In the Name of Vicky: Prosecuting Transfemicide in Honduras

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Vicky Hernández was a Honduran transgender activist, a daughter and a sister. During the coup d’état in 2009, she was murdered when police patrolled the streets. Nevertheless, amidst a context of relentless structural violence, transgender activists, lawyers, allies and Vicky’s family continued fighting to end transfemicide. Twelve years after Vicky was killed, a legal precedent was established when the Inter-American Court of Human Rights found a state responsible for the death of a transgender woman for the first time in history, affirming that transgender women are women and are entitled to gendered legal protection.

INTRODUCTION

Vicky Hernández was a young transgender woman with warm almond-shaped black eyes adorned with eyeliner and blonde hair. She was very close to her mother and sister. Despite a hard life, Vicky dared to dream of a better world. She was a resilient activist, promoting transgender rights through the grassroots organization Colectivo Unidad Color Rosa. To make ends meet, she was also a sex worker.

On the 28th of June 2009, Vicky Hernández, Fergie Alicia and Michelle Torres were working in the streets. Due to a coup d’état, Honduras was going through a turbulent period. As a result, a curfew had been imposed, and a strong police and military presence patrolled the streets. Vicky, Fergie and Michelle were spotted by a police unit that tried to arrest them (Cattrachas, 2021, 12). They fled in different directions, a strategy frequently used by transgender women when targeted by police. The next day Vicky was found dead, killed by a gunshot to the head. She
was 26 years old. One month later, Fergie was killed; in 2011, Michelle was also killed (Reportar sin Miedo, 2020).

The following essay analyses the landmark ruling by the Inter-American Court of Human Rights regarding the transfemicide of Vicky Hernández, establishing accountability for state-sponsored transphobia and affirming that transgender women are women and are entitled to gendered legal protection. To begin with, it is worth noting that Latin American activists developed the term *transfemicide* to refer to the intentional killing of a transgender woman motivated by transphobia Bento (2016, 50). Thus, Vicky’s death occurred within a context of widespread discrimination against transgender women and is exacerbated by systematic police abuse and structural violence (Arroyo, 2021), resulting in a broader context of impunity against LGBT people and sex workers throughout Honduras (IACtHR, 2021, 1). Because Vicky’s case was not tried at the national level, on the 29th of May 2019, the case was taken to the Inter-American Court of Human Rights (IACtHR, 2021, 5). Twelve years after Vicky was killed, a legal precedent was established when an international court found a state responsible for the death of a transgender woman for the first time in history.

Transphobia amidst a Coup: The Situation of Transgender Individuals in Honduras

There is a great deal of debate regarding the sequence of events leading up to the coup. Similarly, there are debates as to the reasons underlying the coup. As with any coup, it was initiated clandestinely and under a veil of darkness. The Inter-American Commission of Human Rights (2009) has acknowledged that the military orchestrated it. At 5:00 a.m. on the 28th of June, 2009, armed troops took over the presidential residence and detained President Zelaya Rosales. He was placed on a military aircraft and forcibly sent into exile. Rupture in the constitutional order, generalized chaos and repression ensued.

In the aftermath of the coup, members of the LGBTQ community were affected by pervasive human rights violations (Cálix, 2010, 420). According to Cattrachas, an NGO dedicated to LGBTQ rights in Honduras, 15 transfemicides occurred amidst the coup (Mendoza, 2010). Between 2009 and 2019, 325 members of the LGBTQ community were murdered (Cooperación LGBTI, 2019). Moreover, between 2009 and 2020, 117 transgender women were murdered (Reportar sin Miedo, 2020). The extrajudicial killing of Vicky Hernández demonstrates that transphobia is deeply embedded in state institutions. Indeed, her death is
inscribed in a larger pattern of police violence against marginalized groups, which often operates with impunity. A lawyer for Cattrachas, Astrid Tamos, affirmed that “there was an actual pattern of social cleansing against transgender women during the coup” (Venis, 2021).

