

**ASYLUM AND FEMICIDE: AN ANALYSIS OF GENDERED CONCEPTS  
OF HUMANITY AND ITS ROLE IN THE NORTHERN TRIANGLE OF  
CENTRAL AMERICA**

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## ABSTRACT

Asylum and Femicide: An Analysis of Gendered Concepts of Humanity and its Role in the Northern Triangle in Central America

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This study will examine how women are marginalized within gendered concepts of humanity through the limitations of *femicide* as an unrecognized basis for the credible fear of persecution under human rights regimes in the United States. In the United States, an applicant must have a credible fear of persecution and be a member of a particular social group. To further explore the implications of the patriarchal structure of human rights, I examine three legal asylum cases from Honduras, El Salvador, and Guatemala respectively. This thesis will include historical and sociological examinations of social unrest in the Northern Triangle that forces migrant women to leave their home country for asylum in the United States, exploration of a male-centric view of human rights, and the way that the permissions of sexual violence being in international institutions affects private life in the Northern Triangle. The following questions

will guide the study: How does a patriarchal foundation of human rights law perpetuate gender injustices in the Northern Triangle? Moreover, how does the absence of *femicide* as a right-based asylum claim in the Northern Triangle impact how we might think of women as a social group in asylum law? When asylum courts deny claims of women from the Northern Triangle they do so because they do not belong to a particular enough social group that is required for asylum claims, or they are seen as not having a credible fear of persecution. I aim to argue that a patriarchal structure underwrites international human rights law and discredits the severity of sexual violence in the Northern Triangle by rendering *femicide* as a credible fear of persecution. Moreover, I aim to use these cases from the Northern Triangle to examine how the absence of *femicide* and “woman” as a social group in asylum law reinforces the gendered concepts of humanity within humanitarian discourse.

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## INTRODUCTION

The Northern Triangle, which encompasses Honduras, El Salvador, and Guatemala, is characterized as one of the most violent regions in the world outside of a designated warzone due to social unrest (Obinna 1). The term “Northern Triangle” is used to reference these countries' shared economies and challenges such as widespread poverty, violence, and corruption (“Central America’s Turbulent Northern Triangle”). The rise of organized criminal gangs and economic and government turmoil has pushed citizens to emigrate from the Northern Triangle to the United States in hopes of a better future. This has led to one of the largest forced migration flows, as an estimated 500,000 people cross the border between Mexico and Guatemala every year from the Northern Triangle of Central America to seek asylum in the United States (Obinna 1). Not only is the Northern Triangle suffering from organized criminals and governmental corruption that force people to migrate, but this region also has one of the highest rates of *femicide* - the deliberate killing of women because of their gender (Obinna 2). Consequently, migrant women from the Northern Triangle are fleeing systemic violence, such as physical assaults, sexual assaults, or threats from organized criminal groups (Baranowski 47).

However, *femicide* is treated as distinct from other forms of violence in the Northern Triangle. I use the UN Women’s definition of *femicide* which says “*femicide* is the murder of a woman due to her gender, i.e., killing of a woman with its motive or context related to gender-based violence, discrimination or a subordinate role of a woman, expressed by the desire to have rights over her superiority, proprietary attitude, control over her behavior or other reason based on gender” (“REPORT ON FEMICIDE MONITORING: GENDER-RELATED KILLINGS OF WOMEN: Analysis of Criminal Cases Committed in 2016” 7). *Femicide* is not recognized as a

credible fear of persecution under human rights law. To gain asylum in the United States, the applicant must prove they are being persecuted on five protected grounds: race, religion, nationality, political opinion, or membership in a particular social group. Even though gender-based violence in the Northern Triangle has been acknowledged in immigration courts, violence specifically against women is not recognized as the grounds for asylum since *femicide* does not constitute a credible fear of persecution. In other words, the category “woman” cannot be claimed as a social group insofar as *femicide* cannot be recognized as a form of political violence.

