shortcoming that we have in the system, we do not have a team that facilitates the empowerment of women so that they move forward with the process".[66]

What is more, protection orders tend not to be effective even while they are still valid. Formally, it is police that are competent to enforce a protection order (the violation of which is a criminal offence itself) and respond to women during an emergency. Still, it was evident from survivors' testimonies that police intervention was far from what women expected or needed.

---

64 First-contact officer, personal interview, Cuenca, May 14, 2019.

65 First-contact judicial officer, personal interview, Cuenca, July 1, 2019.

66 Specialised judge, personal interview, Cuenca, February 20, 2019.

Most interviewees' experiences of interacting with police were either of indifference and inaction (the police never arrived, arrived late, or did not offer help or useful information), or of minimisation of the abuse. One survivor told us:

> When I have had problems [...] with my aggressor, I have called the police, and they have never arrived. What I wanted then has never been fulfilled, sometimes one wants to say, 'I want justice', and it is never delivered.

In another case that was particularly unnerving, a policeman had arrived but befriended the aggressor, drank some beers with him, and attempted to convince the complainant not to take forward any legal action for the sake of the children.

Again, the police's ongoing failure to protect women from intimate-partner violence will not be surprising to VAW researchers. It has long been noted that police tend to reproduce hegemonic masculinities when they intervene in VAW.[67] However, it is important to stress the distinctive effects of the police's response when they encounter VAW, since it is clear that the effects of criminalisation, in the domain of VAW, are different from those that penal expansion produces in other areas. In our case study, the turn to criminal law did not result in increased surveillance and/or incarceration of stigmatised men. Neither did we observe that criminal law expansion was facilitating a differentiated surveillance of women.[68] When survivors of domestic violence seek help from the police, they frequently encounter passivity or disdain.

That said, however, police inaction in the field of VAW adds a new, gendered dimension to research on the dynamics of state presence and absence. As Goldstein observes, based on his work in Bolivia,[69] the state is partially but not helpfully present: it "imposes certain kinds of legal regulation but neglects others, making the state into a phantom, at once there and not there, a ghostly presence that generates more insecurity than it prevents".[70] In our example, the Ecuadorian state is present in the form of law and courts, but it is not there to provide the resources and services that are materially necessary to overcome violence, including emergency assistance by police. The specialised system allows the state to make an exhibition of action that is in practice hollow. Courts, criminal proceedings, and even protection orders ultimately fail to lead to any substantial outcome for women. The posturing state performs, to itself and the world, that it is taking violence seriously, while survivors find protection harder to access. Insecurity is produced because criminalisation derails protective measures that could make a meaningful difference. This is a distinctive 'misfiring', since the state's response

---

67 Johnson, "Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault"; R. Emerson Dobash and Russell Dobash, *Violence against Wives: A Case against the Patriarchy* (New York: Free Press, 1979).

68 This contrasts with the patterns noted by feminist criminologists in areas such as drug trafficking. See: Jennifer Fleetwood, *Drug Mules: Women in the International Cocaine Trade* (UK: Palgrave Macmillan, 2014); Andreina Isabel Torres Angarita, "Drogas Y Criminalidad Femenina En Ecuador: El Amor Como Un Factor Explicativo En La Experiencia de Las Mulas," ed. Mercedes Prieto Noguera (Master in Social Sciences, FLACSO sede Ecuador, 2007), http://repositorio.flacsoandes.edu.ec/handle/10469/1317.

69 Daniel M. Goldstein, *Owners of the Sidewalk: Security and Survival in the Informal City* (Durham and London: Duke University Press, 2016).

70 Ibid., 6.

to VAW makes the interventions that are desired by women –protection and services– harder to get. Through the contradictory relationship between protection orders and the trials that end up invalidating them, we see this misfiring at its starkest: the very grounds for claiming progress (criminalization) make the possibility of effective intervention even more remote.

CONCLUSION

In this article, we have used a case study of Ecuador to explore the effects, on survivors, of the turn to criminal law as indicative of progress towards gender equality, development, and security. In arguing that more attention should be paid to gender, we reminded readers that VAW was a foundational concern of those who directed the development gaze to the problem of violence and insecurity. We are not ourselves adding gender-based violence to the debate, but rather reciting it as central to the story.[71] With that in mind, we have endeavoured to uncover the distinct consequences of conceptualising gender-based violence as a security and development issue.

