

NOT ONE WOMAN LESS: An Analysis of the Advocacy and Activism of Argentina’s Ni Una Menos Movement

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INTRODUCTION

The contemporary women’s rights movement in Argentina is widespread and comprised of different grassroots organizations. One of the most well-known and well-established is Ni Una Menos. Ni Una Menos translates to “not one [woman] less” and is often stylized as #NiUnaMenos due to the viral nature of the movement.

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Ni Una Menos, along with the broader Argentine women's rights movement, advocates for the advancement of women's rights including reproductive rights, freedom from gender-based violence, and access to sexual education.

This Article analyzes feminist activism in Argentina through the lens of the Ni Una Menos movement. This is not an exhaustive study of the Ni Una Menos movement or of feminist activism in Argentina. Instead, this Article provides a descriptive introduction to the movement and explores its aims. Additionally, focus on Ni Una Menos is not intended to diminish or ignore the importance and strength of other similar groups, but rather to paint a clear picture of the largest and most well-known feminist organization in Argentina in order to provide a descriptive account of the status of the women's rights movement in the country. Indeed, many of the advocacy tactics Ni Una Menos uses are illustrative of the tactics used by many Argentine feminist groups, making it paradigmatic of the country's feminist movement as a whole.

This Article's analysis proceeds in two branches: a policy advocacy lens and an activist, or grassroots, lens. The policy advocacy perspective refers to legal and legislative initiatives in support of the feminist movement's aims, while the activist lens highlights the movement as it appears in the form of protest and mobilization. As is the case with many social movements, Ni Una Menos operates both within the political and legal processes and in the streets, therefore the line between these categories is often blurred. The movement's policy and grassroots components do not operate independently, and there is a link connecting some of the legal initiatives to the social movement. This Article traces the influence that Ni Una Menos has had on legal developments in Argentina and vice versa.¹

Part I provides a brief history of feminist activism in Argentina and introduces the Ni Una Menos movement. Parts II and III explore two of Ni Una Menos's main tenets: Part II discusses the movement's platform against femicide and other manifestations

1. This Article is based on primary and original source material, including conversations and interviews with law professors and students from the Universidad de Buenos Aires (UBA). The Article is largely based on interviews with Marisa Herrera, Adjunct Professor of Family and Inheritance Law at UBA, and Cecilia Hopp, Professor of Criminal Law at UBA and Law Clerk at the Federal Court of Criminal Cassation. Both Professor Herrera and Professor Hopp provided invaluable insight into Ni Una Menos's history, and the inner workings of Ni Una Menos's relationship to feminist legal movements in Argentina. All conversations and interviews were conducted in Spanish and have been translated and edited for purposes of clarity.

of gender-based violence, and Part III explores the movement's embrace of international law norms. Part IV provides an example of Parts II and III, illustrating how these two ideas played a prominent role in Argentina's recent passage of permissive abortion legislation. The Article concludes by exploring where Ni Una Menos currently stands and looks ahead to the future of the movement.

I. NI UNA MENOS AND ITS ORIGINS

A. *A History of Feminist Activism in Argentina*

The words Ni Una Menos are virtually synonymous with today's feminist movement in Argentina. The movement began as a hashtag in 2015 when tweets calling for #NiUnaMenos “not one [woman] less”—went viral.² Now a well-established movement, Ni Una Menos has been incredibly successful at elevating women's rights to the top of the Argentine political discourse.³

While the movement is relatively young, it exists in a society with a deeply rooted history of social activism, particularly in the context of women advocating for gender equity.⁴ From 1930 to 1983, Argentina experienced a series of dictatorships and authoritarian regimes.⁵ Unsurprisingly, the repressive regimes stalled progressive platforms and efforts to secure fundamental human rights. During

2. A tweet from journalist Marcela Ojeda is by many accounts the tweet that sparked the viral #NiUnaMenos hashtag: “Actrices, políticas, artistas, empresarias, referentes sociales . . . mujeres, todas, bah..no vamos a levantar la voz? NOS ESTAN MATANDO” (“Actresses, politicians, artists, businesswomen, community organizers. We're all women, but we're not going to raise our voices? THEY'RE KILLING US.”) Marcela Ojeda (@Marcelitaojeda), TWITTER (May 11, 2015, 12:24 PM), <https://twitter.com/marcelitaojeda/status/597799471368564736?s=10> [<https://perma.cc/3HQG-YH6A>].

3. In his inaugural address in 2020, President Alberto Fernández mentioned the Ni Una Menos movement by name in his promise to uphold the state's duty to reduce violence against women. See Jordana Timerman, *Can Argentina's Feminists Change Government?*, AMERICAS Q. (Feb. 3, 2020), <https://www.americasquarterly.org/article/can-argentinas-feminists-change-government> [<https://perma.cc/5TZA-WCAL>].

4. Zoom interview with Cecilia Hopp, Professor, UBA (May 26, 2020) (“Argentina has had important feminist movements since democracy was restored. From the 1980s, and surely from before” [“Argentina tiene movimientos feministas importante desde que se recupero la democracia. De los años 80 y seguramente de antes.”]).

5. Between the years of 1930 to 1976 there were six coups d'états in Argentina—in 1930, 1943, 1955, 1962, 1966, and 1976. Each established a dictatorship, with the last one falling in 1983. See *generally Argentina Profile - Timeline*, BBC (Nov. 5, 2019), <https://www.bbc.com/news/world-latin-america-18712378> [<https://perma.cc/4KSL-RWTJ>].

Argentina's most recent military dictatorship, large groups, comprised of mostly women, would gather at Buenos Aires's Plaza de Mayo to advocate for their children and grandchildren who had been kidnapped by those in power.⁶ Known as Las Madres de la Plaza de Mayo, these women wore white scarves around their heads, the image of which is now associated with their movement and their fight. "Those dark years . . . marked the strength of the mothers of the disappeared," recounts Professor Marisa Herrera, Adjunct Professor of Family and Inheritance Law at Universidad de Buenos Aires.⁷ Just as Las Madres de la Plaza de Mayo were identifiable by their white scarves, today, Ni Una Menos members can be identified by their use of green scarves as an emblem of the movement.⁸ Like the movement itself, the green scarves—which have become the single biggest symbol of feminism in Argentina—are moored in tradition.⁹ While Ni Una Menos protestors and other feminist activists do not wear their scarves around their heads like their activist predecessors did, the imagery and the symbolism of Argentine women fighting to defend basic human rights remain potent.¹⁰

In 1983, after the end of the final military dictatorship, Argentina's modern feminist movement emerged.¹¹ During this chapter of renewed democracy the feminist movement started with "the most

6. The coup in 1976 started what was called the "Dirty War," lasting until 1983. During this time the Argentine government waged a campaign against political dissidents, kidnapping, torturing, and murdering those thought to be a threat. Some accounts say there were 30,000 disappeared people, but the number is indeterminate.

7. Zoom interview with Marisa Herrera, Professor, UBA (May 21, 2020) ("Esos años oscuros . . . marco la foteleza de las madres de las personas desaparecidas").

8. The green scarves are typically tied around backpacks or tote bags or worn on the wrist.

9. Interview with Marisa Herrera, *supra* note 7 ("Our symbol of the green scarves, in reality, comes from our symbols of the white scarves." (["Nuestro símbolo de los pañuelos verdes, en realidad, viene de nuestros símbolos de los pañuelos blancos."])).

10. The green scarves that are emblematic of the contemporary feminist movement in Argentina even contain a graphic design of a white headscarf as a direct nod to La Madres de la Plaza de Mayo.

11. While feminist movements in Argentina did exist before the 1980s, a history of those movements is outside the scope of this Article. For a discussion of the feminist movement in Argentina during the 1960s, see Maria del Carmen Feijoo, Marcela M. A. Nari & Luis A. Fierro, *Women in Argentina During the 1960s*, 23 *LATIN AM. PERSPECTIVES* 7, 7–20 (1996).

basic requests.”¹² Conversations about bodily autonomy emerged;¹³ and the right to divorce was secured.¹⁴ Grassroots organizing began to mobilize feminists to the streets. In 1986, activists organized the first of Los Encuentros Nacionales de Mujeres which formed an important foundation for feminist movements in Argentina and are especially relevant to the formation of Ni Una Menos.”¹⁵

The Encuentros take their form from the World Conferences on Women organized by the United Nations; the first one was specifically modeled after the Third World Conference on the status of women convened in Nairobi, Kenya in 1985.¹⁶ Like the U.N.-sponsored conferences which assess the status of women’s empowerment globally, the Encuentros strive to take account of the status of women in Argentine society. Since the first meeting in 1986, the Encuentros have convened annually and continue to be a critical component of feminist activism in Argentina today.¹⁷ To refer to these as meetings is somewhat of a misnomer, with Encuentros attendees in recent years numbering in the hundreds of thousands. During Encuentros, which convene annually in a designated city in Argentina, women gather to participate in a mass consciousness raising exercise similar to the recent Women’s Marches in the United States. Thus, even in this early iteration

12. Interview with Cecilia Hopp, *supra* note 4 (“[In 1983] the feminist movement begins to put forward the most basic requests: divorces.” [“En 1983] empieza sugerir el movimiento feminista con los reclamos mas básicos posibles: divorcios.”]).

13. Pioneer of the women’s movement in Argentina, Maria Elena Oddone, is known for her slogan “No a la maternidad, sí al placer” (“No to motherhood, yes to pleasure”). See Emmanuel Theumer, *María Elena Oddone: Conversaciones con una feminista histórica*, POLÉMICAS FEMINISTAS, 2020 at 1, 2.

14. Divorce and remarriage were legalized in Argentina in 1987. See *Argentina, a Holdout, Is Legalizing Divorce*, N.Y. TIMES (May 9, 1987), <https://www.nytimes.com/1987/05/09/world/argentina-a-holdout-is-legalizing-divorce.html> [<https://perma.cc/3ES2-P5T3>].

15. Los Encuentros Nacionales de Mujeres translates to “National Meetings of Women,” and is sometimes shortened to “Encuentros.” For more on the history of the Encuentros, see Amanda Alma, *Encuentros Nacionales de Mujeres en Argentina: 33 Años de Lucha*, NUEVA SOCIEDAD (Oct. 2018), <https://nuso.org/articulo/encuentros-nacionales-de-mujeres-33-anos-de-lucha> [<https://perma.cc/G7GS-KRL6>].

16. See *Mujeres de todo el país deliberant en Chubut buscando ampliar derechos*, EL DIARIO (Oct. 13, 2018), <https://www.eldiariodemadryn.com/2018/10/mujeres-de-todo-el-pais-deliberan-en-chubut-buscando-ampliar-derechos> [<https://perma.cc/F9EE-8PAY>]; *World Conferences on Women*, UN WOMEN, <https://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women#nairobi> [<https://perma.cc/VW5S-2JS8>] (last visited Mar. 3, 2022).

17. See Alma, *supra* note 15.

of the modern Argentine women's movement, and alongside progressive legal and political changes, there existed a growing activist component from which Ni Una Menos took inspiration and grew.

B. *An Introduction to Ni Una Menos*

Like the Encuentros that came before it, Ni Una Menos is not a single entity, but rather a consolidation of various feminist grassroots movements. Ni Una Menos is a horizontal organization comprised of various assemblies.¹⁸ Its members come from a range of professions—journalism, academia, and law, for example—and it is a movement driven by young people.¹⁹ That the Argentine youth is so socially conscious and that such a large portion of them have mobilized behind the feminist movement and the slogan of #NiUnaMenos contributes enormously to the movement's visibility and success. Building off Argentina's well-established history of social movements and activism, young people, mainly women and girls, have played a large role in shaping Ni Una Menos's identity and continue to drive its direction.²⁰ These young women have rallied behind recognition of certain fundamental human rights²¹ and they actively pressure the state to uphold those duties. Additionally, Argentina's political structure is set up in a way that invites participation from young people. The voting age in Argentina was lowered to sixteen years old in 2009,²² meaning that young people are necessarily more inclined to participate politically in their society.²³

18. Interview with Marisa Herrera, *supra* note 7 (“Ni Una Menos is a typical movement in that it is a horizontal construction that brings together different organizations. [The movement] is generated by assemblies . . . where there is no hierarchy, there is no president or a treasurer or a secretary.” [“El Ni Una Menos es un típico movimiento que se ha generado de carácter horizontal que nuclea muchas organizaciones diferentes. [El movimiento] se genera por asambleas . . . donde no hay una cuestión jerárquica, no hay una presidenta o una tesorera o una secretaria.”]).

