

THE MARIA DA PENHA LAW: 10 YEARS ON

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- *What do we want to celebrate?* •

ABSTRACT

In the year of the tenth anniversary of law 11.340/2006 - the Maria da Penha law (MPL) - a mixture of happiness and hesitation characterises the celebrations. In this article, I present an analysis of the challenges and obstacles of the MPL's implementation in light of bill 07/2016, which is moving through the federal senate and has brought about a strong reaction from those involved in applying the MPL and in defending the rights of women. This recent event raised questions about how Brazil will implement the MPL in the coming years and in which social and political conditions this implementation will take place. In the debates around the issue, we see that the wave of change initiated by the MPL cannot be stopped. The threats to the MPL today show not only that traditional social structures resent this change which strengthens the conviction that there is still a long fight ahead, but also that the rights of women will not lose the statute they gained in the last decade.

KEYWORDS

Maria da Penha law | Bill 07/2016 | Domestic and family violence | Gender | Public policy

1 • Law 11.340/2006, the Maria da Penha Law

The Maria da Penha Law (MPL), which “creates mechanisms to reduce domestic and family violence against women,”¹ is a demand that women’s and feminist movements in Brazil have long defended. Responding to the grave problem of violence against women, elaboration of the law was made possible after the Inter-American Commission of Human Rights (IACHR) found Brazil responsible in the case of Maria da Penha Maia Fernandes (2002).² Formulated by a coalition of feminist NGOs, jurists and legislators working to defend women’s rights, and with the support of the then-recently-created President’s Policy Council on Women, the text of the legislation reflects a long fight for rights. It was recognised by the United Nations, which, in 2008, noted that the Maria da Penha law was “the culmination of a prolonged campaign carried out by women’s organisations along with national, regional and international organs, such as the Inter-American Commission on Human Rights.”³

In the national context, the MPL is recognised for being innovative and exemplary, especially referring to the measures that it introduces for a more comprehensive approach to combatting violence against women. Among the changes promoted by the legislation, it adopts the definition of violence against women used at the Belém do Pará Convention⁴ and classifies domestic violence as a human rights violation. Relationships of domination and hierarchy that result from widespread gender inequality are identified as the root cause of domestic violence. The law thus recognises that domestic and family violence is not a problem that affects just a few women and works against an understanding that it is a private problem related to personal history. The law affirms that domestic violence has the potential to affect all women during the course of their lives.

The definition of violence is expanded to include abuse and assault of a physical, sexual, psychological and moral nature, as well as harm to property. It also expands the concept of family ties, referring to people united by intimacy and affection, ties that can be present or past and also those that exist whether or not the involved parties live together (in cases of dating, for example). Another innovation in the law: the interpersonal relationships are not restricted in terms of sexual orientation.

The MPL represents a group of directives that hold aggressors responsible, that protect women and their family-members, that give access to rights and to justice and that carry out preventative actions, including work in the field of primary-school education. Considering these measures, the MPL serves both to channel public policies and also as an instrument of social transformation built on the theories and practices of the feminist movement that draws inspiration from the movements for legislative changes and public policies addressing rights for women in the international context.⁵

With so many changes, the legislation requires governments and courts to adapt and adopt the new practices and competencies corresponding to this approach and which consider the gender perspective. In other words, women recognised as subjects with

rights protected by laws that are applied in a way that is not only egalitarian but is also attentive to the specificities of each case. The measures hold perpetrators of violence responsible and also permit women to overcome difficult situations so that they can reconstruct or construct new relationships in a life without violence.

Over the past ten years, the implementation of the law has resulted in many advances: in the creation of specialised services, in education and training professionals for assistance, and in alerting society to the gravity of domestic and family violence as a problem to be addressed through specialised and directed public policies. Policies that work not only by punishing the violence, but also by preventing and reducing tolerance for new acts of violence.

However, the advances are modest when compared to the size of the task at hand. Segments of Brazilian society and the institutions responsible for applying the MPL and protecting the rights of women are resistant to the cultural and institutional changes required for the law to be applied in a complete and effective way. During its first ten years, the MPL was regularly attacked, and was even called unconstitutional by some who attempted to suspend the law, claiming that it went against the principals of equality among men and women. The more than 100 bills currently circulating in congress that present new proposals for combatting violence against women can also represent threats insofar as they turn away from the gender perspective and/or ignore the integrated approach guaranteed in the law.

In this context, in the year of the tenth anniversary of the Maria da Penha law, a mixture of happiness and hesitation characterises the celebrations. As usually happens on these days, reflection efforts focus on celebrating the victories and advances, on analysing the difficulties and on renewing agreements that seek a more effective implementation of the law in order to build a more equal society for men and women.⁶

In this article, I propose an evaluation based on a recent event that raised questions about how Brazil will implement the MPL in the coming years as well as in which social and political conditions this implementation will take place. I refer to the controversy around a bill moving through the national senate that has caused a strong reaction in the different sectors involved in applying the law and among those who fight for women's rights.