We found that the move to criminal law and penality — often used internationally as a sign of taking VAW more seriously— undermines protection. This occurs in two key ways. Firstly, access to a protection order is made more difficult, contingent on pursuing, and winning at, a criminal trial. In our study, women rarely wanted a trial and, when they did, there were material obstacles to pursuing one that were not acknowledged by state actors. Protection orders lapsed when trials failed to progress, and survivors were then held responsible for "abandoning" the trial and considered in need of "empowerment". This emphasis on the trial, in turn, diverts institutional attention from women's more substantial needs. Secondly, police continued to fail survivors, by not responding to their calls for help, or by minimising the threat posed to them and failing to provide effective protection and resources.

On a practical and immediate level, these findings suggest there is an urgent need to decouple the state's protective capacities from the criminal trial, such that restraining orders, and services, do not hinge on a conviction. This is a difficult demand for women's movements to make, especially when governments are less than enthusiastic about comprehensive measures to tackle violence and point to criminal law reforms as key evidence of progress. In late 2019, the Ecuadorian government announced a reduction of 84% in the annual budget allocated to implement the Law to Eradicate and Prevent Violence Against Women.[72] Many women's organisations have responded with calls to protect, and resource implementation of the law. However, funding for protection and services still requires more attention within these discussions: our research showed that even when the law *was* used by women to file complaints, it failed to protect them. The experiences of women who approach the courts strongly suggest that

---

71 For more on recitation in gender and development, an approach inspired by Claire Hemmings' re-narratization of feminist histories, see Bedford, "Law, Gender, and Development: Potent Hauntings."

72 Valeria Heredia, "Médicos Y Mujeres Rechazan Reducción de Presupuesto En Prevención de Embarazo Adolescente Y Violencia de Género," December 3, 2019, https://www.elcomercio.com/actualidad/reduccion-presupuesto-prevencion-violencia-genero.html; Jose Robalino, "Víctimas de Violencia de Género Se Quedan Sin Presupuesto Y Sin Atención," Pichincha Comunicaciones, January 13, 2020, http://www.pichinchacomunicaciones.com.ec/victimas-de-violencia-de-genero-se-quedan-sin-presupuesto-y-sin-atencion/.

the debate needs to move beyond the "implementation gap" or the need for law *plus* other measures. Laws and courts enable the state to demonstrate action in the realm of women's security and safety while masking—and in some respects fuelling—state abandonment: the state's failure to protect women occurs in part *as a result of* criminal law's status as a signifier of protection.

Our case study hereby highlights a particular form of state "misfiring", and a gendered synergy between state presence and absence. Beyond the phenomenon of penal expansion discussed in critiques of securitisation and carceral feminism, and beyond the limits of fetishizing law as a response to maldevelopment and insecurity, we argue that using harsher criminal law as evidence that states are taking VAW seriously may undercut the effective protection of survivors. Today's legal discourses are largely focused on the rule of law, law reform, criminal law enforcement, legal education, and "empowerment" to report violence but, on the ground, criminal justice demands of survivors that they shift their understanding of protection to fulfil the goals of the trial. There is a crucial relationship between the weakened state and the turn to criminal law; the state performs for itself and to itself, but with real negative consequences for survivors. In sum, the state's presence and absence are interrelated and co-constituted. The broader lesson here, for us, is that we need to concretely interrogate the distinctive effects of the turn to different sorts of law on the lives of citizens. Without careful attention to the grounded consequences of legal interventions, we run the risk of ignoring and veiling some structural dimensions of exclusion and leaving aside more effective solutions to women's pressing problems.