First, I examine three asylum law cases from each country in the Northern Triangle. I first examine Alvarez Lagos who is a single mother from Honduras that suffered from consistent threats; Lazo-Majano who was a thirty-four-year-old woman from El Salvador at the time of her harassment; and Perdomo who left Guatemala at age fifteen to seek refuge in the United States. Each of these survivors applied for asylum in the United States based on their fear of gender-based violence in their respective countries of origin. All of them had unique cases that highlight the type of violence that women face in the Northern Triangle. In all three cases, the women claim “woman” as a social group to petition for asylum in the United States. In all three cases, the women were denied asylum in the United States despite the fear of persecution based on their gender.

The importance of being an “ideal victim” under United States asylum law is emphasized in the Alvarez Lagos, Lazo-Majano, and Perdomo case. An ideal victim in the immigration courts would be someone who is a part of a categorical group. These ideal victims would have standard characteristics such as fleeing from ethnic cleansings, genocide, or political repressions. However, gender is disqualified as a social group because the nuances it entails. Immigration



courts refuse to acknowledge gender as a social group because gender-based violence includes a range of behaviors such as physical violence, sexual harassment, and rape. The credibility of the victims is questioned as a result of the nuances of considering “women” as a social group. In Alvarez Lagos’ case, she was constantly threatened with gendered-based threats like genital mutilation and rape. For Lazo-Majano, she was harassed and assaulted consistently by a man taking advantage of his power in society since her abuser was a part of the Salvadoran Armed Forces. Finally, for Perdomo, she feared future persecution in Guatemala because of her gender as a woman in a patriarchal-run state. However, in the courts’ rejections of the asylum claims, the credibility of the victim is questioned. In United States asylum law, the ideal victim is desired. This ideal victim is one who is subject to state-recognized forms of violence such as ethnic cleansings, genocide, or political affiliation. Such narratives of ideal victim erase any variations in sexual violence such as rape, torture, or genital mutilation. These latter forms of violence disrupt, traumatize, and circulate within women’s lives, thus demanding recognition by human rights law. Constructing the ideal categorical victim ignores that women do not fit into this model under asylum law in the United States.

Finally, I argue that gender-based violence against women in the Northern Triangle is reinforced by a lack of recognition under the United States human rights of femicide as an act of political violence and by the ways gender - namely, the category “woman” - is not recognized as a particular social group. I argue that femicide needs to be recognized as a credible fear of persecution in immigration courts. *Femicide* is not being used in asylum courts because the term has not been recognized in the universal treaties of human rights and there is no universally agreed-upon definition of it (Belvedere 7). According to the World Health Organization (WHO), femicide is generally understood to be the intentional murder of women because of their gender,

but there have been broader definitions that allow it to encompass the murder of women or girls (World Health Organization 1). Most countries, including the United States, do not evaluate the victim-perpetrator relationship or investigate the motives for homicide, which leaves *femicide* widely left out of human rights discourse. The omission of the victim-perpetrator relationship allows the courts to ignore how state and societal structures perpetuate violence against women. There are no investigations into why women continue to be treated differently than men and what factors perpetuate the hostility to women in the Northern Triangle. As a result, *femicide* is excluded as a basis for seeking political asylum in the United States. By not recognizing “woman” as a social group and not recognizing *femicide* as the basis of fear of persecution, asylum law dismisses a violation of women as the violation of human rights.

When migrant women are unable to claim asylum based on “woman” as a social group and *femicide* as a fear of persecution, they are experiencing the effects of gendered concepts of humanity. By gendered concepts of humanity, I mean that the basis of human rights law is the male experience. Sexual violence cases are reported to authorities every year, and the relatively few in which perpetrators are rightfully convicted show a gendered disparity of violence-based claims in the Northern Triangle. Catharine MacKinnon, a feminist legal scholar and activist, attributes the lack of recognition of “woman” as a social group within human rights frames to the patriarchal structure of human rights. MacKinnon explains that the category “woman” is exempt from the human rights framework because human rights discourse naturalizes the subject of human rights as men. MacKinnon claims that there is an absence of female narratives from asylum law due to male experiences becoming the governing human rights practice (147). Consequently, not having “woman” as a social group and *femicide* as a fear of persecution

deprives women of their freedom from violence because state violence is presumed to be based on the experiences of men.