19. For a discussion of Ni Una Menos from the perspective that it is revolution of young girls, see generally LUCIANA PEKER, *LA REVOLUCIÓN DE LAS HIJAS* (2019).

20. *Id.*

21. Interview with Marisa Herrera, *supra* note 7 (“The young women have taken notice that these governments have put human rights on the agenda.” [“Las mujeres jóvenes se han informado en estos gobiernos donde los derechos humanos han sido puesto en agenda.”]).

22. See *Argentina Voting Age Lowered from 18 to 16*, BBC NEWS (Nov. 1, 2012), <https://www.bbc.com/news/world-latin-america-20164573> [<https://perma.cc/7J5X-FST8>].

23. Interview with Marisa Herrera, *supra* note 7 (“This incorporation of politics into young people's lives and giving them the chance to vote at a younger age, gives you kids with a more open mind who can have much more

The power of the internet and social media have helped to further ignite the Ni Una Menos movement. Since Marcela Ojeda's "tweeted call to arms"²⁴ in 2015, the hashtag #NiUnaMenos went viral; the movement reached all corners of the internet as it drew attention to the rising violence against women in Argentina. The hashtag engaged an audience looking to discuss issues relating to women's rights, and much like the viral #MeToo hashtag in the United States,²⁵ #NiUnaMenos became a forum for Argentine women to discuss and share their experiences of gender-based violence. #NiUnaMenos did not just change the way Argentines were talking about these issues—the hashtag helped connect individuals and feminist advocacy groups with each other. #NiUnaMenos's reach extended beyond Twitter feeds and served to coordinate and produce the large-scale mobilizations and demonstrations which have become a hallmark of the movement. The mass demonstrations have particularly advanced Ni Una Menos's political leverage and created a change in the discourse around gender-based violence in Argentina. Regarding the importance of in person mobilization, Professor Herrera said, "I think that as much you tweet and hashtag about the same topic, that doesn't have the same impact as opening your window as a legislator and seeing a plaza filled with [green] scarves. I think that that mobilization is one of a kind."²⁶

Thanks to the online forum created by the hashtag, activists were able to organize the first large-scale Ni Una Menos protest in 2015. The protest was a direct repudiation of a rise in femicides in Argentina and throughout Latin America, some of which were highly publicized.²⁷ One was that of fourteen-year-old Chi-

interesting debates." ["Esta incorporación de la política y dar la posibilidad de votar a gente mas joven también te da, chicos que vienen con una cabeza mas abierta, con debates muchos mas interesantes."]).

24. Ojeda, *supra* note 2; Alex Ronan, *How One Tweet About Femicide Sparked a Movement in Argentina*, CUT (June 16, 2015), <https://www.thecut.com/2015/06/how-one-tweet-sparked-a-movement-in-argentina.html> [https://perma.cc/VQG7-Y4KC].

25. Monica Anderson & Skye Toor, *How Social Media Users Have Discussed Sexual Harassment Since #MeToo Went Viral*, PEW RSCH. CTR. (Oct. 11, 2018), <https://www.pewresearch.org/fact-tank/2018/10/11/how-social-media-users-have-discussed-sexual-harassment-since-metoo-went-viral> [https://perma.cc/2E9L-THK4].

26. Interview with Marisa Herrera, *supra* note 7 ("Yo creo que por lo mas que vos tuitees, y le pongas el mismo hashtag del 'topic,' eso no te da esa cosa de abrir la ventana tuya como diputado, senador y ver una plaza llenísima, llena de pañuelos. Creo que la movilización eso es irreproducible.").

27. Femicide is generally understood to be the intentional killing of a woman because she is a woman. For more on the term's definition and the importance of Ni Una Menos's use of the term, see *infra* Part II.

ara Paez, who was killed just one month prior to the first Ni Una Menos demonstration.²⁸ In May of 2015, Chiara's body was found buried under her boyfriend's house in Rufino, Santa Fe, a city in northern Argentina.²⁹ It was later revealed that Chiara was pregnant at the time of her murder, presumably with the child of her boyfriend, Manuel Mansilla.³⁰ Manuel eventually confessed to killing her after Chiara had told him about the pregnancy.³¹ He beat her to death and buried her body under his house with the help of his relatives.³²

This tragic incident is just one of many,³³ and the specific facts of Chiara's killing illuminate many of the issues Ni Una Menos sought to bring to light in the initial 2015 demonstration and which remain core pillars of the movement today. Chiara's death highlighted that gender-motivated violence could happen to any woman or girl anywhere, and potentially without any overt warning signs.³⁴ Chiara's murder also spoke to the false dichotomy between issues considered private family matters and issues considered to be public societal matters. This horrific incident, along with the many others in the public eye, catapulted the concept of femicide into the

28. "Es terrible encontrarla así", dijo el padre de Chiara Páez, la adolescente enterrada en la casa del novio, LA NACION (May 11, 2015, 10:16 PM) [hereinafter LA NACION], <https://www.lanacion.com.ar/seguridad/es-terrible-encontrarla-asi-dijo-el-padre-de-chiara-paez-la-adolescente-enterrada-en-la-casa-del-novio-nid1791913> [<https://perma.cc/2GRP-A997>].

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* See also *How One Pregnant Teen's Murder Sparked Protests Across Argentina Against 'Femicide'*, HUFFPOST (June 4, 2015, 2:44 PM), https://www.huffpost.com/entry/chicara-paez-femicide-argentina_n_7513194 [<https://perma.cc/V5BT-3U4L>].

33. The Women's Office of the Supreme Court of Justice established the first National Femicide Registry in 2015 to collect data on femicides in Argentina. Per the National Femicide Registry's report, in 2019 there were 269 femicides in Argentina. FEMICIDIOS: DATOS ESTADÍSTICOS DEL PODER JUDICIAL 2019, REGISTRO NACIONAL DE FEMICIDIOS DE LA JUSTICIA ARGENTINA, 1, 20 (2019), <https://www.csjn.gov.ar/omrecopilacion/docs/informefemicidios2019.pdf> [<https://perma.cc/SP3N-6GDN>]. On her 2016 visit to Argentina, the U.N. Special Rapporteur on Violence Against Women noted that the data collected by the National Femicide Registry included only cases in which judicial proceedings had been initiated, therefore the actual number of femicides is likely higher. See Dubravka Šimonovic (Special Rapporteur on Violence Against Women), *Rep. of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, on Her Mission to Argentina*, at ¶ 11, U.N. Doc. A/HRC/35/30/Add.3 (June 23, 2017).

34. Chiara's father claimed that his daughter seemed to be happy in her relationship. LA NACION, *supra* note 28.

public discourse and underscored the fact that gender-based violence was not a matter to be dealt with privately by individuals, but instead a societal ill to be dealt with publicly.

Fueled by the national outrage over deaths like Chiara's, armed with the strength of various preestablished grassroots feminist movements, and backed by the viral hashtag, the Ni Una Menos movement began in earnest with its first demonstration in Buenos Aires on June 3, 2015. Professor Herrera recounts, "[i]t was raining and it was a horrible day."³⁵ "[Nonbelievers] said: 'Okay, well, no one is going to show up,' but [the Plaza] was full because [the demonstration] had a mysticism about it and had more strength than people thought. It had a large impact."³⁶ More than 200,000 people showed up to the Plaza de los Dos Congresos in Buenos Aires to take part in the demonstration.³⁷

In a sense, the lack of hierarchical organization makes Ni Una Menos relatively informal. Simply wearing a green scarf, tweeting the hashtag #NiUnaMenos, or attending a march signals that one is part of the feminist movement in Argentina. At the first march, however, Ni Una Menos proved itself as not only a mass cultural mobilization, but also a legitimate advocacy group that would prove to wield significant political force.

In a manifesto that was published prior to the march and read aloud at the event, organizers outlined what the movement stood for by listing its specific demands and desired outcomes.³⁸ This first manifesto, and the Ni Una Menos movement in 2015 more broadly, was specifically geared toward addressing the widespread problem of femicide and related gender-based violence in Argentina.³⁹ The manifesto is frank in the way it begins:

In 2008, a woman was killed every forty hours; in 2014, every thirty. In those seven years, the media reported on 1808 femicides. How many women were killed simply for being women in 2015? We don't know. But we do know that we have to say enough. In those years, femicides made close to 1500 boys and girls orphans and some of them are forced to live with the perpetrators. This is a problem that belongs to everyone. We have

35. Interview with Marisa Herrera, *supra* note 7 ("Era una día que llovía y era un día horrible.").

36. *Id.* ("Y decían bueno no va ir nadie, y se lleno, porque tuvo como una mística tuvo una fuerza mayor a lo que se que era.").

37. See *Argentine Marches Condemn Domestic Violence*, BBC (June 4, 2015), <https://www.bbc.com/news/world-latin-america-33001990> [<https://perma.cc/52XE-E4H2>].

38. *Manifestos: 3 de junio 2015*, NI UNA MENOS (June 3, 2015), <http://niunamenos.org.ar/manifestos/3-de-junio-2015> [<https://perma.cc/Z9QU-ENJL>].

39. *Id.*

to come up with a solution together. We need to make commitments to change a culture which tends to think of a woman like an object of consumption and for disposal and not as an autonomous person.⁴⁰

As the manifesto continues, it discusses the widespread problem of femicide in Argentine society and ends with a list of nine specific demands.⁴¹ The demands that continue to be central to the movement include: the collection and publication of official statistics on violence against women including rates of femicide; the creation of more emergency shelters and day homes for victims of gender-based violence along with housing subsidies to help victims achieve autonomy; the incorporation and deepening of comprehensive sexual education curriculum at all education levels; and mandatory training for government actors on the subject of sexist violence.⁴² The manifesto emphasizes that many of these demands must be met “from a gender perspective,” meaning that gender must be considered when actualizing these demands.⁴³ For example, the demand for comprehensive sexual education states that it must include the topic of machismo violence and create workshops to prevent violent relationships.⁴⁴

40. *Id.*

41. The demands in the first manifesto are as follows: (1) Full implementation of the Law of Comprehensive Protection to Prevent, Punish and Eradicate Violence Against Women in the Areas in which they Develop Interpersonal Relationships (Ley No. 26.485 Ley de protección integral para prevenir, sancionar y erradicar la violencia contra las mujeres en los ámbitos en que desarrollen sus relaciones interpersonales passed in 2009); (2) Collection and publication of official statistics on violence against women including rates of femicide; (3) A full opening and operation of the Domestic Violence Offices of the Supreme Court (Oficinas de Violencia Doméstica de la Corte Suprema de Justicia); (4) Guarantees for the protection of victims of violence, including electronic monitoring of offenders to ensure that they do not violate restraining and protective orders; (5) Guarantees for victims to access the justice system, including: attention of trained personnel to receive complaints in each prosecutors office and police station; merging of civil and criminal cases; and free legal representation for victims during the entire judicial process; (6) Guarantees for the fulfillment of children’s rights with specially trained legal representation; (7) Creation of more emergency shelters and day homes for victims, along with housing subsidies with interdisciplinary assistance from a gender perspective; (8) Incorporation and deepening of comprehensive sexual education curriculum at all education levels from a gender perspective, including the topic of machismo violence and workshops to prevent violent relationships; and (9) Mandatory training for government actors on the subject of sexist violence. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

Every subsequent Ni Una Menos demonstration has been accompanied by its own manifesto that explains any developments in the movement's platform and provides updates on the movement's advocacy initiatives. Outlining the movement's platform and updating it each year is an integral component of Ni Una Menos, and publishing and reading the manifestos aloud is a practice that continues at even the most recent demonstrations. In explicitly outlining the movement's goals and demands, the manifestos serve as tools to not only align the movement and its messaging internally, but also to firmly signal to others what Ni Una Menos's platform and messaging are.