REFERENCES

1. Alvarez, Sonia E. "Translating the Global Effects of Transnational Organizing on Local Feminist Discourses and Practices in Latin America." *Meridians* 1, no. 1 (2000): 29–67.
2. Barbieri, Teresita de, and Gabriela Cano. "Ni Tanto Ni Tan Poco: Las Reformas Penales Relativas a La Violencia Sexual." *Debate Feminista* 2 (1990): 345–56.
3. Bedford, Kate. "Law, Gender, and Development: Potent Hauntings." *Law and Development Review* 13, no. 1 (February 25, 2020). https://doi.org/10.1515/ldr-2019-0066.
4. Bernstein, Elizabeth. "Carceral Politics as Gender Justice? The 'traffic in Women' and Neoliberal Circuits of Crime, Sex, and Rights." *Theory and Society* 41, no. 3 (2012): 233–59.
5. Bunch, Charlotte, and Roxanna Carrillo. *Gender Violence: A Development and Human Rights Issue*. Center for Women's Global Leadership, 1991.
6. Castelli, E., and J. Jakobsen, eds. *Interventions: Activists and Academics Respond to Violence*. New York: Palgrave Macmillan, 2004.
7. Céspedes Báez, Lina María. "Far beyond What Is Measured: Governance Feminism and Indicators in Colombia." *International Law: Revista Colombiana de Derechos Internacional* 12, no. 25 (October 15, 2014): 311–74.
8. Comaroff, Jean, and John L. Comaroff, eds. *Law and Disorder in the Postcolony*. Chicago: University of Chicago Press, 2006.
9. Corrigan, Rose. *Up Against a Wall: Rape Reform and the Failure of Success*. New York and London: NYU Press, 2013.

10. De la Torre, Augusto, Julian Messina, and Joana Silva. "The Inequality Story in Latin America and the Caribbean: Searching for an Explanation." In *Has Latin American Inequality Changed Direction?*, 317–38. Springer, Cham, 2017.

11. Dobash, R. Emerson, and Russell Dobash. *Violence against Wives: A Case against the Patriarchy*. New York: Free Press, 1979.

12. Duffield, Mark. "The Liberal Way of Development and the Development—Security Impasse: Exploring the Global Life-Chance Divide." *Security Dialogue* 41, no. 1 (February 1, 2010): 53–76.

13. Eslava, Luis, and Lina Buchely. "Security and Development? A Story about Petty Crime, the Petty State and Its Petty Law." *Revista de Estudios Sociales*, no. 67 (January 1, 2019): 40–55.

14. Falk, Richard, Balakrishnan Rajagopal, and Jacqueline Stevens, eds. *International Law and the Third World: Reshaping Justice*. 1 edition. Routledge Research in International Law. Oxon: Routledge-Cavendish, 2008.

15. Fleetwood, Jennifer. *Drug Mules: Women in the International Cocaine Trade*. UK: Palgrave Macmillan, 2014.

16. García Villegas, Mauricio. "Constitutionalism Aspirational: Law, Democracy and Social Change in Latin America." *Análisis Político* 25, no. 75 (2012): 89–110.

17. García Villegas, Mauricio, and César Rodríguez Garavito. "Derecho y sociedad en América Latina: propuesta para la consolidación de los estudios jurídicos críticos." In *Derecho y Sociedad En América Latina: Un Debate Sobre Los Estudios Jurídicos Críticos*, edited by Mauricio García Villegas and César Rodríguez Garavito, 15–66. Bogotá: Universidad Nacional de Colombia, 2003.

18. Garland, David. "Penality and the Penal State: Penality and the Penal State." *Criminology; an Interdisciplinary Journal* 51, no. 3 (August 2013): 475–517.

19. Goldstein, Daniel M. *Outlawed: Between Security and Rights in a Bolivian City*. Durham and London: Duke University Press, 2012.

20. Goldstein, Daniel M. *Owners of the Sidewalk: Security and Survival in the Informal City*. Durham and London: Duke University Press, 2016.

21. Goodmark, Leigh. *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence*. First edition. Oakland, California: University of California Press, 2018.

22. Gotell, Lise. "A Critical Look at State Discourse on 'Violence against Women': Some Implications for Feminist Politics and Women's Citizenship," 39. Women and Political Representation in Canada. University of Ottawa Press, 1998.

23. Halley, Janet, Prabha Kotiswaran, Hila Shamir, and Rachel Rebouché. *Governance Feminism: An Introduction*. Minneapolis and London: University of Minnesota Press, 2018.

24. Halley, Janet, Prabha Kotiswaran, Hila Shamir, and Chantal Thomas. "From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism." *Harvard Journal of Law & Gender* 29 (2006): 335–423.

25. Heredia, Valeria. "Médicos Y Mujeres Rechazan Reducción de Presupuesto En Prevención de Embarazo Adolescente Y Violencia de Género," December 3, 2019. https://www.elcomercio.com/actualidad/reduccion-presupuesto-prevencion-violencia-genero.html.