To asylum courts in the United States, violence towards women can only be seen in a category that makes sense under an individual nation's law rather than international law. Violence against women is often regarded as a form of civil strife that falls under the state's jurisdiction. While evaluating the surges of migration from the Northern Triangle in 2018, U.S. Attorney General Jeff Sessions wrote that claims pertaining to domestic violence or gang violence would not qualify for asylum. Sessions claimed that these women were victims of "private violence" and that such acts of violence were not able to be prosecutable in asylum law since the women who made these claims do not fulfill the protected characteristic of a victim (A.G. 2018). Women are unable to escape gender-based abuses in their countries of origin because perpetrators are exempted from upholding their individual nation's laws against violence towards women. The state can thus remain oblivious to or complicit in the violence.

Violence in the Northern Triangle allows us to see how the patriarchal structure of the state contributes to so-called "private violence" in the home. In Honduras, for example, institutional practices normalize sexist violence so much so that society no longer expects law enforcement to respond to complaints of violence against women. Police handle gender-based violence cases with systematic indifference that leads women to rarely report them. Faced with similar impunity, criminal activity in El Salvador has exacerbated sexual violence. Gangs commit violence to the public and undermine state institutions that were meant to protect them. This is because gangs have infiltrated the government and legal institutions. Between January and August 2015, the National Civilian Police of El Salvador registered an average of five cases of sexual violence a day (Applebaum and Mawby 10). This is alarming because this number does

not account for cases that are unreported, and it does not account for those who have not received justice. Lastly, Guatemala is not free from faults in the structure and application of its laws. In 2008, Guatemala passed the “Law Against Femicide and Other Forms of Violence Against Women” meant to address violence under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which is described to be the international bill of rights for women. However, this law was ultimately ignored and hard to implement. To make matters worse, Guatemala had the highest rates of murder of women from 2002-2011. However, even in the most violent cases, violence against women is seldom prosecuted (Menjivar et al 3). In these ways, the lack of justice creates a culture of fear and impunity for violence against women.

Danilo Valladares, a journalist for *Inter Press Service*, notes that many victims in the Northern Triangle are reluctant to give reports of sexual violence due to shame or fear, the “lack of evidence response by the authorities,” and “unequal power relations between men and women.” Valladares also explains that there is “little sensitivity” in these societies towards victims and there is little support for investigations since “victims are revictimized” by the justice system (“CENTRAL AMERICA: Still a Long Way to Go in Fight Against Sexual Violence.”). This is damaging to the security of women and girls from the Northern Triangle because when the state fails to protect them, they cannot rely on international human rights law to recognize them either.

# 1. ASYLUM CASES FROM THE NORTHERN TRIANGLE

## 1.1 The Case of Alvarez Lagos

Sindy Marilu Alvarez Lagos testified that she and her then-seven-year-old daughter, both of them natives and citizens of Honduras, were threatened with gang rape, genital mutilation, and death if they did not comply with the demands of a Barrio 18 gang member. Out of fear, they decided to migrate to the United States in August of 2014 where they sought asylum, withholding of removal, and protection under the Convention Against Torture, a United Nations international human rights treaty. Alvarez Lagos confirmed that she did fear that she and her daughter would be raped, tortured, and killed if they returned to Honduras because members of Barrio 18 had asked about her whereabouts since having fled the country. Alvarez Lagos had entered the United States without valid documentation but applied for asylum under the Immigration and Nationality Act.

