

VIOLENCE AGAINST WOMEN IN LATIN AMERICA

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- *A look at access to justice and the structural conditions that allow cases of femicide to multiply* •

ABSTRACT

In recent decades, international human rights law has provided the framework for the creation of a solid regulatory basis for the prevention, punishment and eradication of violence against women. Its full implementation requires coordination among the different initiatives promoted by states and the establishment of adequate monitoring and evaluation mechanisms. However, the challenges to its implementation reveal the shortcomings that exist in guaranteeing access to justice. In light of the persistence of extreme violence in the form of femicide, it is necessary to consider the scope of the state's duty to exercise due diligence. This includes the obligation to address other forms of violence that sustain the structural conditions of discrimination that allow the number of femicides to multiply.

KEYWORDS

Violence against women | Access to justice | Indicators of violence

In recent decades, international human rights law has provided the framework for the creation of a solid regulatory basis for the prevention, punishment and eradication of violence against women. The widespread ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – which, in its General Recommendation N° 19, clearly establishes that the right to live a life without violence is implicit and constitutes a basic, fundamental premise for the enjoyment of the rights enshrined in the convention – and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (known as the Convention of Belém do Pará) are just a few examples that illustrate the scope and the specificity of the obligations the international community has assumed on this issue.

The Latin American and Caribbean region is perhaps the one that has advanced the most in creating national regulatory frameworks to address violence against women.¹ There was an initial phase during which regulations on violence in the family or domestic violence were passed. Later, over the past decade, a dozen countries advanced toward adopting laws that provide full protection against several forms of violence in order to respond to violence occurring not only between the members of a family or within a family unit, but also in various settings in the community. Thus, countries such as Argentina, Bolivia, Colombia, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Peru and Venezuela passed second-generation laws that incorporate the definition of other types of violence, including: institutional, workplace, obstetric and media violence, violations of reproductive rights, sexual harassment, and property-related and symbolic violence.²

However, progress at the legislative level has not been accompanied by the creation of adequate sources of information that enable us to measure the size of the phenomena surrounding the different forms of violence, nor by the implementation of mechanisms to monitor and evaluate the effectiveness of state responses.³ A rapid review of the recommendations of the international organisations from the universal, regional and national human rights systems allows us to identify important demands for the state to improve information sources as a key prerequisite for designing effective public policies to address the different forms of violence.⁴ Studies point out the lack of information in the Latin American and Caribbean region, where data are concentrated on only one of the types of violence: the one occurring in the domestic sphere, between current or past partners.⁵ This led the Follow-up Mechanism for the Convention of Belém do Pará (MESECVI according to its Spanish abbreviation) to adopt a system of progress indicators for monitoring the Convention of Belém do Pará. These could serve as a guide and plan of action for the gradual construction of information sources by various states that are capable of effectively throwing light on the various types of violence and environments in which violence against women occurs.⁶

Several methodological tools for obtaining data on forms of violence against women do exist. For one, surveys allow one to measure the incidence and prevalence of violence against women and are generally carried out to gather information on domestic violence inflicted by current or former partners.⁷ Surveys offer valuable information on how physical, psychological and

sexual violence in couples affect women of different ages and socio-educational levels, but they do not register significant differences between diverse sectors, contrary to what evidence from the records of complaints appears to indicate (which are generally concentrated in women of reproductive age and middle class socio-educational sectors). In fact, administrative records allow one to document the concrete access of women in situations of violence to the services and resources available in a given jurisdiction: the police, helplines, health centres and agencies specialised in providing assistance to women. Institutions linked to the justice system, such as the public prosecutor's office, the public defendant's office and courts of justice, also produce information via the administrative records of their work. These data collection methods must complement one another, as together they constitute the only way to capture the dimension, characteristics and forms of violence.

Despite the broad definition of violence against women provided by the Convention of Belém do Pará, which is reflected in the domestic laws of the countries in the region, and perhaps due to the unspeakable brutality of the crimes, what has succeeded in massively mobilising Latin American societies in recent years has been the extreme violence against women. Femicide perpetrated against a variety of women – adolescents, youth and adult women, in urban and rural areas, with different occupations and different socio-economic conditions – has caught the attention of the people responsible for designing and implementing public policies. The registry on femicide being developed by nearly 20 countries in the region reveals the brutal side of this violence. The highest rates are found in countries in Central America (Honduras, El Salvador, Guatemala and the Dominican Republic).⁸ Due to the magnitude of this phenomena, states responded by approving criminal laws to specifically punish the violent death of women in situations of gender violence, which gave rise to the definition of specific criminal offences or different ways of increasing sentences for manslaughter.⁹

In light of the persistence of the most extreme forms of violence against women, despite advances in national and international legal frameworks, attention in recent years has turned towards the effectiveness of legal remedies and the fulfilment of promises on legislation. The work of the judiciary and the bodies responsible for the administration of justice became subject to public scrutiny, as did initiatives aimed at guaranteeing that women in situations of violence who manage to use the mechanisms for demanding protection for their rights have effective access to justice.¹⁰ Therefore, the effectiveness of state responses was brought into question and state violations of the duty to exercise due diligence, as determined by international human rights law, were identified.

