

## PART II

# FEMICIDE AND HUMAN RIGHTS LAW

Part II provides an overview of human rights bodies' adjudication of gender-based harm, relevant to femicide. In each chapter, I examine human rights bodies' cases holistically in the form of 'case studies.' This allows for consideration of human rights bodies' overall response to specific situations of violence against women and reveals the relevant factual circumstances of femicide that may be important for the legal analysis. Femicide involves a compounded set of closely connected human rights violations (e.g., the prohibition of torture, the right to life, and fair trial/access to justice rights) with a gender-based component.

Part II contains Chapters 5–8, discussing regional human rights bodies and the Convention on the Elimination of Discrimination Against Women (CEDAW) Committee's approach to femicide. Chapter 5 conveys a broad understanding of the development of women's rights at the United Nations level, before delving into the specificities of CEDAW's approach to violence against women and girls. As evident from its name, the CEDAW Committee uses discrimination as the primary lens to view domestic violence, rape, and other acts of femicide. CEDAW is receptive to gender-based harm, but it tackles such harm indirectly. Chapter 5 exemplifies this focus on discrimination through a few select cases.

Chapter 6 looks at European human rights instruments relevant to femicide, the Istanbul Convention explicitly dealing with domestic violence. This chapter lays out the fundamental principles of the *Osman* test for determining state responsibility by inaction, which are applied by the Inter-American and the African human rights bodies. However, the European Court of Human Rights (ECtHR) is stagnant in its approach to recognizing rape committed by non-state actors as torture or integrating a 'gender perspective' in investigating crimes against women and girls. This may be due to the Court's margin of appreciation doctrine and its reluctance to incorporate other drastic changes, as seen throughout its case law.

Chapter 7 considers femicide in the context of Latin America, where the term femicide is most strongly anchored. Accordingly, the Inter-American system is sympathetic to identifying and recognizing gendered harm. While it relies on the *Osman* test, it advances the ECtHR's conservative approach to rape by recognizing the commission of rape as torture irrespective of the perpetrators' private or public status. It also advances the idea that States should use a 'gender perspective' in investigating crimes of violence against women and girls, thereby combatting impunity with regard to femicide. The Inter-American Court of Human Rights' (IACtHR) evolutionary case law and its in-depth discussion of gender-based violence warrant a closer analysis.

Finally, Chapter 8 addresses the African human rights system. Considering that this regional human rights system is the newest, and least studied, the developments of women's rights in the African region are thoroughly investigated. Case law on femicide by the African Commission is emerging but not yet established. The African system's collective view of human and people's rights is most relevant to address and understand the collectively targeted social group in femicide. The African system's laudable contribution to identifying widespread risks, e.g., concerning marriage by abduction, is pertinent for the discussion of state responsibility in Chapter 10.