Before emigrating to the U.S., Alvarez Lagos had recently separated from her husband and was forced to move in with her siblings in Honduras. The neighborhood that she moved into was named Alto del Divino Paraiso and it was consumed by Barrio 18 gang. So much so that the gang monitored who entered and exited the neighborhood, controlled when residents worshipped, collected taxes from the residents, and murdered individuals who disobeyed their commands. The conditions were so egregious that Alvarez Lagos was constantly asked for money and threatened when she refused to comply. A gang member named Chuta harassed Alvarez Lagos constantly and reminded her “what the gang does to women” (Alvarez Lagos v. Barr). Based on Barrio 18’s criminal records, she was to be raped or mutilated if she did not comply. Barrio 18 was committing economic violence towards Alvarez Lagos. Economic

violence is considered as preying on disadvantaged people financially such as withholding payments, property damage, restricting access to financial resources, etc. (European Institute for Gender Equality). Barrio 18 was threatening Alvarez Lagos, a single mother, to pay them even though she did not have the financial means to comply.

Alvarez Lagos explains that she never reported her encounters with Barrio 18 to the police because she believed that the police in her neighborhood were working with Barrio 18. She feared that if she told the police, the gang members would find out and harm her and her daughter. Alvarez Lagos was experiencing political violence from her community in Honduras. Political violence is perpetrated by people or the government to achieve political goals. It includes violence used by a state entity, such as law enforcement of the military, against non-state actors (Sousa 169). Alvarez Lagos feared torture if she told authorities about Barrio 18's threats. When she was confronted with the crippling realization that she could not meet Chuta's demands, she made the bold decision to flee to the United States to save herself and her young daughter.

Alvarez Lagos's case represents the complex factors that play into migrant women's reasons to migrate. Alvarez Lagos was threatened explicitly by a gang member, yet decided not to report it because of the impunity of violence against women under Honduran law. This is a result of the structural violence that women face in everyday life (Jokela-Pansini 851). In 1997, Honduras implemented a law to guarantee women their right to live free from domestic violence. While this law was implemented to support victims of domestic violence, it only penalizes perpetrators with between two and four years of imprisonment. Also, the only legal sanctions for the first offense of domestic abuse are community service hours and 24-hour preventative detention if the violator is caught in the act ("Honduras' Compliance with the International

Covenant on Civil and Political Rights: Suggested List of Issues Relating to Violence Against Women” 3). Alvarez Lagos did not get help due to the inadequacies of law enforcement in Honduras and their ties to the Barrio 18 gang. Also, she was unable to help herself because she did not have enough money to comply with the pricey demands of the Barrio 18. Both of these factors made her stuck in a constant state of fear in her community as the gang member assured her that there would be consequences for not paying the tax. This exemplifies the forms of oppression that produce the political and economic violence that accompany physical violence in Honduras.

Not only did Alvarez Lagos experience consistent threats by the Barrio 18 gang, but her grievances were dismissed by United States immigration courts. Alvarez Lagos was denied asylum on three claims: neither of the reasons she identified for her persecution qualified as protected grounds under the Immigration and Nationality Act; she failed to satisfy the requirement that requires a protected ground to be violated and she failed to establish that asylum is necessary. Alvarez Lagos attempted to argue that she was a member of a “particular social group” as an unmarried mother living under the control of gangs and she was persecuted under her political opinion since she was defiant with the gangs’ requests.

In Alvarez Lagos’s case, the category “unmarried mother” was not considered profound enough to warrant protection even though it was the reason the threats were made against her. Alvarez Lagos referenced experts, who were knowledgeable about gangs in Honduras, who said Barrio 18 would take Alvarez Lagos’s protests as a form of political opposition. That is, by refusing to give Barrio 18 money, Alvarez Lagos would be opposing a political entity, they argued, since Barrio 18 is so entwined with legal and governmental institutions. Barrio 18 infiltrates government institutions by bribery and threats. The patriarchal structure of asylum law

in the United States refused to view Alvarez Lagos's situation as worthy of victimhood. Experts commenting on her case even noted that the Barrio 18 gang targeted her because she was a single mother.