State-sponsored transphobia (Lee, 2021) has a long history. It is rooted in the institutionalization of cisheteronormativity, including the othering of transgender, gender diverse, and other gender dissidents. As such, it legitimizes violence against anyone who exists beyond the gender binary (Faria, 2021). As such, the state does not protect transgender and gender-diverse individuals, resulting in multiple forms of victimization. Previous research in Central America has revealed the pervasiveness of physical, psychological, and sexual violence (Rodríguez Álvarez & Fernández Muñoz, 2021). In Honduras, discrimination against transgender individuals expresses itself on a spectrum, from lesser attacks on human dignity to death. It is a regional issue. According to the Trans Murder Monitoring Project (2020), 82% of all the documented murders of transgender individuals in the world took place in Central and South America.

In response, activists in Latin America created the term “transfemicidio”. It refers to the murder of a transgender woman because of her/their gender identity (Bento, 2016, 45–46). Accordingly, Bento (2016, 51) has noted that “transfeminicide, like feminicide, is due to a widespread policy based on the systematic elimination of travestis and transgender women, motivated by the denial of the humanity of the victims” and in many ways serves as a punishment of the individual who demands recognition for their identity from social institutions. Lastly, Bento (2016, 56) affirms that these deaths do not provoke the same outrage as the deaths of cisgender women. Because of these “hierarchies of life”, many of these murders are not punished. For instance, in Honduras, there is an impunity rate of 90% (Cattrachos, 2019). In this regard, the persecution of transgender communities has long been upheld by the judicial system.

Thus, the law is not objective or neutral (Bernard, 1981, 374). On the contrary, it tends to uphold political and economic hegemonic values and interests. At times, it has been a tool used by powerful social groups to perpetuate class, race and gender status (Litowitz, 2000, 515). Hence, the law crystallizes prevailing social attitudes and belief systems because it is a cultural construction. Not only is the letter of the law cisgender normative, but so are the interpretations of the law. This means that cisgender superiority tends to be upheld in courts of law, and non-normative gender identities and their interests are cast aside or seen as derisive.

Traditionally, marginalized groups have been denied access to justice (Doherty Bea & Taylor Poppe, 2021); this extends to transgender and
gender-diverse individuals. This can be observed in the criminal justice system, where many are subjected to hate crimes, police violence and physical and sexual victimization in prisons (Romero & Huerta, 2019). However, once in a while, marginalized groups manage to strike a victory and penetrate that shroud of structural injustice. This happened in the case brought against Honduras in the Inter-American Court of Human Rights.

A Case of Transfemicide in the Inter-American Court of Human Rights

During the decade after Vicky’s death, the state did not carry out an investigation with the necessary due diligence (Reportar sin Miedo, 2020). The case demonstrates that state bureaucrats can have a bias based on gender roles and stereotypes, which can affect the objectivity of a crime scene investigation and the due diligence required to pursue all avenues and evidence. The case was dismissed at the state level because of the victim’s gender identity and occupation, leading to subsequent impunity and structural violence. For transgender people, structural violence is pervasive, and the negation of justice is all too common, furthering their victimization processes.

As a result, in December 2012, the Red Lésbica “CATTRACHAS” and the Centro de Derechos Humanos de las Mujeres petitioned the Inter-American Commission of Human Rights to investigate the case, alleging state responsibility for the death of Vicky. Via Report No. 157/18, the Commission concluded that the state was responsible. Moreover, it established a series of recommendations for the state (IACHR, 2018, 2,25). Because the state failed to fulfill these requirements, the case was submitted to the Inter-American Court of Human Rights (IACtHR, 2021, 5).

It should be noted that the Inter-American Court of Human Rights is a Latin American regional court tasked with applying and interpreting the American Convention on Human Rights. Since Honduras ratified the Convention, it has accepted the jurisdiction of the Court.

A Transgender Activist, Refugee and Witness

Another indicator of the pervasiveness of transphobia is that by the time Vicky’s case reached trial, the last people who saw her alive had also been murdered. For this reason, the Court relied on the testimony of Claudia Dayanara Spellmant Sosa- a Honduran transgender woman who has been granted asylum in the United States. During the public hearing, she affirmed that “the majority of transgender women who stay
in Honduras die” (Spellmant Sosa, 2020, testimony on *Vicky vs Honduras*).

Claudia mentioned that even before the coup, there was an atmosphere of police brutality. For example, police would harass, assault and arbitrarily arrest transgender women, “we were subjected to cruel, inhuman and degrading treatments.” She then spoke about the coup, affirming that “the country was in chaos. It was militarised. I heard sirens all the time. There were many protests.” In that context, she noted that the crimes against LGBTQ individuals increased. It made the entire transgender community feel as if they were under siege. To make matters worse, although it has been more than a decade, those crimes have not been prosecuted (Spellmant Sosa, 2020, testimony on *Vicky vs Honduras*).