26. Howe, Adrian. *Punish and Critique. Towards a Feminist Analysis of Penality*. London and New York: Routledge, 1994.

27. Imbusch, Peter, Michel Misse, and Fernando Carrión. "Violence Research in Latin America and the Caribbean: A Literature Review." *International Journal of Conflict and Violence* 5, no. 1 (June 6, 2011): 87–154.

28. INEC. "Encuesta Nacional de Relaciones Familiares Y Violencia de Género Contra Las Mujeres." 2012. https://www.ecuadorencifras.gob.ec/documentos/web-inec/Estadisticas_Sociales/sitio_violencia/presentacion.pdf.

29. INEC. "Violencia de Género." Instituto Nacional de Estadística y Censos, 2019. https://www.ecuadorencifras.gob.ec/violencia-de-genero/.

30. Iqbal, Sarah. "Women, Business, and the Law 2018." The World Bank, April 11, 2018. http://documents.worldbank.org/curated/en/926401524803880673/Women-Business-and-the-Law-2018.

31. Johnson, Holly. "Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault." In *Sexual Assault in Canada: Law, Legal Practice and Women's Activism*, edited by Elizabeth A. Sheehy, 613–34. Ottawa: University of Ottawa Press, 2012.

32. Jütersonke, Oliver, Robert Muggah, and Dennis Rodgers. "Gangs, Urban Violence, and Security Interventions in Central America." *Security Dialogue* 40, no. 4-5 (August 1, 2009): 373–97.

33. Kennedy, David. "The 'Rule of Law,' Political Choices, and Development Common Sense." In *The New Law and Economic Development: A Critical Appraisal*, edited by David M. Trubek and Alvaro Santos, 95–173. Cambridge University Press, 2006.

34. Larrauri, Elena. *Criminología Crítica Y Violencia de Género*. Madrid: Trotta, 2007.

35. Lemaitre, Julieta. *El Derecho Como Conjuro: Fetichismo Legal, Violencia Y Movimientos Sociales*. Bogotá: Siglo del Hombre Editores, 2009.

36. Lind, Amy. *Gendered Paradoxes. Women's Movements, State Restructuring and Global Development in Ecuador*. USA: Pennsylvania State University Press, 2005.

37. Lind, Amy, and Christine Keating. "Navigating the Left Turn: Sexual Justice and the Citizen Revolution in Ecuador." *International Feminist Journal of Politics* 15, no. 4 (2013): 515–33.

38. Lizarazo-Rodriguez, Liliana. "Mapping Law and Development." *The Indonesian Journal of International & Comparative Law* IV, no. 4 (October 1, 2017): 761–895.

39. Macaulay, Fiona. "Judicialising and (de) Criminalising Domestic Violence in Latin America." *Social Policy Report / Society for Research in Child Development* 5, no. 1 (2006): 103.

40. MacKinnon, Catharine. "Sexuality, Pornography, and Method: Pleasure under Patriarchy." *Ethics* 99, no. 2 (1989): 314–46.

41. McIlwaine, Cathy, and Caroline Moser. "Violence and Social Capital in Urban Poor Communities: Perspectives from Colombia and Guatemala." *Journal of International Development* 13, no. 7 (2001): 965.

42. Miller, Francesca. "Latin American Feminism and the Transnational Arena," 10–26. Women, Culture, and Politics in Latin America. Berkeley: University of California Press, 1992.

43. Morris, Rosalind C. "The Mute and the Unspeakable." In *Law and Disorder in the Postcolony*, edited by Jean Comaroff and John Comaroff, 57–101. Chicago: University of Chicago Press, 2006.

44. Moser, Caroline, and Cathy McIlwaine. "Latin American Urban Violence as a Development Concern: Towards a Framework for Violence Reduction." *World Development* 34, no. 1 (2006): 89–112.

45. Moser, Caroline, and Elizabeth Shrader. *A Conceptual Framework for Violence Reduction*. World Bank, Latin America and Caribbean Region, 1999.

46. Muggah, Robert. "The Rise of Citizen Security in Latin America and the Caribbean." *Revue Internationale de Politique de Développement* 9, no. 9 (October 10, 2017): 291–322.

47. Muggah, Robert, and Katherine Aguirre Tobón. "Citizen Security in Latin America: Facts and Figures." Igarapé Institute, 2018.