Failure to fulfil the duty of due diligence in cases of violence against women represents a kind of discrimination towards women on the part of the state and a denial of their right to equal protection of the law. According to the standards defined by the regional and universal human rights systems, the state's efforts to meet its obligation to exercise due diligence should not be centred only on legal reforms, nor on the adoption of measures to facilitate women's access to justice and to services for victims.¹¹ The duty of

due diligence requires efforts to prevent violence by attacking the structural causes that give rise to it and taking measures that aim to modify social and cultural behavioural patterns and to shape state responses, including the actions of the judiciary and the police, among other state actors.¹² The states' obligation to take into account the multiple forms of violence against women and the different types of inter-sectional discrimination that affects their rights becomes even more important when adopting multi-faceted strategies to effectively prevent, address and eradicate all forms of violence.

This approach demands not only the creation of institutions with adequate human, technical and financial resources, organised under the leadership of a mechanism for the advancement of women with an adequate functional hierarchy, but also the adoption of efficient strategies for inter-institutional and inter-jurisdictional coordination.¹³ Furthermore, it requires that the different manifestations of violence be understood as a continuum, as this helps to explain the persistence of extreme violence that leads to femicide and is built on social and state tolerance of other more everyday forms of violence.

The structure of discrimination against women that produces femicide is sustained and fuelled by other veiled and naturalised forms of violence, the majority of which are beyond the reach of public policy: symbolic violence present in the media; sexual harassment in educational and work environments; obstetric violence naturalised in health care institutions; and violence and sexual harassment in public transportation and spaces. These forms of violence undermine women's ability to exercise their autonomy by restricting their freedoms. Even when covered by many national regulatory bodies and, undoubtedly, the broad definition in Article 2 of the Convention of Belém do Pará, these freedoms have still not been given due attention in public policies.

In various public and civil society spaces, these other forms of violence are beginning to gain visibility, as efforts are being made to trace the path that unites them to more extreme forms of violence, which prompt mobilised civil society to demand responses.¹⁴ Media observatories and networks of journalists committed to gender equality have denounced the reproduction of sexist violence by the media. Not only does the media repeat the news on violence, but it also constructs a discourse that sustains the idea that the submission of women is natural. In line with the Platform for Action of the 1995 Beijing Conference, ELA contributed to increasing the visibility of these phenomenon by performing an analysis of the news¹⁵ and produced guidelines for incorporating a human rights approach into journalistic work.¹⁶ Institutional violence, which is manifested in health care facilities, among other contexts, is also generally overlooked by public policies. One form of violence perpetuates others and they have particular impacts on different women, such as, for example, the case of young women who are persecuted and accused, even when they have a miscarriage, which is in clear violation of their human rights.¹⁷

In identifying promising practices related to the access of women victims of violence to justice by various international organisations, it is necessary to draw attention to the

importance of taking into consideration the different manifestations of violence and the environments in which it occurs in order to transcend extreme violence and the violence present in the relationships of couples.¹⁸ This will allow advances to be made in the development of broader strategies for the eradication of the structural conditions that sustain all forms of violence, such as invoking the possibility of resorting to other tools provided by civil, labour or administrative law and going beyond punitive measures. As Di Corleto argues, the “Convention of Belém do Pará urges states to prevent, investigate and punish gender violence, but it does not demand that all accusations of violence be given a prison term at the end of a trial.” The Convention itself refers to any other “legal procedure that is fair and effective for women” – standards that will have to be revisited according to the different manifestations of violence under consideration at the time.¹⁹

The promising practices identified in the field of law and in justice systems include treating violence against women as a form of gender discrimination linked to other forms of oppression and as a violation of women’s human rights. Daily forms of violence restrict women’s freedom and their access to civil, political, economic, social and cultural rights. These forms of discrimination undermine the autonomy of girls, adolescents and women over different areas of their life: violence in reproductive processes affects their physical autonomy; media and symbolic violence reproduced in public discourse limits their participation in social and political life; and finally, violence in social, educational and work environments has a negative impact on the development of women’s economic autonomy.