As a single mother, Alvarez Lagos was a victim of gender-based violence. Asylum law in the United States relies on ideal victims whose abuses are tangible and categorical such as ethnic cleansing, genocide, and political repression that men experience as well. When asylum cases are based on the grounds for violence towards women, the United States institutions have to admit the global phenomenon of women everywhere being persecuted because of their gender. Consequently, the United States asylum law relies on the victims fitting a set of criteria to be recognized. This criterion requires female victims to be being seen as credible in law if men experience the same type of struggle (Gibson 80). What the United States asylum law did not recognize is that gender contributed to her harassment because Barrio 18 used gender-based slurs like "whore" and made gender-based threats of rape and genital mutilation (Alvarez Lagos v. Barr). These gender-based threat resulted from the fact that Alvarez Lagos, as a single mother, violated cultural norms about sexual respectability, namely that she mothered children outside the bonds of marriage.

Despite the 1997 Honduran law to combat domestic violence and the National Plan to Combat Violence against Women 2014-2022, which aims to prevent and prosecute gender-based crimes, the Honduran state fails to punish gender-based violence. Perpetrators of sexual violence against women are not held accountable in 94.5% of all cases ("Honduras' Compliance with the International Covenant on Civil and Political Rights: Suggested List of Issues Relating to Violence Against Women" 10). This shows that institutional bodies fail to address violence



against women and are largely unresponsive to gendered concepts and fail to find sexual violence important enough to prosecute which results in widespread impunity.

After almost five years since Sindy Alvarez Lagos applied for asylum in the United States, she and her daughter were ordered to be removed. The consistent threats, the uncertainty of security, and lack of money were not reasons that the United States' immigration courts found reasonable for asylum.

## **1.2 The Case of Lazo-Majano**

In 1981, Olimpia Lazo-Majano was a twenty-nine-year-old citizen and resident of El Salvador. This same year Lazo-Majano, a mother of three, was abandoned by her husband who fled from their country to gain protection from guerilla fighters. He was distrusted by the Salvadoran government because he was a part of the rightest paramilitary group known as ORDEN. After her husband left her, Lazo-Majano made a living for herself as a domestic worker for another woman living in El Salvador. In April 1982, Sergeant Rene Zuniga, a soldier of the official Armed Forces of El Salvador, asked Lazo-Majano to be his domestic worker. Lazo-Majano had known Zuniga since childhood so she agreed to work for him and quit her other job as a domestic worker.

Lazo-Majano worked for Zuniga for the next six weeks at his house. One day, when Zuniga noted that Lazo-Majano's husband was no longer around, Zuniga proceeded to rape her. Lazo-Majano states "with a gun in his hand he made me be his" (Lazo-Majano v. Immigration & Naturalization Service). Out of fear, over the next couple of months, Zuniga threatened her, taunted her, and beat her. She suffered constant verbal, emotional, and physical abuse from him in public and private places, and Lazo-Majano became nervous, frail, and depressed as a result.

Lazo-Majano believed that the Armed Forces would let Zuniga carry out his threat of killing her given the way that the patriarchal structure of the state closely overlapped with Salvadoran cultural norms. An example of the immunity given to the Armed Forces occurred in 1981 when the husband of Lazo-Majano's neighbor was taken away with 15 other men and killed by the Armed Forces. After this crime, the Armed Forces were not held responsible under Salvadoran law. Also, the Armed Forces, including Zuniga, was known to rape "young college girls," but their atrocities were never tried in a court of law (*Lazo-Majano v. Immigration & Naturalization Service*). Around the time of Lazo-Majano's abuse, the Salvadoran Armed Forces were known to be corrupt and known to have kidnapped political detainees and other civilians and to have subjected them to physical and psychological torture, assassination, rape, and illegal detention. The non-governmental organization (NGO) Salvadoran Human Rights Commission (CDHES) claims that the Armed Forces killed 2,868 civilians between May 1989 and May 1990 (Canada: Immigration and Refugee Board of Canada). In essence, violence against women extends from the home to government institutions in El Salvador. Zuniga, being a part of the military, reflects how violence towards women is found in households and within government institutions. Lazo-Majano rightfully feared Zuniga would be exempt from punishment if she reported the abuses. Women are unable to receive justice because the institutions that are meant to protect them are infiltrated by corruption.