Each time Ni Una Menos publishes a new manifesto, the movement expands and adapts its platform. This has allowed it to advocate for women's rights in all aspects of Argentine society, touching on a range of issues from economic justice, to workplace harassment, to the inclusion of trans women's rights.⁴⁵ Even through the movement's continued expansion of its platform, Ni Una Menos continues to be successful because it remains true to two core tenets identified in the first manifesto: a fierce commitment to the eradication of gender-based violence and a steadfast reliance on international norms and conventions of human rights. These two ideas have allowed the movement to successfully grow and expand its advocacy without losing any of the momentum garnered by the grassroots elements.

II. CONDEMNATION OF FEMICIDE AND ATTENDANT FORMS OF GENDER-BASED VIOLENCE

Ni Una Menos's initial demonstration and manifesto laid the foundation for the movement's identity as an anti-femicide movement aimed at combatting systemic gender-based violence. Femicide as a concept is inherently political, and the use of the term in the first manifesto necessarily drew out the connection between gender-motivated killings and the patriarchal nature of

45. See, e.g., *Manifiestos: #DesendeudadasNosQueremos*, NI UNA MENOS (June 2, 2017), <http://niunamenos.org.ar/manifiestos/desendeudadasnosqueremos> [<https://perma.cc/MQ6Y-5D84>]; *Manifiestos: Respuestas políticas a reclamos políticos. El 8 de marzo #NosotrasParamos*, NI UNA MENOS (Feb. 4, 2017), <http://niunamenos.org.ar/manifiestos/respuestas-politicas-a-reclamos-politicos-el-8-de-marzo-nosotrasparamos> [<https://perma.cc/J8Q9-ZLLE>]; *Manifiestos: Llamamiento transfronterizo a la Huelga Feminista este 8 y 9 de Marzo 2020*, NI UNA MENOS (Mar. 6, 2020), <http://niunamenos.org.ar/manifiestos/llamamiento-transfronterizo-la-huelga-feminista-este-8-9-marzo-2020> [<https://perma.cc/9SL8-SRFK>].

society's socio-cultural and political dimensions.⁴⁶ While directly linking these two ideas is not necessarily a new concept, Ni Una Menos brought this relationship between acts of gender-based violence and the prominence of machismo⁴⁷ in society to the fore of the public's attention. By electing to use this gendered term, the movement forces a spotlight on the gendered motive behind these killings. This shift in perspective changes the narrative around why and how these kinds of killings occur and heightens awareness of the issue. Deliberate and repeated use of the term femicide by feminists contributed to its widespread usage in Argentina. As Ni Una Menos's influence continued to spread and as the movement grew in popularity, so did normalization of the term femicide. In 2015, the Argentine government even began studying femicide rates.⁴⁸

Deliberate use of the term femicide as a way to bring awareness to the issue of widespread gender-based violence is not a tactic invented by Ni Una Menos organizers, but one adopted from a group of feminist journalists who purposefully would use the word femicide as a means to achieve similar goals.⁴⁹ A few years before the first Ni Una Menos demonstration, a group of feminist journalists began to use the term in their reporting as a means to shift the narrative surrounding gender-based killings and educate readers on issues relating to gender-based violence. These journalists were

46. *Manifestos: 3 de junio 2015*, *supra* note 38.

47. Machismo is strong or aggressive masculine pride. The term originated in the 1940s from the Mexican Spanish term for male, "macho." As this Article illustrates, machismo underpins society in Latin America and beyond, and it can manifest itself in a variety of ways.

48. The movement's very first demand in the 2015 manifesto is for enforcement of a law that mandates the collection and publication of data on instances of violence against women throughout the country. The manifesto spells out that these statistics must include rates of femicide, and accordingly the Office of Women of the Supreme Court began publishing a yearly report of femicides. *See supra* note 33 and accompanying text.

49. In 2008 a group called Periodistas de Argentina en Red-Por una Comunicación No Sexista [PAR] [Argentine Journalists for Non-Sexist Communication] published *Decálogo para el tratamiento periodístico de la violencia contra las mujeres* [Commandments for the Journalistic Treatment of Violence Against Women] with the goal of addressing the media's responsibilities in the face of increased instances of gender-based violence. The first of PAR's commandments is that the terms violence against women, gender-based violence, machismo violence, and femicide should be used when reporting on instances of gender-based violence. Commandment three explicitly bans the use of the term "crimes of passion," stating that "crimes of passion do not exist." *See* PERIODISTAS DE ARGENTINA EN RED-POR UNA COMUNICACIÓN NO SEXISTA, *DECÁLOGO PARA EL TRATAMIENTO PERIODÍSTICO DE LA VIOLENCIA CONTRA LAS MUJERES* (2008), https://www.spr.org.ar/intranet/frm_documentos/documentos/1505505867_decálogo_par.pdf [hereinafter PAR].

noticing that when a woman was killed, traditional media outlets would use terms such as “passion killing” in their reporting.⁵⁰ Such a term pushes blame onto the victim; it suggests that the perpetrator was not motivated by pure animus, but rather that they were triggered by something the victim did. Inserting the word passion suggests an underlying emotional rationale behind the killing—a rationale that is likely to be considered a family, or private, matter. Additionally, the term could be perceived as mitigating the perpetrator’s fault, as the presence of strong emotional impulses could excuse the perpetrator’s actions both in court, as a technical legal matter, or generally, in public opinion.⁵¹ This tactic also helped to remove the protective barriers that a term like “passion killing” provided and introduced these kinds of killings into the public sphere and discourse. A simple change in terminology brought with it a big shift in the way the problem of gender-based violence was being identified. Through the intentional use of femicide, feminist journalists were able to shift public perception surrounding these killings. Using the term in its first manifesto, Ni Una Menos adopted a similar strategy. Intentional use of this term is more than just a way to shift perspectives on the issue—it is also an important advocacy tool, because the term femicide implies that the movement is geared at structural change.⁵²

A. *The Use of the Term Femicide Signals a De-Emphasis on Criminal Law*

The movement’s use of femicide and such specific terminology is important because it illustrates how the movement does not direct all its energy into the criminal justice system in building the power necessary to stop gendered violence. This Article analyzes the diminished role of criminal law in Ni Una Menos’s preferred solutions from an anti-carceral perspective. This is not to say that there is no role for the criminal justice system in the push for women’s rights or that the feminist agenda in Argentina is uniformly

50. Ingrid Beck, one of these feminist journalists and an early member of Ni Una Menos, stated violence against women “is not crime of passion.” Miriam Puelles, #NiUnaMenos: *La historia de un tuit que revolucionó el feminismo*, LA VANGUARDIA (Mar. 21, 2018), <https://www.lavanguardia.com/vida/20180321/441658396587/niunamenos-feminismo-ingrid-beck.html> [<https://perma.cc/N9EP-5XND>]. See also Peker, *supra* note 19, at 153.

51. See PAR, *supra* note 49, at 10.

52. See Magdalena Grzyb, Marceline Naudi & Chaime Marcuello-Servós, *Femicide Definitions*, in FEMICIDE ACROSS EUROPE: THEORY, RESEARCH AND PREVENTION 17 (Shalva Weil, Consuela Corradi & Marceline Naudi eds., 2018) (“Defining a social problem in a certain way leads to a *specific* possible solution, which is dependent on the way the problem is defined.”).

anti-carceral. In fact, there have been various initiatives that have instituted increased punishment as a response to gender-based violence. For example, in 2012 the Argentine penal code was amended to specifically criminalize femicide and heighten punishment especially in the context of domestic killings.⁵³ Additionally, in 2015—although separate from the Ni Una Menos movement—lawmakers passed a bill that removed the statute of limitations for crimes involving sexual abuse.⁵⁴ Most of the solutions that Ni Una Menos supports, on the other hand, are not criminal in nature and target systems outside criminal law and practice. Use of this gendered term invokes systemic, root issues of patriarchy, which signals that the movement does not give primacy to criminal law in response to the widespread problem of gender-based violence. A focus on systemic change forces criminal law out of the spotlight, and, in turn, opens the door for other systems to fill the void.⁵⁵ Specific use of the term femicide recognizes the limits of criminal law and practice—at the very least, use of the word represses a carceral impulse.⁵⁶

One way in which the use of the term femicide shifts emphasis away from carceral solutions is that it necessarily places a direct focus on the victim, because in femicide, the victim is always a woman.⁵⁷ A reality of criminal law, on the other hand, is a primary focus on the individual who has transgressed the law. While the criminal legal system purportedly seeks to bring justice to victims, in reality much of criminal punishment is focused on—and justified by—a

53. Law No. 26.791, Dec. 11, 2012 (Arg.).

54. Law No. 27.206, Oct. 28, 2015 (Arg.). This law was passed just four months after the first Ni Una Menos demonstration. The first demonstration did not list a legislative initiative like this one in its first list of demands. To see the full list of demands, see *supra* note 41 and accompanying text.

55. Giving criminal law primacy when solving societal issues is something that occurs often in the United States. For more on how the United States has turned to criminal law as its preferred system to address problems like disorder in workplaces, families, and schools, see JONATHAN SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* (1st ed. 2007).

56. This idea of carceral feminism was first explored by Elizabeth Bernstein in her assessment of the feminist movement in the context of the anti-trafficking movement in the United States. See Elizabeth Bernstein, *Carceral Politics as Gender Justice? The “Traffic in Women” and Neoliberal Circuits of Crime, Sex, and Rights*, 41 *THEORY & Soc’y* 233 (2012).

57. The term woman is used throughout the Article to include all individuals who identify as women, including trans women. Because Spanish is a gendered language, Ni Una Menos is a feminine term, but there is a push to change the movement’s name to Ni Unx Menos to be more inclusive of trans and non-binary individuals.

principle of retribution, with victims often left out of the equation.⁵⁸ Even in the context of increased visibility for victims' rights⁵⁹ or laws that purport to offer victims additional support,⁶⁰ turning to criminal systems for solutions nonetheless prioritizes punishing the perpetrator above repairing injury inflicted upon the victim.⁶¹ An intentional (and oftentimes emphasized) consequence of a criminal conviction is that a stigma is imposed on the transgressing individual, along with a sense of blameworthiness of fault.⁶² This solution is purely reactive, as it takes an ex post approach and only intervenes after the individual has transgressed the law.

By drawing attention to the root and societal causes of violence against women, use of the term femicide necessarily probes at underlying motive or rationale and thereby sets Ni Una Menos apart from women's rights movements that rely on criminal law.⁶³ An approach that probes at the motives and reasons behind acts of gender-based violence broadens the lens beyond the individual perpetrator and victim, and, more importantly, interrogates the society in which these individuals operate. Criminal law is not focused as

58. For more on the justifications of punishment in the criminal law context, see Kent Greenawalt, *Punishment*, 74 J. CRIM. L. & CRIMINOLOGY 343 (1983).

59. In the United States, for example, so-called victim impact statements in which victims and family members outline the emotional, physical, and financial impacts suffered as a result of the crime are routinely considered in a court's sentencing determination. See Victoria Schwartz, *Recent Development: The Victims' Rights Amendment*, 42 HARV. J. LEGIS. 525 (2005); Symposium, *Crime Victim Law: Theory and Practice*, 9 LEWIS & CLARK L. REV. 481 (2005).

60. The Law of Comprehensive Protection to Prevent, Punish and Eradicate Violence Against Women in the Areas in which they Develop Interpersonal Relationships theoretically provides resources, including legal assistance, to victims of gender-based violence. See Law No. 26,485, Apr. 1, 2009 (Arg.). However, like many laws, its implementation has been slow.