Several states in the region have begun to outline regulatory responses to and public policies on the various forms of discrimination and violence against women. It will be necessary to monitor the implementation of these legal reforms to assess how efficient they are; guarantee that women are not victimised again during the investigation process; and weigh the different impacts of the measures on women according to race, class, ethnic origin, religion, disabilities, culture, being indigenous or migrants, legal status, age and sexual orientation.

In regards to the mechanisms that must be at women’s disposal in order to guarantee the effective protection of their rights, the recently adopted General Recommendation N° 33 of the CEDAW considers the availability and accessibility of various resources that must promote a holistic approach to a problem that is defined as structural and founded on gender stereotypes that affect not only the institutional design and implementation of norms and plans of action, but also the process of the administration of justice. Thus, this recommendation establishes that it is the obligation of the state to guarantee the availability of adequate, effective remedies that are proportional to the rights violated and the gravity of the harm suffered; the inclusion of compensation be included; and remedies for civil damages and criminal sanctions, which must not be mutually exclusive.

It is clear that the states’ resources for dealing with violations of the right to a life without violence are not limited to approving laws that impose punishment or punitive measures. Given the different manifestations of violence and the variety of environments in which

they occur, states must make a variety of resources available, including different forms of redress, measures of satisfaction and measures that promote the transformation of the widespread discriminatory practices that give rise to the violations. The state's obligation is to guarantee that women both have access to procedures that do not restrict access to other legal processes in other areas of law (civil, labour, administrative) and also to guarantee the existence, availability and accessibility of quality support systems in order to prevent new violations of their rights from happening.

In the Latin American region, advances have been made in not only regulatory frameworks, but also the highly promising area of social awareness that condemns extreme violence against women. Based on a holistic understanding of the duty of due diligence of the states, it is necessary to address – with more information and more efficient public policy tools - the forms of daily violence that help to sustain the structural conditions underlying the discrimination against women that allow cases of femicide to multiply.

NOTES

1 • The Follow-up Mechanism to the Belém do Pará Convention (MESECVI), which regularly assesses states' compliance with the obligations of the Convention, reports on advances in legislation. See: "Segundo Informe Hemisférico sobre la Implementación de la Convención de Belém do Pará," Organización de los Estados Americanos (OEA) and Mecanismo de Seguimiento de la Convención de Belém do Pará (MESECVI), April 2012, accessed November 29, 2016, <http://www.oas.org/es/mesecvi/docs/MESECVI-SegundoInformeHemisferico-ES.pdf>.

2 • For an analysis of laws for full protection against violence, see: "Informe Anual 2013-2014. El Enfrentamiento de la Violencia contra las Mujeres en América Latina y el Caribe (LC/G.2626)," Comisión Económica para América Latina y el Caribe (CEPAL), 2014, accessed November 29, 2016, <https://goo.gl/hjf4eX>.

3 • For a review of available sources of information, see: Natalia Gherardi, "La Violencia Contra las Mujeres en la Región", in *Si no se Cuenta, no Cuenta:*

Información sobre la Violencia Contra las Mujeres, coord. Alméras y Carlderón Magaña (Santiago de Chile: Cuadernos de la CEPAL, 2012).

4 • This can be seen in the final recommendations of not only the CEDAW Committee but also other treaty bodies, such as the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, and in the evaluations conducted by MESECVI at the regional level.

5 • On this, see, for example: Frías Lorena and Victoria Hurtado, "Estudio de la Información sobre Violencia Contra la Mujer en América Latina y el Caribe," *Serie Mujer y desarrollo*, no. 99 (LC/L.3174-P/E) (Santiago de Chile: Comisión Económica para América Latina y el Caribe - CEPAL, 2009).

6 • See: Laura Pautassi and Natalia Gherardi, "Guía Práctica para el Sistema de Indicadores de Progreso para la Medición de la Implementación de la Convención de Belém do Pará." Comisión Interamericana de Mujeres (CIM) and Mecanismos de Seguimiento de la Convención de Belém do Pará (MESECVI) (OEA/Ser.L/II.6.15), 2015,

accessed November 29, 2016, http://www.oas.org/es/mesecvi/docs/Guia_Indicadores_BDP_ESP.pdf.

7 • A comparison of surveys conducted in the region can be found in: Organización Panamericana de la Salud (OPS), *Violencia Contra las Mujeres en América Latina y el Caribe: Análisis Comparativo de Datos Poblacionales de 12 países* (Washington, DC: OPS, 2014).

8 • These data are available at the Gender Equality Observatory for Latin America and the Caribbean of the ECLAC.

9 • A comparison of the laws on femicide/feminicide approved in the region can be found at: CEPAL, *Informe Anual 2013-2014*, 2014.