In 1982, Lazo-Majano escaped from Zuniga's employ and fled El Salvador to the United States. She entered the United States without papers and in January 1983, she was ordered to show reasons for entering without documentation. Lazo-Majano applied for asylum and claimed fear of persecution by Zuniga. However, she was denied because Immigration Judge William F. Nail claimed that "the evidence attests to the mistreatment of an individual, not persecution"

(Lazo-Majano v. Immigration & Naturalization Service). The United States government argued there was no evidence to support Lazo-Majano's claim that Zuniga was persecuting her for her political opinion of not wanting to be submissive, and that nothing in the record indicated what, if any, political opinion she held. However, I argue that Lazo-Majano's claims are based on her fear of political persecution. This is because Zuniga threatened to kill Lazo-Majano if she complained about his abuse of her, thus betraying the way her disbelief in gender hierarchy was in fact a political opinion. In other words, Zuniga would not need to threaten to kill her if she adhered to this gendered hierarchy. Given that she did not, Zuniga could characterize Lazo-Majano as a political subversive based on his beliefs about culturally prescribed roles of male dominance and female subservience.

Zuniga's threats and torture reflected a broader culture of misogyny, an assertion of a political conviction about men's place in society, and a determination to enforce it. Lazo-Majano's experiences were degraded by immigration judges because they were "personal in nature" and did not constitute "political persecution" within the meaning of immigration laws (Lazo-Majano v. Immigration & Naturalization Service). In this way, asylum courts reduced her abuses and suffering to personal conflicts between employer and employee. The immigration courts did not see Lazo-Majano as a victim of abuse because she stayed working for Zuniga for months. Since Lazo-Majano did not actively try to escape, the United States immigration courts denied her claims. The idea of an ideal victim in immigration courts makes victim-blaming possible (Gibson 81). Lazo-Majano's passivity with Zuniga was seen as insufficient evidence of victimhood which made the victim-blaming rhetoric used in the immigration court possible. In this way, the immigration courts ignored the consistent beatings and torture that Lazo-Majano

endured that prevented her from leaving. The court's blatant victim-blaming exemplified the patriarchal structure and nature of human rights discourse.

In a broader sense, this case opened up the patriarchal mindset behind many immigration laws. Judge Cecil F. Poole, former Judge of the United States District Court for the Northern District of California, objected to considering the crimes against Lazo-Majano as political. He noted that the relationship between Lazo-Majano and Zuniga was personal since they had a prior connection. He also claimed that Zuniga's threats were effective because Lazo-Majano was "unsophisticated enough to believe that this low-grade bully-tyrant might make trouble" (Lazo-Majano, 813 F.2d at 1439). Judge Poole suggests that Lazo-Majano was not smart enough, as a Salvadoran woman, to leave her situation. This opinion is an example of how violence against women is seen as preventable and at the fault of the women. The state deflects violence against women and places blame on the individual in an attempt to take responsibility away from the state and institutions that perpetuate violence against women (MacKinnon 488). Judge Poole's opinion exemplifies how when men do not experience this violence, such forms of violence remain unrecognized in international human rights law.

Judge John T. Noonan, Jr, former federal Judge for the Ninth Circuit Court of Appeals in San Francisco, California, claimed the opposite position to the verdict. Judge Noonan Jr. was a voting member in the 1987 decision of *Lazo-Majano V. INS*. In his decision, Judge Noonan Jr. explained that the abuse towards Lazo-Majano was inherently political because Zuniga maintained his control as a man over Lazo-Majano. Zuniga was asserting the political opinion that a man has a right to dominate women (Noonan Jr. 5). In this way, the violence against Lazo-Majano could be seen as political due to the political nature of gender roles and gender-based violence. Gender-based violence is political because it is a result of patriarchal power dynamics

between men and women. Under the patriarchy of human rights, women have no power. So, atrocities against women are a way to display power over women. When men commit gender-based abuses to display power over women, they are committing political violence against women to achieve their goals.