61. Too often the criminal legal system fails victims in a host of ways. For example, survivors of violence are often punished, people fear for their lives when they call the police if they do not have other community resources to support them, and the criminal system often retraumatizes survivors of gender-based violence. For more reasons feminist scholars and organizers are reluctant to rely on the criminal legal system and for a challenge on the criminalization of survivors of domestic and sexual violence, see SURVIVED & PUNISHED, <https://survivedandpunished.org/about> [<https://perma.cc/7UDA-SQPB>] (last visited February 21, 2022).

62. See Greenawalt, *supra* note 58.

63. Motive is not to be confused with mens rea, a distinguishing element of criminal liability that is focused on the perpetrator's mental state and resulting culpability. For a study on the difference between purpose or intention and motive, see GLANVILLE WILLIAMS, *THE MENTAL ELEMENT IN CRIME* 10, 14 (1965) (categorizing both intent and motive as types of intentions, but stating intent is legally relevant to criminal liability while motive is irrelevant).

much on prevention because in a traditional criminal law inquiry there is not much opportunity to explore events that led both the perpetrator and the victim to find themselves in the situation. In other words, a focus on criminal law does not allow for much focus on the systems or structures that may have created the violence situation in the first place. This strictly *ex post* approach provides for solutions that are much more narrowly applicable than the aims of the Ni Una Menos movement, which seeks to achieve a societal shift through structural change. Use of the word femicide necessarily prompts the questions: what were the circumstances that led to this outcome? What was the motivation behind the violence? While motive is not completely irrelevant in traditional criminal law doctrine, as it can powerfully influence charging and sentencing decisions, it is not a determining factor in an individual's culpability.⁶⁴ But these are the kinds of questions that are necessarily posed when the term femicide is used. Removing a focus on criminal law enables this kind of inquiry into motive and illustrates how criminal law is perhaps an inadequate and inappropriate way to address gender-based violence.⁶⁵

Two pillars of the criminal legal system that may provide hope for a criminal law solution to the problem of gender-motivated killings are the ideas of deterrence and rehabilitation because they can best address the underlying issues and conditions that exacerbate this kind of violence.⁶⁶ However, emphasis on the punishment of abusers should not be the feminist priority when questions of whether criminal laws do in fact deter crime or regarding effectiveness of rehabilitation programs remain.⁶⁷ The shift in perspective

64. See *id.* (stating that motive is “legally irrelevant, except perhaps in relation to sentence”). For a comprehensive analysis of the question of whether motive should be regarded as relevant to sentencing, see Elaine M. Chiu, *The Challenge of Motive in the Criminal Law*, 8 BUFF. CRIM. L. REV. 653 (2005).

65. For further exploration of the anti-carceral movement in the context of gender-based crimes through a feminist lens, see Aya Gruber, *A Neo-Feminist Assessment of Rape and Domestic Violence Law Reform*, 15 J. GENDER RACE & JUST. 583 (2012); Bernstein, *supra* note 56.

66. For background on the idea of rehabilitation as a justification for punishment, see Michael Vitiello, *Reconsidering Rehabilitation*, 65 TUL. L. REV. 1011, 1038–40 (1991).

67. For a discussion of crime and deterrence, see VALERIE WRIGHT, THE SENTENCING PROJECT, DETERRENCE IN CRIMINAL JUSTICE: EVALUATING CERTAINTY VS. SEVERITY OF PUNISHMENT (2010). With regard to the efficacy of rehabilitation programs in the United States penal system, some researchers on this topic are pessimistic. See Steven P. Lab & John T. Whitehead, *From “Nothing Works” to “the Appropriate Works”* 28 CRIMINOLOGY 405 (1990) (arguing that a large majority of rehabilitation programs in the criminal justice context have proven ineffective). Most research has shown that the success rate of rehabilitation

prompted by use of the term femicide allows Ni Una Menos to seek solutions outside the carceral space in order to advocate for real structural change in response to the problem of gender-based violence.

B. *Alternate Solutions Outside of Criminal Law*

While there are indeed some aspects of the Ni Una Menos platform focused on solutions in the criminal justice sphere, the movement largely looks outside the penal system to promote change by proposing a wide variety of public policy initiatives. For example, one of the movement's biggest initiatives is the collection of data relating to gender-based violence and using that data collection in its policy advocacy. In the wake of the first Ni Una Menos demonstration and the demands listed in the 2015 manifesto, which called for the "collection and publication of official statistics on violence against women, including rates of femicide,"⁶⁸ the Women's Office of the Supreme Court of Justice established the first National Femicide Registry, known as "El Registro Nacional de Femicidios de la Justicia Argentina (RNFJA)."⁶⁹ Each year, RNFJA publishes statistics on the deaths of women because of gender-based reasons. The results are publicly available and are easily accessible.⁷⁰

The term femicide is broad, as it encompasses all killings of women because of their gender, but the data shows that femicides occur in different contexts and can be aggregated in a variety of ways. For example, femicides can be classified by the victim's age or by the relationship between the victim and perpetrator.⁷¹ Ni Una Menos advocates for this kind of data collection and analysis as a means to specifically call out and address the different types of

programs vary dependent on type of offense and offender. For a discussion of the features most often associated with effective programs, see LOIS M. DAVIS, ROBERT BOZICK, JENNIFER L. STEELE, JESSICA SAUNDERS & JEREMY N. V. MILES, *EVALUATING THE EFFECTIVENESS OF CORRECTIONAL EDUCATION: A META-ANALYSIS OF PROGRAMS THAT PROVIDE EDUCATION TO INCARCERATED ADULTS* (2015), https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/RAND_Correctional-Education-Meta-Analysis.pdf [<https://perma.cc/8P7C-FF2N>]; see also Edward J. Letessa, *What Works in Correctional Intervention*, 23 S. ILL. UNIV. L.J. 415 (1999).

68. See *Manifestos: 3 de junio 2015*, *supra* note 38.

69. FEMICIDIOS: DATOS ESTADÍSTICOS DEL PODER JUDICIAL 2019, *supra* note 33.

70. *Id.*

71. For example, 90 percent of femicide victims in 2019 had a prior relationship with their killers. *Id.*

femicide. This enhances public understanding of the complex nature of femicides and allows for the development of focused solutions.

Ni Una Menos believes that femicides perpetrated by a stranger should be dealt with differently than femicides in which the perpetrator and victim had a personal relationship before the killing. To address femicides in which the victim and perpetrator had no prior relationship, Ni Una Menos posits that there needs to be a “conscious cultural change. Machismo violence is the root cause here: How do men view women, and especially young women, in general?”⁷² Since there was no prior relationship between the victim and perpetrator, the cause of these killings can be directly linked to patriarchal violence that generally influences how men view women, and young women in particular. Ni Una Menos offers specific and concrete solutions to the systemic issue of violence by strangers. For example, the movement proposes public safety reforms including a large emphasis on building public transportation infrastructure that remains safe late at night.⁷³ The hope is that granular, specific policy reforms will actually spur structural change.

The problem that Ni Una Menos identifies has less to do with a single person or incident and more to do with a society that allows patriarchal attitudes towards women to prevail. This machismo violence manifests itself in a host of ways, the most severe of which is femicide and the most obvious of which is femicide in the stranger-stranger context. This idea of femicide as only one manifestation of machismo attitudes against women, albeit the most severe point on the continuum, can be called trickle down femicide. If society allows femicides to continue without eradicating their root cause, what trickles down and permeates society are different versions of machismo violence. This spectrum includes verbal or physical abuse, rape, and sexual harassment at the more severe end, but it can also be extended further to include more veiled manifestations of machismo violence such as the entrenchment of typical gender roles, disparities in gender pay, and even restrictive abortion laws. Trickle down femicide underscores that femicide is not an issue siloed from all the other aspects of a society in which patriarchal views prevail, and it can provide a useful lens through which to view Ni Una Menos’s advocacy efforts.

The other type of femicide, accounting for a majority of reported killings, is that of women killed by domestic violence or

72. See Peker, *supra* note 19 at 151.

73. See *id.* at 154 (“[These girls] need public policies that . . . guarantee that they can freely walk down the street. For example, safe night transportation, special buses that girls can take to go dancing, clubs with protocols against machismo/sexist violence.”).

someone with whom they had a preexisting relationship. According to the RNFJA, out of the 269 femicides in 2019, 113 of them were committed by the victim's current domestic partner with 66 of those committed by an ex-partner.⁷⁴ One of the main reasons the movement is purposeful in its aggregation and publication of data demonstrating the prevalence of femicides occurring inside the home is to foster honest and open dialogue around the prevalence of femicides in the domestic violence context. In doing so, Ni Una Menos broaches a complex subject and forces Argentines to contend with how common this kind of violence is in their society.⁷⁵

By classifying and distinguishing identified types of femicide, Ni Una Menos is able to tailor its approaches to finding solutions. For example, the aforementioned public safety reforms advocated for in the context of femicides by strangers will not necessarily work in the context of domestic violence femicides. Conversely, a solution such as publicizing data on instances of prior-relationship femicide in order to generate conversation about domestic violence will not necessarily work in the context of stranger-stranger killings. Ni Una Menos is acutely aware of this problem and is therefore deliberate in proposing concrete, narrowly tailored solutions.

The unanimous passage of Ley Micaela (Micaela's Law) in 2018 provides a recent example of the kinds of structural solutions Ni Una Menos proposes to combat gender-based violence, especially killings in the stranger-stranger context for which criminal law is oftentimes the preferred solution.⁷⁶ On April 1, 2017, a twenty-one-year-old woman and #NiUnaMenos member named Micaela Garcia was raped and killed after a night out with her friends in Gualeguay, Entre Rios, a central province in Argentina.⁷⁷ Micaela's attack was perpetrated by a stranger, Sebastian Wagner, who had recently been released on parole after receiving a nine year sentence for two counts of rape in 2012.⁷⁸

In response to Micaela's killing, certain voices in the feminist movement lamented that Micaela's death would not have happened

74. FEMICIDIOS: DATOS ESTADÍSTICOS DEL PODER JUDICIAL 2019, *supra* note 33, at 28 tbl.8

75. For more on this idea, see Dean Spade, *Introduction*, in *AGAINST EQUALITY: PRISONS WILL NOT PROTECT YOU 5* (Ryan Conrad ed., 2012) ("If we deal with the complexity of how common violence is, and let go of a system built on a fantasy of monstrous strangers, we might actually begin to focus on how to prevent violence and heal from it.")

76. Law No. 27499, Jan. 10, 2019 (Arg.).

77. See *El terrible asesinato de la joven Micaela García que conmociona a Argentina*, BBC MUNDO (Apr. 9, 2017), <https://www.bbc.com/mundo/noticias-america-latina-39545509> [<https://perma.cc/N3QC-HA47>].

78. *Id.*

had Wagner not been released on parole. “Like so many femicides,” one reporter commented, “[Garcia’s] death is one that could have been stopped, if only the law had been applied, if only men were properly punished for their crimes.”⁷⁹ This perspective, which looks to criminal law for the solution, is a misguided impulse equating increased punishment with increased safety.⁸⁰ Looking outside the penal system for solutions to gender-based violence tells a harsh truth: Sebastian Wagner being denied parole would not have necessarily prevented Micaela’s death because a different man could have killed Micaela. As the Ni Una Menos movement shows, and as advocacy like Ley Micaela demonstrates, femicides and acts of gender-based violence, whether they happen in the domestic context or in the stranger context, stem from structural problems that the penal system alone is unable to fix. The Law did not heed the cries for increased punishment for people like Sebastian Wagner in the hope of safer streets for women like Micaela. Instead, the Law, and the movement backing it, focused on structural change in the search for safety.