Lastly, Claudia noted that transgender women are not treated as citizens in many ways, “the state of Honduras has never taken responsibility (...) there is no law to protect us.” She added, “We deserve the right to live in our countries” (Spellmant Sosa, 2020, testimony on *Vicky vs Honduras*).

Overall, Claudia Spellmant’s testimony gave a harrowing account of what it was like to survive a context defined by extreme violence. However, she also detailed the efforts to establish grassroots organizations like Unidad Color Rosa in order to “strengthen and empower” the transgender community. Through this organization, she befriended Vicky, whom she described as an activist, leader and someone who dreamt of helping the community and her family (Spellmant Sosa, 2020, testimony on *Vicky y otras*).

Six months after testifying, Claudia was interviewed while the trial was still ongoing. She affirmed, “if we win, I know her soul will be happy too. Thanks to her soul, we are carrying a message and doing justice.” (Robert F. Kennedy Human Rights, 2021, 4:21).

*Role of State Responsibility*

The legal strategy involved affirming Vicky’s humanity by establishing the state’s obligation to recognize her identity and her right to life. Establishing state responsibility for Vicky’s death was fundamental, given the prevalence of institutionalized transphobia. State responsibility implies that each state should guarantee its citizens’ identity, safety and dignity. For this reason, some legal regimes provide “protected class” status to social groups who encounter discrimination (Saccocio, 2019). However, this has not been the case in Honduras. Far from being
granted protection, at the time of Vicky’s death, transgender identity was not legally recognized. From a social perspective, transgender individuals face multiple forms of violence. From a legal perspective, they have faced erasure.

It should be noted that this erasure can be traced to colonial-era policies. There is evidence of gender diversity in the precolonial civilizations, such as third genders, mixed-gender identities, and fluidity in understanding gender and sex (Stockett, 2005). Yet the colonial process violently imposed a gender binary (Lugones, 2008). Via the legal system, it became firmly entrenched, perpetuating historical injustices. In this regard, the Court’s assertion that gender identity, gender expression and sexual orientation are legal categories protected by the American Convention of Human Rights (IACtHR, 2021, 21) is truly a milestone. It is rejecting social and legal norms which have persisted for centuries. Instead, the Court furthered the protection of members of the LGBTQ community by extending the interpretation of provisions in regional human rights treaties.

The Court also extended its understanding of transgender protection to procedural considerations.

For instance, she was misgendered and referred to by her legal name in her case file and throughout the investigation (IACtHR, 2021, 15–20). Additionally, the Court argued that the state did not take into account Vicky’s gender identity as a possible motive for the murder, the fact that she was a sex worker or the fact that she was a transgender rights activist for the organization Colectivo Unidad Color Rosa. The case was not treated as a possible hate crime but as a “crime of passion”. This argumentation by the state has helped justify the killing of numerous LGBTQ activists, dismissing their cases as private affairs. Additionally, the Court affirmed that when investigating matters related to violence that affects transgender women, there must be a “reinforced due diligence”, which entails a gender focus for the investigation to help combat impunity and eradicate structural violence (IACtHR, 2021, 37).

Furthermore, the Court declared that the American Convention of Human Rights affirms that states must provide legal resources to victims of human rights violations. And the tribunal has said that states have an obligation of due diligence to pursue all avenues required to find the guilty parties and determine the truth. This implies that victims and families have a right to know what happened within a reasonable time frame (IACtHR, 2021, 4). Given the delays in reaching trial within the Honduran legal system, the state did not fulfill this requirement. More importantly, the Court concluded that there was a sufficient amount of circumstantial evidence and declared that the state was responsible for her death, contravening
articles 8 and 25 of the *American Convention of Human Rights* related to due process and judicial guarantees (IACtHR, 2021, 55).

Lastly, it is worth noting that “the judgments of the Court are binding” (IACtHR, 2019, 20) to Honduras and the twenty-five other countries that have accepted the jurisdiction of the Court. Henceforth, any state bureaucrat involved in the administration of justice is expected to ensure that the national laws and procedures adhere to both the *American Convention of Human Rights* and the Court’s interpretation of it. This implies that the legal advances and protections resulting from the trial are not limited to Honduras. It extends throughout the region.