Lazo-Majano's case was ultimately retried because of the controversy within immigration court actors because of the denial of asylum. In the second trial, the case was successful and Olimpia Lazo-Majano became a citizen of the United States on August 21, 2008. Before Lazo-Majano's case, it was unheard of that gender-based persecution like rape or domestic violence could be the basis for asylum under the refugee definition in the United States immigration law. In the second trial, the case recognized a man's abuse of a woman as an expression of his political opinion regarding male dominance and female subordination and his desire to punish a woman for holding a contrary view. The immigration courts ultimately ruled it as political violence because of Zuniga's position in the Salvadoran Armed Forces. Since the Armed Force is a government entity, Zuniga's abuses towards Lazo-Majano were seen as actions of the state. Finally, this case recognized that Lazo-Majano had a political opinion opposing abuse and that her flight from abuse was an expression of that opinion.

### **1.3 The Case of Perdomo**

Lesly Yajayra Perdomo is a citizen and native of Guatemala. In April 1991, Perdomo left Guatemala at age 15 to join her mother in the United States. Perdomo has integrated fully into the United States. She is fluent in English and Spanish, completed high school, and is currently employed as a Medicaid account executive at a medical facility in Reno, Nevada. She no longer has any ties to Guatemala as both her parents are deceased and she has no close relatives there. So, when the Immigration and Naturalization Service ordered her removal on April 21, 2003,

Perdomo requested asylum and relief under the Conventional Against Torture (CAT), a law aimed to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world.

Perdomo requested asylum because she feared persecution as a member of a particular social group in Guatemala. The social group she identified with was women between the ages of fourteen and forty. She claimed her fear was based on the high incidence of the murder of women in Guatemala because of the way gang violence disproportionately effects women in this age group. This fear of persecution was exacerbated by the fact that she was an unmarried woman, leaving her without a patriarch to “protect” from such violence. On top of this, Perdomo did not have any family in Guatemala, meaning she would be without familial support should she be targeted with violence. She provided the immigration judge with numerous reports of the gang’s torture and killing of women, the brutality of the killings, and the non-responsiveness of the Guatemalan government. Perdomo did not claim that she was a victim of past persecution since she left Guatemala before she was targeted, but she expressed fear of future persecution if she returned to Guatemala. She also expressed fear that she would not be accepted in Guatemala as a native citizen due to the number of years she resided in the United States.

The immigration judge denied her asylum request and relief under CAT. The immigration judge offered her sympathy but denied that women fourteen to forty in Guatemala were considered a part of a particular social group. The Board of Immigration Appeals (BIA) agreed with the immigration judge’s determination that Perdomo failed to establish a well-founded fear of future persecution in Guatemala on account of her particular social group. The BIA considered the group of “women between the ages of fourteen and forty who are Guatemalan and living in the United States” too broad to be considered a particular social group

(Perdomo v. Holder). With both the denials from the immigration judge and the BIA, Perdomo was granted 60 days for voluntary departure from the United States.

Perdomo's case represents a deeper problem in U.S. asylum law not about how a "particular social group" is defined, but about acknowledging the category of "woman" as a social group. Despite the way that human rights law considers "woman" to be overly broad as a social group, the Department of Homeland Security has not mandated that a "particular social group" needs to be narrowly defined. And yet, under human rights law definition when "woman" is claimed as a social group, it has to be accompanied by another category to be deemed narrow enough. For example, claiming to be a Catholic Guatemalan woman is narrow, but a Guatemalan woman is not narrow. Also, there is nothing in international treaties, United States asylum law, or their negotiations that supports a requirement that a particular social group is defined narrowly. The BIA denied "woman" as a social group because the BIA didn't want to admit half of the world's population from receiving justice for the violence done specifically against them. Asylum law within the United States hesitates to consider "woman" as a social group because of the patriarchal structure of human rights law. Immigration courts do not want to consider "woman" as a social group because then all members within this persecuted group might be eligible for asylum.