Where Ley Micaela departs from this standpoint of prioritizing criminal law, it reaches for the root cause of femicides like Micaela’s.⁸¹ The law is a preventative strategy that requires mandatory trainings on gender and violence against women. Just as Ni Una Menos taught the public about gender motivated violence, Ley Micaela teaches government workers. Through the trainings, government actors learn how to better deal with cases of gender-motivated violence by understanding the importance of cooperation, including actual communication and uniform protocols, among different government actors who may come into contact with victims of gender-based violence.⁸²

Ley Micaela does not completely leave out the penal system, as it includes training for levels of government officials within the criminal justice system such as prosecutors and judges. But the law distinctly looks to systems outside criminal law in addressing the

79. Karla Zabłudovsky, *This Woman Devoted Her Life to Keeping Women Safe. And then a Man Killed Her*, BUZZFEED (Oct. 29, 2017, 10:20 AM), <https://www.buzzfeednews.com/article/karlazabłudovsky/these-women-tried-to-take-hashtag-activism-into-the-streets> [https://perma.cc/YHP5-A8EF].

80. For more on the interplay between a rise in violence crime and a push for tougher criminal laws, and the media’s relationship to this connection, see RACHEL ELISE BARKOW, *PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION* 105–24 (2019).

81. Ni Una Menos proposed something similar in its first manifesto, which demanded “mandatory training for government actors on the subject of sexist violence.” See *Manifiestos: 3 de junio 2015*, *supra* note 38.

82. Law No. 27499, Jan. 10, 2019 (Arg.).

structural change it hopes for. Ley Micaela does not suggest an overwhelming desire to inflict more punishment in the case of femicide and other gender-based crimes, but instead to educate officials on questions of gender inequalities and discrimination. The intent of Ley Micaela is to infuse knowledge of gender-based violence into the fabric of society, specifically its major institutions. Thus, Ley Micaela reflects Ni Una Menos's ethos of working from the inside out to create a societal shift.

III. RELIANCE ON INTERNATIONAL LAW NORMS

Since its inception, Ni Una Menos has been anchored on two main tenets and, together, these two ideas have allowed the movement to successfully develop its own platform of advocating for and advancing women's rights at large. The previously discussed tenet is the more obvious: Ni Una Menos is a movement geared at combatting the pervasiveness of gender-based violence in all its forms. The movement condemns femicide and the first manifesto identifies machismo violence as the root cause. More specifically, however, the manifesto explicitly defines machismo violence as an international human rights term.⁸³ By situating the movement within the human rights framework—the second tenet—Ni Una Menos can rely on international law and leverages these human rights norms and conventions to put pressure on government, and on society at-large.⁸⁴

In Argentina, both politically and culturally, there is a large emphasis on the idea of internationally recognized human rights and the state's duty to protect those rights. Argentina has ratified jurisdiction to the Inter-American Court of Human Rights, and domestically this idea also holds real weight. For example, the Argentine Constitution explicitly states that international human rights instruments, such as the Universal Declaration of Human Rights and the American Convention on Human Rights, form part of the nation's supreme law.⁸⁵ Aligning itself with the human rights agenda allows Ni Una Menos to latch on to the well-established notion that certain human rights must be upheld and protected by the state. And with international human rights conventions and norms moored to the text of the Argentine

83. *Manifestos: 3 de junio 2015*, *supra* note 38.

84. For more on this idea of the interplay between international human rights law and social movements, and the influence they can have on each other, *see, e.g.*, Kiyoteru Tsutsui, Claire Whitlinger & Alwyn Lim, *International Human Rights Law and Social Movements: States' Resistance and Civil Society's Insistence*, 8 ANN. REV. L. & SOC. SCI. 367 (2012).

85. Art. 31, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

constitution, Ni Una Menos is even better able to bolster its position when it challenges the government to increase its efforts to end gender-based violence.

This concept of freedom and protection from gender-based violence as embedded in human rights standards is not new. The 1995 Beijing Conference on Women resonated internationally and brought attention to the idea of gender-based and domestic violence as existing within a human rights framework.⁸⁶ One year before the Beijing Conference, Argentina became a signatory to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention).⁸⁷ Adopted by the Organization of American States in 1994, the Belém do Pará Convention “positions violence against women as a violation of human rights and confirms the patriarchal root of violence against women.”⁸⁸ States that signed on to the Convention, which includes Argentina, agreed to “include in their domestic legislation . . . any other type of provisions needed to prevent, punish and eradicate Violence Against Women” and to “take all appropriate measures . . . to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence . . . of Violence Against Women.”⁸⁹ Given the Argentine Constitution’s designation of international human rights doctrines as supreme law, the ideas promulgated by the Belém do Pará Convention form a meaningful part of the landscape of legal change when it comes to the eradication of systemic gender-based violence.

The progress of social movements in Argentina, and the legal changes may that accompany them, is also dependent on the Inter-American Commission of Human Rights and its companion body, the Inter-American Court of Human Rights. The Commission

86. See, e.g., Gail Hershatter, Emily Honig & Lisa Rofel, *Reflections on the Fourth World Conference on Women, Beijing and Huairou, 1995*, 23 Soc. JUST. 368, 368–75 (1996) (describing how the issue of human rights was raised at the conference); Linda Tarr-Whelan, *The Impact of the Beijing Platform for Action: 1995 to 2010*, A.B.A. (Jul. 1, 2010), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol37_2010/summer2010/the_impact_of_the_beijing_platform_for_action [https://perma.cc/S4DC-T9RV] (including “Increased Action to End Women’s Human Rights Abuses and Promote Women’s Legal Rights” on a list of major trends post-Beijing).

87. Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women [Belém do Pará Convention], June 9, 1994, 33 I.L.M. 1534.

88. *Id.*; Lorena P. A. Sosa, *Inter-American Case Law on Femicide: Obscuring Intersections?*, 35 NETH. Q. HUM. RTS. 85, 91 (2017).

89. Belém do Pará Convention, *supra* note 87, art. 7.

works to promote the observance and protection of human rights in the Americas by ensuring that various international norms, including the ones agreed to in the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and the Belém do Pará Convention, are adhered to.⁹⁰ Upon referral from the Commission the Court adjudicates claims and issues advisory opinions regarding these issues.

In the seminal case *González v. Mexico* (the Campo Algodonero case),⁹¹ the Court addressed the issue of the state's duty to prevent and protect against femicide. While the case only named three victims—Claudi Ivette González, Esmeralda Herrera Monreal, and Laura Berenice Ramos—three young women whose bodies were found buried in a cotton field in Ciudad Juárez, Mexico, it was representative of a more widespread and pervasive issue.⁹² In the late 1990s and early 2000s, there were many other similar instances in Ciudad Juárez. Gender-based violence became endemic and these disappearances and murders were known in the media as Las Femicidas del Campo Algodonero (The Femicides⁹³ of the Cotton Field).⁹⁴

90. In fact, per the judge-created doctrine of conventionality control, there is an international obligation on public authorities in all states party to the American Convention, including domestic judges, to interpret any legal norms in a manner compatible with the Inter-American Court's interpretation. See generally Laurence Burgorgue-Larsen, *Conventionality Control: Inter-American Court of Human Rights*, OXFORD PUB. INT'L L. (Dec. 2018) <https://opil.ouplaw.com/view/10.1093/law-mpeipro/e3634.013.3634/law-mpeipro-e3634> [<https://perma.cc/N2MK-B4GA>]. For an exploration of what limitations, if any, exist on the conventionality control's reach, see Alexandra Huneus, *The Institutional Limits of Inter-American Constitutionalism*, in *COMPARATIVE CONSTITUTIONAL LAW IN LATIN AMERICA* 300 (Rosalind Dixon & Tom Ginsburg eds., 2017). For an overview of some of the strategic discussions about the role of the Inter-American system in Latin America, see Víctor Abramovich, *From Massive Violations to Structural Patterns: New Approaches and Classic Tensions in the Inter-American Human Rights System*, 6 SUR INT'L J. HUM. RTS., Dec. 2009, at 7, 14–22.

91. González et al. (“Cotton Field”) v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C), No. 205 (Nov. 16, 2009) [hereinafter *González v. Mexico*].

92. Monica Rodriguez, Case Summary, *González et al. (“Cotton Field”) v. Mexico*, 36 LOY. L.A. INT'L & COMPAR. L. REV. 1971, 1971–77 (2014).

93. The word femicide is sometimes used in place of femicide. Both words encompass the murder of women because they are women, but femicide is a more political term. In addition to connoting the murder of women because they are women, femicide also indicates state responsibility for these killings. See GUATEMALA HUMAN RIGHTS COMMISSION, FEMICIDE AND FEMICIDE FACT SHEET, https://www.ghrcusa.org/Publications/factsheet_femicide_2011.pdf [<https://perma.cc/Z9W6-WFNM>] (last viewed Apr. 2, 2022).

94. Rodriguez, *supra* note 92, at 1977–78.

In its decision, the Inter-American Court held that femicide is “a state crime tolerated by public institutions and officials, a form of gender-based discrimination, and grounds for international accountability of states for human rights violations.”⁹⁵ More specifically, the Inter-American Court held that Mexico did not uphold its duties by virtue of: (1) its failure to provide adequate protection to the victims (especially those who were minors), (2) its failure to prevent the three murders despite the well-known existence of gender-based violence in the area, (3) its failure to adequately respond to the three women’s disappearances, and (4) its failure to adequately investigate their deaths.⁹⁶ In its ruling, the Inter-American Court outlined the parameters member states must follow for determining, preventing, investigating, and punishing gender-based violence, and it “established guidelines to identify when we face cases whose motive is gender-based violence.”⁹⁷ In holding that member states have an affirmative duty to protect people against human rights violations and by grounding gender-based violence in the human rights context, the Court dispelled the notion that gender-based violence is a private matter and elevated discourse about it in the public sphere.

Since the seminal *Campo Algodonero* case, the Inter-American Court has been reliably progressive on various issues relevant to *Ni Una Menos* and the feminist movement in Argentina. This is true even despite deep-rooted and vocal opposition from the Catholic Church on many of these issues. The ways both the Commission and the Court have responded to opposition from the Catholic Church and other conservative groups in these contexts not only provides confirmation of *Ni Una Menos*’s views, but also provides a blueprint for how the movement should respond to similar opposition in the context of feminist activism in Argentina. Two sexual and reproductive rights cases, *Artavia Murillo v. Costa Rica*⁹⁸ and *Atala v. Chile*,⁹⁹ are representative of the Inter-American’s Court’s rebuke of Catholic ideologies. Both cases landed before the Court where the Church attempted to wield its social influence

95. Gryzb, Naudi, & Marcuello-Servós, *supra* note 52, at 20.

96. *Gonzalez v. Mexico*, *supra* note 91, at ¶ 2.

97. “*Campo Algodonero*”: *Caso González y otras vs. México*, COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS-MÉXICO, https://www.cndh.org.mx/noticia/campo-algodonero-caso-gonzalez-y-otras-vs-mexico#_ftn1 [<https://perma.cc/W5R8-MRBT>] (last visited Mar. 10, 2022).

98. *Artavia Murillo v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257 (Nov. 28, 2012).

99. *Atala v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 254 (Feb. 24, 2012).

in the Inter-American System in order to “secure favorable interpretations or framings of human rights instruments.”¹⁰⁰ Traditional ideologies about same sex marriage and parenting, and family planning and contraception influenced the Church’s involvement in these cases. The fact that these ideologies were previously embraced by the highest courts in Costa Rica and Chile,¹⁰¹ represent the continued societal and legal influence of the Catholic Church over social norms and behaviors in the region. The Inter-American Court’s ruling in both cases, however, illustrated a loosening of the Church’s tight grasp on the ideologies in the region and revealed a minimized power of the Church in the context of the Inter-American System. More importantly, however, in the context of Ni Una Menos and feminist advocacy in Argentina, the Inter-American Court’s decision in *Artavia* affirmed the fundamental nature of the rights tied to permissive abortion legislation and therefore paved the way for an expansion of reproductive rights.