*Transgender Women Are Women*

In addition to establishing state responsibility, the legal strategy aimed to affirm Vicky’s humanity by having the Court acknowledge her womanhood. Hence, the representatives of Hernández’s family and the Inter-American Commission on Human Rights (IACHR) also requested that the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, known as the *Convention of Belém do Pará*, be applied to Vicky (IACtHR, 2021, 36–37). In previous rulings, the treaty had only applied to cisgender women.

In a landmark decision, the Court recognized that the *Convention of Belém do Pará* applied to this case because violence against transgender individuals is also based on their gender identity. The judges declared that article 9 of the Convention allows for an intersectional lens. Accordingly, since ‘gender identity’ can make transgender women the target of violence, the Court stipulated that it is a category protected by the treaty (IACtHR, 2021, 6–8). The Court interpretation widens what is explicitly stated in the Convention, granting protection to transgender women in the process due to what it terms an “evolutive interpretation” (IACtHR, 2021, p37).

Hence, the Court does not merely recognize the existence of transgender individuals; it also acknowledges the systemic violence they face. Moreover, using an intersectional lens, the Court shows that it is permeable to the influence of activist and progressive discourses instead of remaining the bastion of hegemonic values. The sentence signals a change in the role of international law regarding the transgender community. In Latin America, legal norms have been weaponized against the transgender community. Instead of continuing to be a source of violence by upholding colonial-era, cisgender normative exclusionary norms, there is a paradigm shift. Law is never neutral. Whereas it was once used for erasure, it is
now being used to recognize the humanity and womanhood of Vicky and countless others.

CONCLUSION

The Inter-American system and its Court of Human Rights have shown decisively that it can be a tool for the empowerment of transgender people, helping to integrate and listen to their concerns and interests in a way that most national courts have been unable or unwilling to do due to a cisheteronormative bias. The judicial system can be a place where transgender rights are upheld, as this conviction against Honduras shows. However, for more permanent protection, categories such as hate crimes and transfemicide should be enshrined in the criminal codes across Latin America. This would enable prosecutors to argue their cases more effectively and aid in providing security for this marginalized group.

This verdict represents a critical shift, at least at the human rights level. Murder has traditionally been used against transgender people as the ultimate form of control over their bodies, and the state has usually been complicit. Nevertheless, the Inter-American human rights system will no longer tolerate state-sponsored transphobia. Indeed, it has taken a stance against the most extreme forms of discrimination faced by transgender individuals.

On the 9th of May 2022, the President of Honduras, Xiomara Castro, acknowledged the state’s responsibility for the death of Vicky Hernández. Moreover, she publicly expressed her commitment to implementing reforms in accordance with the Court’s ruling (González Cabrera, 2022).

In many ways, this is a crucial steppingstone. Given that institutions shape the social fabric, the fact that the most important regional Court acknowledged that transgender women are women demonstrates a clear blow to cisheteronormativity, advancing transgender rights in the process. The sentence will operate as a barrier to state-sponsored transphobia since there are now international repercussions for it. However, transfeminicide will probably persist without a widespread cultural change. It should be noted that law and judicial interpretation alone cannot change social reality; however, they can aid in the process of social transformation.

Nevertheless, this milestone must be contextualized. For centuries the legal system has been complicit in the erasure and suffering of transgender and gender-diverse individuals. The refusal to even acknowledge
the existence of transgender identities and the failure to prosecute crimes contributed to widespread impunity. The legal system did not offer them recognition, protection or justice. If anything, the law has been tantamount to institutionalized cruelty.

It is a landmark sentence amidst a context of relentless structural violence—an achievement earned through perseverance by transgender activists, lawyers, allies and Vicky’s family. And indeed, it was a struggle in the name of Vicky but also for countless other transgender individuals. The transgender struggle is multidimensional. It requires rejecting colonial-era, cis-heteronormative exclusionary narratives and norms. Above all, it is necessary to reframe the legal, political and social theater in order to create more space to acknowledge the humanity and dreams of the transgender community. In this regard, this case is not the end of the fight for transgender rights but rather the beginning of accountability.

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