10 • This requires overcoming the material and subjective obstacles to gaining access to justice, which make it difficult for women to not only lay charges, but especially to give continuity to the proceedings. See: Birgin Haydée and Natalia Gherardi, coord., *La Garantía de Acceso a la Justicia: Aportes Empíricos y Conceptuales* (Fontamara, Mexico: Suprema Corte de Justicia de la Nación, 2011).

11 • See, for example, the recommendations in: "Segundo Informe Hemisférico sobre la Implementación de la Convención de Belém do Pará," Organización de los Estados Americanos (OEA) and Mecanismo de Seguimiento de la Convención de Belém do Pará (MESECVI), Apr. 2012, accessed November 29, 2016, <http://www.oas.org/es/mesecvi/docs/MESECVI-SegundoInformeHemisferico-ES.pdf>; and also: "Acceso a la Justicia para Mujeres Víctimas de Violencia Sexual en Mesoamérica (OEA/Ser.L/V/II)," Comisión Interamericana de Derechos Humanos (CIDH) and Organización de los Estados Americanos (OEA), 2011, accessed November 29, 2016, <http://www.cidh.oas.org/pdf%20files/MESOAMERICA%202011%20ESP%20FINAL.pdf>.

12 • See, for example, the decisions in: "Informe No. 80/11. Caso 12.626: Jessica Lenahan (González) y Otros, Estados Unidos," paragraphs 125-128, CIDH, 2011, accessed November 29, 2016, www.oas.org/es/cidh/decisiones/2011/USPU12626ES.doc; and *Ibid*, paragraphs 60-62,

2011, accessed November 29, 2016, <http://www.oas.org/es/mesecvi/docs/BdP-GuiaAplicacion-Web-ES.pdf>, among other summarised regional and international standards.

13 • See the recommendations and strategies outlined in: Natalia Gherardi, "La Violencia Contra las Mujeres en la Región", in *Si no se Cuenta, no Cuenta: Información sobre la Violencia Contra las Mujeres*, coord. Alméras and Carlderón Magaña (Santiago de Chile: Cuadernos de la CEPAL, 2012). pp. 157-171.

14 • For an overview on these other forms of violence and states' responses, see: Natalia Gherardi, "Otras Formas de Violencia Contra las Mujeres que Nombrar, Reconocer y Visibilizar." Series de la CEPAL, 2016, accessed November 29, 2016, <http://www.cepal.org/es/publicaciones/40754-otras-formas-violencia-mujeres-que-reconocer-nombrar-visibilizar>.

15 • The Observatorio de Las Mujeres en los Medios (Observatory on Women in the Media) published a regional report on monitoring in five countries in 2012. A later initiative by the Medios y Justicia en Clave Feminista (2012-2013) also provided an analysis of news stories on women's rights from a feminist perspective. The reports are available online on the Latin American Group for Gender and Justice (ELA) website: www.ela.org.ar.

16 • See: "Mejorar la Comunicación para Expandir los Derechos. Herramientas para Incorporar un Enfoque de Derechos en la Cobertura Periodística," Equipo Latinoamericano de Justicia y Género, 2013, accessed November 30, 2016, www.ela.org.ar.

17 • The "Belén case" is one of the most well known ones. In this case, a young woman was convicted of aggravated murder for having a miscarriage in a public hospital in the Argentine province of Tucumán (when she did not even know she was pregnant). The case was brought before international bodies, which led to the adoption of a specific recommendation by the Human Rights Committee in July 2016 ("CCPR/C/ARG/CO/5," United Nations, July 2016, accessed

November 29, 2016, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/ARG/CO/5&Lang=En.

18 • See, for example: “Estudio a Fondo sobre Todas las Formas de Violencia Contra la Mujer. Informe del Secretario General,” United Nations, A/61/50yCorr.1., Jul. 6, 2006, accessed November 29, 2016, https://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/61/A_61_122_add1_es.pdf; and “Guía para la aplicación de la Convención Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra la Mujer (Convención de Belém do

Pará),” Organización de los Estados Americanos (OEA) and Mecanismo de Seguimiento de la Convención de Belém do Pará (MESECVI), OEA/Ser.L/II.6.14, 2014, accessed November 29, 2016, <http://www.oas.org/es/mesecevi/docs/bdp-guiaaplicacion-web-es.pdf>.

19 • Julieta Di Corleto, “La Suspensión del Juicio a Prueba en Casos de Violencia de Género. Límites y Condiciones para su Concesión. A Propósito del Fallo ‘Góngora’”, in *Jurisprudencia Penal de la Corte Suprema de Justicia de la Nación*, dir. Leonardo G. Pitlevnik, edit. Hammurabi- José Luis Depalma, Bs. As., no. 15 (2013).



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