In *Artavia*, the Inter-American Court ordered Costa Rica to lift its total ban of in vitro fertilization (IVF).¹⁰² The procedural background of the case is complicated as it began when a decree regulating IVF in Costa Rica for the first time was challenged by conservative groups. The conservative argument before the Costa Rica Supreme Court aligned with traditional Catholic views and “built on the view, widely and transnationally disseminated by Catholic scientists and lawyers, that human personhood begins at the moment a distinct chromosome emerges from the encounter of a human egg and sperm.”¹⁰³ The Costa Rica Court agreed and held that life beings at conception. IVF was subsequently outlawed because the procedure was found to be a violation of an embryo’s dignity and human rights.¹⁰⁴ When the case was appealed to the Inter-American Court, the Church once again intervened on behalf of the conservative groups opposing the decree providing for IVF regulation.¹⁰⁵

100. Julieta Lemaitre & Rachel Sieder, *The Moderating Influence of International Courts on Social Movements: Evidence from the IVF Case Against Costa Rica*, 19 HEALTH & HUM. RTS. J. 149, 157 (2017).

101. *Id.* at 154.

102. *See Artavia Murillo v. Costa Rica*, *supra* note 98, at 93.

103. Lemaitre & Sieder, *supra* note 100, at 151.

104. *Id.* at 152 (highlighting that while “the conservative ruling precluded any reference to religious authority,” it nonetheless “reflected the Catholic Church’s position”).

105. In order for the Inter-American Court to have jurisdiction, all domestic remedies must first be exhausted. Additionally, cases must be referred to the Court by the Commission. For more on the Court’s procedure, *see* RULES OF PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS, INTER-AM. CT.

The Vatican had a strong presence among the amici briefs for the conservative groups before the Court.¹⁰⁶ Knowing that the decision in *Artavia* would significantly affect the trajectory of abortion issues in Latin America, the Catholic Church tried to use the Inter-American Court as a means of maintaining control over behavior and norms in the region by promoting its ideologies. Pope John Paul II's *Evangelium Vitae*, "which insisted that human life was a sacred gift from God from its beginning, that embryos had the same dignity and right to respect as a child born, and that discarding embryos killed innocent human creatures and was morally unacceptable," provides an outline of the Church's position at that time on the central issue in *Artavia*.¹⁰⁷ Although the Church's position was confronted by briefs from organizations such as Catholics for Choice that have a long history of opposing the Church's positions on abortion and contraception, the Costa Rica Supreme Court's decision was nonetheless heavily backed by the Church's presence in the legal process.¹⁰⁸ Ultimately, however, "the [Inter-American] court's judgment clearly inclined toward the interpretations put forward in the feminist briefs," and it struck down the Costa Rica Supreme Court's ruling.¹⁰⁹

It is true that the reach and scope of the Inter-American Court's actual power is limited by the strength of its influence, which varies country by country.¹¹⁰ However, it cannot be discounted that the standards set and the ideas put forward by the Inter-American Court's holdings, specifically in the context of gender-based violence like in the Campo Algodonero case and reproductive rights like in *Atravia*, wield significant cultural force at a minimum. Aligning its platform with international human rights norms is a large part of what makes the Ni Una Menos movement such a success. Interestingly, the standards promulgated by international organizations in the context of gender-based violence do

H.R., (2009), <https://www.cidh.oas.org/basicos/english/basic20.rules%20of%20procedure%20of%20the%20court.htm> [<https://perma.cc/3HUD-EZH7>].

106. Lemaitre & Sieder, *supra* note 100, at 153 (noting that in the pool of amicus brief submissions "US- based organizations were quite present, but so were organizations with links to the Vatican.").

107. *Id.* at 151.

108. *Id.* at 153–55 ("The orientation toward rights claims includes feminist appropriation of Catholic appeals to human dignity, the right to life, and the right to a family.").

109. *Id.* at 156.

110. The reach of the Court's power depends on its relationship with a country's independently functioning democracy. See Huneeus, *supra* note 90. A full discussion of the strength of the Inter-American Courts and how influential its decisions actually are is outside the scope of this Article.

not just help advance the movement's goals of eradicating all forms of gender-based violence—but the influence goes both ways. Ni Una Menos's emergence as a powerful advocacy group backed by the force of its members also helps ensure that both domestic and international systems maintain their commitments to the prevention and eradication of gender-based violence.¹¹¹

After its initial 2015 demonstration, Ni Una Menos established itself as a powerful force to combat the societal structures contributing to the alarming rise in femicides in Argentina. But the fight against femicide proved to be just the beginning. Anchored by its goal of eradicating of gender-based violence and relying on the tenets of international human rights norms, Ni Una Menos has since been able to expand and develop its platform. As the idea of trickle down femicide demonstrates, femicide is the most extreme expression of gender-based violence, but it is not the only one. Guided by this perspective the Ni Una Menos movement has expanded its original platform to advocate for women's rights in broader contexts beyond femicide.

IV. NI UNA MENOS AND THE DEBATE OVER ABORTION

By its second demonstration in 2016, access to abortion and reproductive rights had been added to the Ni Una Menos manifesto.¹¹² Returning to the idea of trickle down gender-based violence, the addition of reproductive rights to the Ni Una Menos platform demonstrates how the fight against femicide is much broader than it may have initially seemed. The way abortion rights have been integrated into the movement's platform illustrate that this issue is not a separate component, but merely another manifestation of the pervasive problem of gender-based violence in society. "Death is the extreme form of violence that seeks to discipline women and all people who rebel against the patriarchal and heterosexual pact," the 2016 manifesto states.¹¹³ "But sexist violence also kills, slowly, when it curtails freedoms, political and social participation, the chance to invent other worlds, other communities, other ties."¹¹⁴ By framing the analysis this way, Ni Una Menos asserts that the issue of abortion rights is directly connected to the movement's central argument categorizing femicide as a societal infirmity. Abortion

111. See Tsutsui, Whitlinger & Lim, *supra* note 84.

112. *Manifiesto: El grito en común*, NI UNA MENOS (May 9, 2016), <http://niunamenos.org.ar/manifiestos/el-grito-en-comun> [https://perma.cc/Y3CZ-8UG7].

113. *Id.*

114. *Id.*

isn't a separate feminist agenda point, but actually one that is intertwined with the movement's attitude against the pervasiveness of gender-based violence in Argentina. As one Ni Una Menos organizer says, "[o]ur claims are not contradictory."¹¹⁵ And as the 2016 manifesto states: "[s]in aborto legal no hay Ni Una Menos" (without legalized abortion, there is no Ni Una Menos).¹¹⁶

In incorporating the issues of abortion and reproductive rights into its platform, Ni Una Menos in effect embraced another prominent feminist movement, La Campaña por el Aborto Legal.¹¹⁷ La Campaña por el Aborto Legal is an established movement that predates Ni Una Menos and advocates for legal, safe, and free abortion.¹¹⁸ Formed directly after the 2003 and 2004 Encuentros Nacionales de Mujeres, La Campaña por el Aborto Legal is a coalition of organizations and individuals with the common goal of legalizing abortion in Argentina.¹¹⁹ The green scarf that is now so emblematic of the Ni Una Menos movement and of feminist advocacy in Argentina actually originates from La Campaña por el Aborto Legal. The text on the scarf states in Spanish: "[s]exual education to decide, anticontraceptives to not abort, legalized abortion to not die."¹²⁰ These are archetypal demands from an Argentine feminist movement and align La Campaña por el Aborto Legal with Ni Una Menos and its core tenets, crucially in the connection of the issue of reproductive rights to concerns about safety and death. However, at its core, La Campaña por el Aborto Legal is chiefly concerned with the discrete project of legalizing abortion in Argentina and is more focused on defending abortion rights on human dignity grounds rather than on highlighting the link between lack to abortion access and gender-based violence.¹²¹

Given the grassroots composition and horizontal nature of feminist activism in Argentina, various movements, and especially Ni Una Menos and La Campaña por el Aborto Legal, are often conflated. This is understandable, as there is much overlap in the

115. Top Rank Podcast, *Episode 12: NI UNA MENOS - Cecilia Palmeiro and Verónica Gago*, iHEART RADIO (Mar. 7, 2018), [https://www.iheart.com/podcast/256-top-rank-magazine-43094809/episode/episode-12-ni-una-menos-45207267/#\[https://perma.cc/J9HY-R9R2\]](https://www.iheart.com/podcast/256-top-rank-magazine-43094809/episode/episode-12-ni-una-menos-45207267/#[https://perma.cc/J9HY-R9R2]).

116. *Manifiesto: El grito en común*, *supra* note 112 ("Sin aborto legal no hay Ni Una Menos") (internal quotations omitted).

117. See *Quiénes Somos*, CAMPAÑA NACIONAL POR EL DERECHO AL ABORTO LEGAL, SEGURO Y GRATUITO, <http://www.abortolegal.com.ar/about> [<https://perma.cc/E8NS-2WFU?type=image>] (last visited Mar. 10, 2022).

118. *Id.*

119. *Id.*

120. On file with author, who owns one of the symbolic green scarves.

121. See *Quiénes Somos*, *supra* note 117.

two movements' goals, policy initiatives, and underlying demands. The green scarves, for example, which originated as a symbol of La Campaña por el Aborto Legal, have become the official emblem of feminism in Argentina, encompassing all movements and representing a much larger fight than just the single issue of reproductive rights. However, this analysis of feminism in Argentina focuses on the perspective of Ni Una Menos because the #NiUnaMenos slogan and rallying call extend beyond the proper and have become a symbol of Argentine feminism at large.

By adding the issue of abortion to its platform, Ni Una Menos was able to form crucial connections between gender-based violence and diminished reproductive rights. Through this connection, the movement influenced a societal shift in the way these issues were viewed and subsequently leveraged that social change as a mechanism to change the legal systems already in place. Connecting the two issues this way was not a pattern or a coincidence, but instead a purposefully deployed strategy. "Autonomy [linked to abortion] is considered a fundamental right in societies generally, and especially in the United States," Professor Cecilia Hopp explains.¹²² But, "the argument of [bodily] autonomy and the idea of women who do what they want does not generate that much empathy from someone [in Argentina] who is conservative."¹²³ The weakness of the liberty and bodily autonomy arguments that have been used to advocate for reproductive rights in other contexts, such as the United States, are unsurprising given that the significant portion of the Argentine population that opposed legalized abortions did so for religious reasons.¹²⁴ To get through to those who oppose legalized abortion on religious or moral grounds, Argentine feminist activism therefore places less of an emphasis on the idea of liberty in the context of advocating for widespread access to abortion and reproductive rights. The Ni Una Menos movement instead classifies restrictive abortion laws as one of many manifestations of violence against women, extending the argument so far as to include deaths caused by clandestine abortions as femicides.

122. Interview with Cecilia Hopp, *supra* note 4 ("La autonomía es un valor fundamental en las sociedades en general, y en particular en Estados Unidos.").

123. *Id.* ("El argumento de la autonomía no genera tanta empatía. La idea de las mujeres que quieren hacer lo que quieren, no genera demasiado buen intercambio para alguien conservador.").

124. For more on the opposition to legalized abortion in Argentina—including opposition to the recent legalization in 2020—see *Argentina's Abortion Law Enters Force Under Watchful Eyes*, VOA NEWS (Jan. 24, 2021, 11:25 PM), https://www.voanews.com/a/americanas_argentinas-abortion-law-enters-force-under-watchful-eyes/6201161.html [<https://perma.cc/DRH4-QNKS>].

Ni Una Menos's choice to start out with femicide alone as its main issue was therefore not only incredibly symbolic, but also subtly tactical. Femicide is an atrocity hardly anyone could condone, and the staggering rise in femicide cases in Argentina and in the region were becoming hard to ignore. The issue of abortion, on the other hand, is less black and white given the conservative and religious demographic of much of the country.¹²⁵ Knowing this full well, the movement took a strategy that allowed it to reframe the argument for legalized abortions in a way that would ensure more support.¹²⁶ Ni Una Menos leveraged the fact that it was not a controversial stance to be anti-femicide and used the connection between femicide and restrictive abortion legislation as a way to reframe the narrative. "Look at the most restrictive legislatures in Central America, like Guatemala, El Salvador, and Honduras, that have total penalization [of abortions]. Those are the countries that have the worst problem with femicides and have the highest rates of femicides in the world."¹²⁷ In expanding its platform to include the fight for legalized abortion, the strategy Ni Una Menos adopts not only acknowledges this correlation, but also actively relies on it. Illuminating the connection between gender-based violence and restrictive abortion laws presents the argument in a way that is simultaneously more palatable and comprehensive.