48. Ní Aoláin, Fionnuala. "Gendered Harms and Their Interface with International Criminal Law." *International Feminist Journal of Politics* 16, no. 4 (October 2, 2014): 622–46.

49. Pérez, Moira, and Blas Radi. "Gender Punitivism: Queer Perspectives on Identity Politics in Criminal Justice." *Criminology & Criminal Justice: The International Journal of Policy and Practice*, July 14, 2020, 1748895820941561.

50. Pinto, Mattia. "Sowing a 'Culture of Conviction' What Shall Domestic Criminal Justice Systems Reap from Coercive Human Rights?" In *Coercive Human Rights: Positive Duties to Mobilise the Criminal Law under the ECHR (Hart Studies in Security and Justice)*, edited by Laurens Lavrysen and Natasa Mavronicola. Hart Publishing, 2020.

51. Povinelli, Elizabeth. *Economies of Abandonment. Social Belonging and Endurance in Late Liberalism*. Durham and London: Duke University Press, 2011.

52. Robalino, Jose. "Víctimas de Violencia de Género Se Quedan Sin Presupuesto Y Sin Atención." Pichincha Comunicaciones, January 13, 2020. http://www.pichinchacomunicaciones.com.ec/victimas-de-violencia-de-genero-se-quedan-sin-presupuesto-y-sin-atencion/.

53. Russell, Diana, and Nicole Van de Ven. *Crimes against Women: Proceedings of the International Tribunal*. USA: Les Femmes, 1976.

54. Schneider, Elizabeth M. *Battered Women and Feminist Lawmaking*. New Haven and London: Yale University Press, 2000.

55. Sikkink, Kathryn. *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics (The Norton Series in World Politics)*. 1 edition. W. W. Norton & Company, 2011.

56. Sudbury, Julia, ed. *Global Lockdown: Race, Gender, and the Prison-Industrial Complex*. New York and London: Routledge, 2005.

57. Tapia Tapia, Silvana. "Beyond Carceral Expansion: Survivors' Experiences of Using Specialised Courts for Violence Against Women in Ecuador." *Social & Legal Studies*, December 7, 2020, 0964663920973747.

58. Tapia Tapia, Silvana. "Criminalising Violence against Women: Feminism, Penality, and Rights in Post Neoliberal Ecuador." Ph.D., University of Kent, 2017. https://kar.kent.ac.uk/62463/.

59. Tapia Tapia, Silvana. "Feminism and Penal Expansion: The Role of Rights-Based Criminal Law in Post-Neoliberal Ecuador." *Feminist Legal Studies* 26, no. 3 (2018): 285–306.

60. Tojo, Liliana, Pilar Elizalde, and Federico Taboada, eds. *Herramientas Para La Protección de Los Derechos Humanos. Sumarios de Jurisprudencia. Violencia de Género*. Segunda. Buenos Aires: CEJIL, 2011.

61. Torres Angarita, Andreina Isabel. "Drogas Y Criminalidad Femenina En Ecuador: El Amor Como Un Factor Explicativo En La Experiencia de Las Mulas." Edited by Mercedes Prieto Noguera. Master in Social Sciences, FLACSO sede Ecuador, 2007. http://repositorio.flacsoandes.edu.ec/handle/10469/1317.

62. UNESCO. "Problems That Concern Women and Their Consideration in Development Planning." UNESCO, 1984. http://unesdoc.unesco.org/images/0006/000632/063207eb.pdf.

63. UNIFEM. *Not a Minute More: Ending Violence Against Women*. New York: Kumarian Press, 2003.

64. United Nations. "Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace, Copenhagen, July 1980." United Nations, 1980.

65. UN Women. "Safe Cities and Safe Public Spaces: Global Results Report." UN Women, 2017.

66. Whalley, Elizabeth, and Colleen Hackett. "Carceral Feminisms: The Abolitionist Project and Undoing Dominant Feminisms." *Contemporary Justice Review* 20, no. 4 (October 2, 2017): 456–73.

67. Williamson, Jeffrey G. "Latin American Inequality: Colonial Origins, Commodity Booms or a Missed Twentieth-Century Leveling?" *Journal of Human Development and Capabilities* 16, no. 3 (July 3, 2015): 324–41.