The National Immigrant Justice Center (NIJC) requested to appear as *amicus curiae*, or an impartial advisor, for the Perdomo case because of the particularity of it. The NIJC is a non-profit program of the Heartland Alliance for Human Needs and Human Rights that specializes in legal representation to immigrants, refugees, and asylum-seekers. The NIJC noted that the evidence of widespread systemic violence against women in Guatemala can support Perdomo's fear of persecution on the account of her gender. They explain that where sexual violence against

women is a documented, systemic type of harm use gender as the basis of their persecution (NIJC 9). The suggestion from NIJC is important in establishing the governing patriarchal structure of asylum law. In asylum law, as previously stated, Attorney General Jeffrey Sessions concluded that issues of domestic violence were considered private and that victims were unable to claim asylum based on it. However, the NIJC has recommended that asylum can be granted when there is evidence of an inability to protect women against gender-based violence due to corruption. Some examples of this would include policy implementation to protect women, few cases being tried and convicted, and impunity from law enforcement.

The documented and systemic harm that women suffer is seen through the structure and application of Guatemalan law. Laws in Guatemala are written in a discriminatory way that systematically put women at a disadvantage in various aspects of life such as marriage, divorce, alimony, property rights, etc. An example of gender-discriminatory law is alimony laws. Alimony laws are not enforced within Guatemala, so women are economically dependent on their male partners (2). Laws, such as the alimony laws, make women susceptible to violence since they may choose to stay in violent marriages in order to survive economically. There are many attempts to introduce laws to combat discriminatory policies such as the Law against Femicide that was passed in 2009 in response to the United States' pressure to combat legal impunity for gender-based violence. However, there is political resistance and pushback from the mostly male Congress to their creation (Menjivar et al 13). These systemic obstacles of implementing policy to protect women reflect the bigger issue of the patriarchal structure of the state.



## CONCLUSION

### **Femicide as a Credible Fear of Persecution**

In the field of international law on human rights, there is not a widely agreed-upon definition of *femicide*. The meaning of *femicide* varies according to the point of view, context, and discipline from which it is being examined. It also varies based on the scope, content, and implications of how it is being addressed. Furthermore, the term *femicide* is not recognized by the international treaties on human rights nor by multiple agencies and programs aimed at combating violence against women. I argue that utilizing *femicide* for grounds of persecution in asylum law recognizes the unique struggle of women in the Northern Triangle.

The term “femicide” was established by a feminist sociologist, Dianna Russell, in the 1970s. She intended to use *femicide* as a political term to reveal discrimination and oppression of women along with the inequality and systemic violence (“REPORT ON FEMICIDE MONITORING: GENDER-RELATED KILLINGS OF WOMEN: Analysis of Criminal Cases Committed in 2016” 7). In this way, *femicide* is an innately political term that addresses the discriminatory attitudes towards women and the subordinate position of gender-based discrimination compared to those of abuses based on ethnicity and political affiliation. Because the term is political in nature, the act of *femicide* could be used as a credible fear of persecution since it constitutes the intent of harm based on a political ideology.

*Femicide* recognizes the unique plight of women because it addresses not only the most extreme form of violence against women and girls but also the most violent manifestations of discrimination against them and their inequality. *Femicide* also addresses the violence that results from unequal power structures in private and public establishments, intimate-partner life,

community, and the state's institutions ("1. What Do We Mean by Femicide?"). Because femicide encapsulates all of these categories, *femicide* would be constituted by the various forms of harm that women in the Northern Triangle face.

When "woman" as a social group and *femicide* as a means of persecution are not considered in United States asylum law, women from the Northern Triangle are sent back to the dangerous conditions they tried to flee. These women flee from horrific conditions in countries where they receive little to no protection from their perpetrators. Immigration courts utilizing *femicide* in asylum law would begin to dissolve the patriarchal structure of human rights that has dominated asylum decisions for years.

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