Until December 2020, abortion was largely banned in Argentina. Exceptions were allowed only for rape or the health or life of the pregnant person.¹²⁸ Abortion was also criminally

125. Interview with Marisa Herrera, *supra* note 7 ("Abortion is more complicated and touches on sensitive topics. It is glued to conservative concepts." ["El aborto es mas complejo y toca temas sensibles. Esta pegado a conceptos conservadores."]).

126. Interview with Cecilia Hopp, *supra* note 4 ("To reframe the argument since we hadn't won it with autonomy, we thought about the issue of femicides and violence against women as central arguments to generate sensitivity around the abortion claim." ["Para replantear la discusión ya que no la hemos ganado con la autonomía, pensamos en la cuestión de los femicidios y la violencia contra mujeres como argumentos centrales para generar sensibilidad sobre el reclamo del aborto."]).

127. ("Incluso en las legislaciones mas restrictivas como son las de Centro America como Guatemala, El Salvador, y Honduras) que tienen penalización [de aborto] total, esos son los países que tienen mayores problemas con el femicidio, que tienen las tasas más altas del mundo de femicidio.").

128. The rape exception was accompanied by language suggesting it was only available if the person was "idiotic" or "demented," but that language was largely considered dated and courts generally applied the exception to all victims of rape regardless of mental capacity. CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 86 (1921) (Arg.).

penalized—anyone who had an abortion could be sentenced to a maximum of four years in prison, while abortion providers faced a maximum of fifteen years under the criminal code.¹²⁹ In addition to these restrictive abortion laws, pregnant people who fell within one of the outlined exceptions faced obstacles given “the frequent refusal of doctors to perform an abortion based on conscientious objection.”¹³⁰

The Argentine Supreme Court dealt specifically with the latter issue in 2012, in a case that planted the roots of a national discourse on abortion. The case concerned A.G., a fifteen year-old girl from Chubut, a northern province in Argentina, who had been raped by her stepfather.¹³¹ A.G. had requested an abortion on the basis of the explicit exception for rape but, pursuant to a conscientious objection, the local hospital refused to perform the procedure absent judicial authorization.¹³² In January of 2010, lower courts sided with the hospital and rejected the girl’s request for the abortion despite findings that “the continuation of this pregnancy against the will of [the girl] impli[ed] grave risk to her psycho-physical integrity, including a risk to her life.”¹³³ However, just a few months later in March of 2010, the Superior Court of Justice of the Province of Chubut reversed the lower judgment, holding that this case fell within the exceptions outlined in the criminal code.¹³⁴ The Superior Court thus allowed the abortion to proceed, and the procedure was carried out on March 11, 2010.¹³⁵

The Subrogating General Counsellor of the Province of Chubut, in his position as Guardian Ad Litem and Counsellor for Families and Incompetent Persons, subsequently filed an appeal to the Argentine Supreme Court on behalf of the unborn child.¹³⁶ The state grounded its argument in the idea that life and personhood begin at the time of conception and that the constitutional protection to the right of life for all persons is a supreme right that

129. *Id.*

130. U.N. Hum. Rts. Off. High Comm’r, *Ni Una Menos Movement Is Ahead of the Problem*, Statement dated Nov. 21, 2016 by the U.N. Special Rapporteur on Violence Against Women, <https://www.ohchr.org/en/2016/11/ni-una-menos-movement-ahead-problem-state-must-catch-and-intensify-efforts-prevent-femicide?LangID=E&NewsID=20901> [<https://perma.cc/977Z-D6MB>].

131. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 13/3/2012, “F., A. L. s / Medida Autosatisfactiva, Expediente Letra ‘F’”; No. 259, Libro XLVI, (Arg.).

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

prevails over other, potentially conflicting constitutional rights.¹³⁷ Further, the state claimed that A.G. did not fall into one of the exceptions to the ban on abortions because she was neither “idiotic” or “demented” as required by the penal code.¹³⁸

These two arguments were in line with the arguments of the greater movement opposing legalized abortion in Argentina. The primary argument of legalized abortion opponents in the country is that all abortions should be illegal on the basis of fetal rights with no exceptions.¹³⁹ Regarding the two then-existing exceptions, opponents of legalized abortion argued that a strict textual reading of the statute limited the reach of the exceptions and therefore blocked access to abortion in all cases. Also, like the state’s arguments in A.G.’s case., the greater opposition movement wanted to grant constitutional rights to the fetus.

Although A.G.’s procedure had already been carried out, thereby potentially rendering the case moot, the Argentine Supreme Court nonetheless granted the appeal “based on the institutional gravity presented by the case.”¹⁴⁰ Balancing primarily the rights of the pregnant person against those of the fetus, the Supreme Court ultimately held that there is no absolute right to prenatal life.¹⁴¹ The Court relied heavily on international human rights conventions in reasoning that the right to prenatal life must be interpreted in conjunction with every person’s right to liberty, equality, and dignity.¹⁴² Because the Argentine Constitution requires that international conventions on human rights be treated as supreme, the Court found that a regime with such limited access to abortion that it places the life of an unborn fetus over that of a pregnant person would be incompatible with various international human rights treaties that Argentina had signed.¹⁴³ The Court reasoned that human dignity, as recognized by various conventional norms,¹⁴⁴ does not allow the state to require victims of sexual abuse — regardless of their mental capacities — to

137. *Id.*

138. *Id.*

139. For more on the opposition to legalized abortion in Argentina, see *Argentina’s Abortion Law Enters Force Under Watchful Eyes*, *supra* note 124.

140. F., A. L. at 3.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.* The Court specifically called out the duties and norms from the American Convention on Human Rights article 11; the Universal Declaration of Human Rights article 1; and the International Covenant on Civil and Political Rights and American Declaration on the Rights and Duties of Man preambles. *Id.*

carry their pregnancies to term.¹⁴⁵ The Court's holding ended the debate over the interpretation of the outlined exceptions and secured the right to an abortion for all victims of sexual abuse without the need for judicial authorization.

The Supreme Court's desire to hear and resolve A.G.'s case demonstrates that abortion access and reproductive rights were becoming a serious part of national discourse, and the decision delivered an early setback for the emerging conservative voices on the issue. The fact that Court's holding relied so heavily on international law also foreshadowed the strategy of feminist movements on the ground. These discussions had been developing in the background since the Court heard this case in 2012. Ni Una Menos's emergence and immediate popularity and the addition of expanded reproductive rights to its platform in 2016 forced a spotlight on abortion and the question of whether or not it should be legalized in Argentina.

A. *The 2018 Debate*

In 2018, three years after the first Ni Una Menos march and two years after the movement added legalized abortion and reproductive rights to its platform, the Argentine legislature heard debates on legislation to legalize abortion.¹⁴⁶ The debates were happening at the same time that the Ni Una Menos movement was quickly increasing in popularity and strength, and they proved to be a watershed moment. The fact that abortion legislation was even being debated was considered a huge victory for the feminist agenda, and the movement scored a further win when the Chamber of Deputies, the lower congressional house, narrowly approved a bill allowing termination within the first fourteen weeks of pregnancy.¹⁴⁷ This vote alone was viewed as major progress and solidified Ni Una Menos's influence over social and legal change.

As the bill made its way to the Senate, the national spotlight on and conversation around reproductive issues continued to grow. The debates on the Senate floor where experts spoke at

145. *Id.* The court also relied on constructions of statutory interpretation in this holding. In its reading of the text, the Court held that pregnant people who were raped or faced health concerns did not have to be "idiotic" or "demented" to qualify for a legalized abortion as the state had argued.

146. Daniel Politi & Ernesto Londoño, *Argentina's Senate Narrowly Rejects Legalizing Abortion*, N.Y. TIMES (Aug. 9, 2018), <https://www.nytimes.com/2018/08/09/world/americas/argentina-abortion-vote.html> [https://perma.cc/RXN8-TLVZ].

147. *Id.*

length in favor of and against legalized abortion were highly publicized in Argentina and followed by the entire Latin American region.¹⁴⁸ The political and cultural force of the feminist movements captured the attention of the entire country as debates over these issues expanded beyond the Senate floor. The effects of the debates also transcended the topic of abortion, starting a widespread conversation more generally about women's rights and the women's lived experience in Argentina.¹⁴⁹ This national conversation was trickle down femicide in action, as the conversation about abortion caused a ripple effect that sparked conversations about related issues such as gender-based violence and gender-based poverty.¹⁵⁰

Not unexpectedly, as the debates continued, an opposition to "la marea verde" (the green wave) arose. Consisting of mainly religious groups, "los celestes" (the blues, as noted by the sky-blue color of their scarves) emerged quickly and fiercely.¹⁵¹ The Vatican even intervened, albeit indirectly, in the Senate debates.¹⁵² The opposition also had political support from the relatively conservative Mauricio Macri presidential administration.¹⁵³ Nevertheless, Ni Una Menos's mass mobilizations proved to be unstoppable. The strength of the opposition's main argument that they were "saving two lives" by opposing legalized abortion was already on the defensive given the Supreme Court's reluctance to recognize an absolute right to prenatal life in 2012. Much to their detriment, los celestes

148. *Id.*

149. Interview with Marisa Herrera, *supra* note 7 ("At the dinner table, these topics were debated." ["En la mesa para comer de la gente, se debatía sobre estos temas."]).

150. *Id.* ("It also generated an interest in talking about clandestine abortion, about women who are poor, the feminization of poverty." ["También genero todo un interese a animarse hablar de aborto cautivo; animarse de hablar de las mujeres que son pobre, la feminización de la pobreza."]).

151. For more on the 2018 debates and the conflict between los verdes and los celestes, see Guido Braslavsky, *Tras 16 horas de debate: El Senado rechazó la legalización del aborto: no se podrá volver a tratar este año*, CLARÍN (Sept. 8, 2018, 4:16 PM), https://www.clarin.com/politica/senado-rechazo-legalizacion-aborto-podra-volver-tratar-ano_0_SkMmKEKHm.html [https://perma.cc/UG77-3S9P].

152. While the debates were occurring, Pope Francis, who he himself is from Argentina, likened abortion to Nazi-era eugenics practices. *Pope Calls Abortion 'White Glove' Equivalent of Nazi Crimes*, N.Y. TIMES (June 16, 2018), <https://www.nytimes.com/2018/06/16/world/europe/pope-abortion-nazi-crimes.html> [https://perma.cc/T9B9-6P32].

153. Hugo Alconada Mon, Opinion, *¿Cuál es la apuesta de Macri con el aborto?*, N.Y. TIMES (Apr. 1, 2018), <https://www.nytimes.com/es/2018/04/01/espanol/opinion/opinion-alconada-macri-aborto-argentina.html> [https://perma.cc/2D2V-AHFJ].

lacked the cohesion and organizational force accounting for much of Ni Una Menos's success.

The fate of the abortion bill was decided in the early hours of August 9, 2018 at around 3:00 AM.¹⁵⁴ After more than sixteen hours of debate, the bill was narrowly defeated with thirty-eight senators voting against, thirty-one voting in favor, and two abstaining.¹⁵⁵ The Ni Una Menos demonstrators who formed a sea of green and who had been waiting all night for the results were visibly disappointed, but at the same time the ultimate result was not necessarily unexpected and it was by no means considered a detrimental setback. Legalized abortion was an important political demand for Ni Una Menos, but it was one component of a much larger advocacy project. The fact that this issue had made its way to the debate floor and had started a national conversation about reproductive rights was a massive step forward. The national conversation transcended the topic of abortion to include the far-reaching impact of societal views on women, including the connection between patriarchal norms and all manifestations of gender-based violence. Widespread recognition of the impact of machismo violence was a vindication of the strength and power of Ni Una Menos.

B. *Renewed Debate in 2020*

The abortion debates were renewed two years later in the Argentine Congress. In the interim, the conservative opposition had failed to regain much traction. The A.G. case remained good law and Ni Una Menos continued to grow in popularity and power. Further, in 2019, with a new presidential administration that had promised to spearhead the movement to legalize abortion on the campaign trail, these conservative voices lost much hope any support from the political branches.¹⁵⁶ On December 30, 2020, the Senate approved Ley de Interrupción Voluntaria del Embarazo

154. Politi & Londoño, *supra* note 146.

155. *Id.*

156. *Quiere "garantizar derechos": Alberto Fernández confirmó que enviará en 2020 el proyecto para legalizar el aborto*, CLARÍN (Dec. 31, 2019, 11:47 AM), https://www.clarin.com/politica/alberto-fernandez-confirmando-enviara-2020-proyecto-legalizar-aborto_0_Orv8bVtP.html [<https://perma.cc/AWS9-ESR8>]; Vice President Cristina Kirchner opposed legalizing abortion for most of her political career, but her position changed in the lead-up to the 2018 vote. Her daughter, a known feminist, is said to have played a role in changing her mind. See Maia Jastreblanksy, *Aborto: Cristina Kirchner designó a una senadora de su riñón para avanzar con la legalización*, LA NACION (Dec. 11, 2020, 5:56 PM), <https://www.lanacion.com.ar/politica/aborto-cristina-diseño-senadora-su-riñon-avanzar-nid2537146> [<https://perma.cc/E2TV-CET8>].

(IVE), which legalizes all abortions during the first fourteen weeks of pregnancy.¹⁵⁷ There are exceptions after fourteen weeks in the case of rape and risk to the pregnant person's health.¹⁵⁸ The law recognizes that the right to voluntarily have an abortion and the right to access to abortion services are human rights.¹⁵⁹ Critically, IVE links sexual and reproductive rights and the right to abortion access to a host of fundamental rights protected by both the state and the Constitution, including the rights to "dignity, life, autonomy, health, education, integrity, body diversity, gender identity, cultural diversity, intimacy, equal opportunities, non-discrimination and a life free of violence."¹⁶⁰ The law is explicit in its public health initiatives, which include both the physical and mental health effects associated with abortion services.¹⁶¹

IVE gives pregnant individuals the right to access abortion services safely and without undue delay or burden.¹⁶² It requires abortion service providers to inform patients of the availability of different termination methods, the scope and consequences of the abortion procedure, and the risk of postponement.¹⁶³ The law outlines that this information must be objective, narrow in scope, and scientifically based, and under no circumstance should it be informed by the provider's personal or religious beliefs.¹⁶⁴

Beyond simply legalizing abortion, IVE works to incorporate legalized abortion into various preexisting regulatory frameworks such as the health care and education systems. The law guarantees to each individual the right to an informed and healthy sexual and reproductive life which includes the right to sexual education

157. Adriana Santagati, *Votación histórica: El protocolo, un paso clave para que se aplique el aborto legal*, CLARÍN (Jan. 1, 2021, 3:23 PM), https://www.clarin.com/sociedad/protocolo-paso-clave-aplique-aborto-legal_0_hE7FHHm8X.html [<https://perma.cc/LH7Q-XL5Y>]. The senate actually approved two laws: IVE and Ley Nacional de Atención y Cuidado Integral de la Salud Durante el Embarazo y la Primera Infancia ("La Ley de los 1000 Días"). La Ley de los 1000 Días is a series of public health laws that provide healthcare funding for women during pregnancy and after their children are born. This Article focuses only on the legal initiatives behind IVE. See Law No. 27610, Jan. 15, 2021, B.O., Art. 1 (Arg.).

158. Law No. 27610, Jan. 15, 2021, B.O., Arts. 4 & 5 (Arg.) (A sworn statement by the pregnant person to the intervening public health professional is all that is required to establish that a rape has occurred).

159. *Id.* at Art. 1.

160. *Id.* at Art. 4.

161. *Id.*

162. *Id.* at Art. 5.

163. *Id.* at Art. 6.

164. *Id.*

and access to contraceptives.¹⁶⁵ Article Eleven requires that abortion-related medical services be integrated into the universal basic healthcare scheme.¹⁶⁶ The law directly relies on the preexisting notion of access to abortion rights as a human right adopted from international law and cites the World Health Organization as the authority on how free coverage of these services should be incorporated into the preexisting healthcare scheme.¹⁶⁷ Article Twelve imposes a duty on both the federal government and the provinces to promote the sexual and reproductive health of all people in Argentina, which includes a specific requirement of sexual education in schools.¹⁶⁸ This duty extends to all people in Argentina, regardless of their citizenship status, further emphasizing the status of the right to abortion as a universal human right that the state is upholding.¹⁶⁹

IVE also implements significant changes to the Penal Code. Article Fourteen modifies the criminal code to remove liability from abortion providers and instead exposes those who impede access to legalized abortion services to a sentence of up to one year, with enhancements in cases in which lack of treatment resulted in damage to the pregnant person's health or their death.¹⁷⁰ IVE not only removes any liability associated with performing or receiving an abortion, but it also modifies the criminal code to affirmatively state that a pregnant person who terminates their pregnancy will in no case be penalized.¹⁷¹ As perhaps a domestic violence reform ini-

165. *Id.*

166. *Id.* at Art. 11.

167. *Id.* at Art. 12 (“[T]odos aquellos agentes y organizaciones que brinden servicios médico-asistenciales a las personas afiliadas o beneficiarias...deben incorporar la cobertura integral y gratuita de la interrupción voluntaria del embarazo prevista en la presente ley en todas las formas que la Organización Mundial de la Salud recomienda.” “[A]gents and organizations that provide medical-assistance services to affiliated persons or beneficiaries...must incorporate the comprehensive and free coverage of the voluntary interruption of pregnancy provided for in this law in all the ways that the World Health Organization recommends.”]).

168. *Id.*

169. *Id.* at Art. 13, (“El Estado nacional...[tiene] la responsabilidad de implementar la ley 26.150, de Educación Sexual Integral, estableciendo políticas activas para la promoción y el fortalecimiento de la salud sexual y reproductiva de toda la población.” “[The state has] the responsibility to implement Law 26,150, on Comprehensive Sexual Education, establishing active policies for the promotion and strengthening of sexual and reproductive health of *the entire population*.”]) (emphasis added).

170. *Id.* at Art. 14.

171. *Id.* at Art. 17.

tiative, IVE makes it a crime to violently cause an abortion even if unintentional.¹⁷²

Even approaching two years since the law's passage, it is difficult to assess how well IVE has been implemented by the federal government and the provinces. Given the Supreme Court's reliance on its international law duties in the A.G. case and IVE's direct reference to international law organizations and norms that the constitution incorporates, the constitutionality of the law does seem secure. However, claims challenging the constitutionality may be lurking and the possibility of doctors refusing on conscientious objection grounds still exists.¹⁷³ But without a doubt, due to the recent legalization of abortion and the debates that preceded, there has been a cultural shift of societal views on issues of abortion and reproductive rights in Argentina.

CONCLUSION

The legalization of abortion in Argentina in December 2020 was seen as a great victory for the feminist movement, and one largely attributable to the efforts of Ni Una Menos and attendant grassroots feminist organizations. But even in the wake of this triumph, Ni Una Menos is hardly done. The highly publicized debates surrounding abortion legislation and the ultimate legalization of all abortions in Argentina are but one prominent example of the movement's goals and successes. Since adding the issues of abortion and reproductive rights to its platform in 2016, Ni Una Menos has continued to expand its platform to champion women's rights in a variety of contexts, including sexual harassment, the gender pay gap and economic justice, transgender rights, and sex workers' rights.

Ni Una Menos is intrinsically Argentine, but its impact has reverberated across Latin America. For example, at her swearing in ceremony in 2021, the mayor of Santiago, Chile wore a green scarf on her wrist.¹⁷⁴ In Mexico City, a march protesting the rise

172. *Id.* at Art. 16.

173. See Daniel Politi, *Abortion Is Now Legal in Argentina, but Opponents Are Making It Hard to Get*, N.Y. TIMES (Mar. 7, 2021), <https://www.nytimes.com/2021/03/07/world/americas/argentina-abortion-opposition.html> [<https://perma.cc/73D7-4RBG>].

174. "Es Chile. Asume nueva alcaldesa. Con pañuelo verde. Halemos de orgullo latinoamericano, feminista y diverso" ("This is Chile. A new mayor taking office. With a green scarf. Let's talk about Latin American, feminist, and diverse pride.") Luciana Peker (@lucianapeker), TWITTER (June 28, 2021, 8:00 PM), <https://twitter.com/lucianapeker/status/1409663000030552065?s=10> [<https://perma.cc/UN4R-VWSJ>].

in incidents of gender-motivated violence drew tens of thousands of green-scarved people to the streets in March 2020.¹⁷⁵ In September 2021, the Mexican Supreme Court voted to decriminalize abortion, clearing a path for legalized abortion in the country.¹⁷⁶ Ni Una Menos is now a global phenomenon with widespread recognition and iterations emerging in countries beyond Latin America, including Spain and Italy.¹⁷⁷

The strategies Ni Una Menos uses to frame the narrative surrounding women's lived experience, as well as the role society plays in those experiences by promoting harmful ideas about women, can serve as a template to promote a systemic shift in other places where the fates of reproductive and other rights are on the line—including the United States.¹⁷⁸ Ni Una Menos's success as a movement is owed in large part to its activism components: the mobilization of the young people both in the streets and online. At the same time, the movement utilizes a legislative strategy as an advocacy group. Finally, Ni Una Menos's steadfast reliance on international conventions and the state's duties to uphold such norms is key to its success.

The movement started with the issue of femicide as its main pillar. As the issues the movement covered expanded, it became clear that Ni Una Menos is not simply an anti-femicide movement, but rather an anti-violence movement of which femicide is the most severe iteration. Ni Una Menos calls what it sees by its

175. Paulina Villegas, *In Mexico, Women Go on Strike Nationwide to Protest Violence*, N.Y. TIMES (Oct. 14, 2021), <https://www.nytimes.com/2020/03/09/world/americas/mexico-women-strike-protest.html> [<https://perma.cc/KW6T-K8MP>].

176. Natalie Kitroeff & Oscar Lopez, *Mexico's Supreme Court Votes to Decriminalize Abortion*, N.Y. TIMES (Sept. 13, 2021), <https://www.nytimes.com/2021/09/07/world/americas/mexico-supreme-court-decriminalize-abortion.html> [<https://perma.cc/P8L6-9SXT>]. As of publication, Colombia is the latest country in Latin America to legalize abortion.

177. See Jaclyn Diaz, *How #NiUnaMenos Grew From the Streets of Argentina Into a Regional Women's Movement*, NPR (Oct. 15, 2021, 5:00 AM), <https://www.npr.org/2021/10/15/1043908435/how-niunamenos-grew-from-the-streets-of-argentina-into-a-regional-womens-movemen> [<https://perma.cc/YC4B-Z9Y6>] (quoting Ximena Casas from Human Rights Watch in Madrid as saying, “[w]omen [in Argentina] going out into the streets to share their experiences, helped break down the stigma tied to abortion and reproductive health[.]”). In Italian, Ni Una Menos translates to Non Una Di Meno. For more information on that movement, see NON UNA DI MENO, <https://nonunadimeno.wordpress.com> [<https://perma.cc/5DY4-GU7Y>] (last visited Apr. 3, 2022).

178. Josh Gerstein & Alexander Ward, *Supreme Court Has Voted to Overturn Abortion Rights, Draft Opinion Shows*, POLITICO (May 3, 2022, 2:14 PM), <https://www.politico.com/news/2022/05/02/supreme-court-abortion-draft-opinion-00029473>.

name, and in doing so has prompted a broad reckoning on sexism, gender parity, and women's rights in Argentina and beyond. An unstoppable force has been galvanized and the only question is: what is the limit?