2 • BILL 07/2016

Bill 07/2016 aims to alter the MPL's third chapter, where the type of assistance that police should give to victims is defined. Chapter 3 reads, "victims of domestic violence have the right to specialised, uninterrupted police and expert assistance, given preferentially by women."⁷

In essence, the bill introduces three new articles to the MPL. The first two articles include directives regarding specialised police and expert assistance both in necessary adaptations to physical spaces as well as in the active and humanised approach to

gathering evidence that must take place to avoid further victimising women. The third article modifies the legislative text so that the police can immediately apply urgent protective measures as soon as any current or imminent risk to the physical or mental health of the victim or her dependents is identified.

Bill 07/2016 was introduced in May 2016 and, after receiving a favourable report from the Senate Commission on the Constitution, Justice and Citizenship and being sent for consideration in the senate. Many actors, including representatives from the police, the public ministry, the public defender's office, the judiciary and the feminist movements, spoke out with some defending and others criticising the bill.⁸

The bill won strong support in the senate from a caucus made up of the civil and military police,⁹ strengthened through a mobilisation led-by the civil police, specifically delegates that work in the Specialised Units for Assisting Women. The main argument of those defending PL 07/2106 is the need to guarantee better attention and immediate protection for women who are at risk. This same argument also underlies the opinion of the legislator that received PL 07/2006 in the senate.

The unified tone of this response quickly broke when other voices that, while aligned with the interests in promoting better attention and protection for the women, began to discuss the relevance of the shift in the proposal and its effects on the Maria da Penha law. Judicial representatives questioned the constitutionality of the proposal.¹⁰ In the midst of the debates, the bill was suspended and a public audience was called to hear the positions of legislators and of women who had been victims of violence. Confrontations at the hearing evidenced the need for more caution and discussion before advancing with the approval process.¹¹

In these debates, the feminist movement brought to the surface its concern that this type of change could weaken the integral foundations of the law. The movement also sought recognition of its legitimacy to be involved in the process of changing a law that is such a historic marker in the fight for women's rights in Brazil.

3•Bill07/2016,obstaclesandchallengesfortheimplementation of the MPL

There are many aspects of the 07/2016 bill and its impact on the Maria da Penha law that could be discussed in light of the advancements, obstacles and challenges of implementation. In this text, I focus on the arguments in favour of article 12-B, which proposes that the police should be allowed to apply urgent protective measures. The arguments presented in the discussion about this article go beyond shedding light on the difficulties that women undergo to gain protective measures and reveal important things about the entire criminal justice system and about the need for public policies that make the protective measures effective. With this, the focus shifted and reflection

was made possible about the conditions of applying the MPL and about the obstacles and challenges women face when seeking the rights assured by the MPL.

Article 12-B makes it possible for the protective measures to be applied immediately, at the moment of the registration of the crime by police officers, whenever a risk situation is identified. It is up to the police to provide immediate subpoena of the aggressor, as well as to call upon any other services for attending to the women. After the initial protection is guaranteed, the bureaucracy continues with the conclusion of the process that is then forwarded to the judiciary within 24 hours, where the rest of the guarantees of the MPL are guaranteed for the victim.

The proposal has an unquestionable motivation. Increase and guarantee protection for women who are in situations of domestic and family violence is the obligation of all public officials that act in the area of assistance to this population. If the motivation is unquestionable, the justification lacks reflection. The debates that followed the publication of the 07/2016 bill and in its defense placed the responsibility for the gaps in application of protective measures on the judiciary. The slow speed of analysis and deferment of requests and the long wait to call the women and the aggressors about the decisions were some of the points highlighted as inadequate given the urgency of the response required in a violent situation.

The justification reflects a known reality. The application of protective measures happens in adverse contexts, in specialised courts and units that are overrun with processes, that have inadequate bureaucratic processes and also a reduced number of technical and bureaucratic staff. There are also difficulties among judges whose understanding of the law is limited to the process, insensitive to the perspective of gender, which requires the understanding of the context of domestic and violence. There are more than a few accounts of judges that demanded that the requests for protective measures be carried out with witnesses and expert evidence, extending the deadlines for the production of necessary documents, relegating the word of the woman to the second plane, yet who in many instances is the only person who can attest to the violence that she suffered. This creates difficulties for women who need to access the protection, as well as promoting their re-victimisation.¹²

On the other hand, in the critiques of the current political activity, you find judges that justify the unviability of the analysis of the requests, alleging that they are not well founded and that they lack information that helps understand the measures called for, including its adequacy as it relates to the situation that the women live.¹³ They recognise the structural deficiencies in the courts and know that this is an important limiting factor for the work that they do.¹⁴

These problems identified in the field of public security and in the judicial powers do not occur in isolation. Together with the absence of specialised services in other sectors of the public policy, and the formation of specialised assistance networks, it is always possible to find someone commenting on how difficult it is to adequately apply the Maria da Penha law. Sometimes this questioning is projected on the law itself, which is described as ineffective and requiring changes. Just as is happening with the 07/2016 bill.

During the last ten years, many studies were done about the implementation of the MPL. Since 2009, the Maria da Penha Law Observatory - OBSERVE - has produced studies with the purpose of describing and analysing the conditions of implementation of the Maria da Penha Law.¹⁵ In 2012, a Mixed Parliamentary Inquiry Committee was constituted for this purpose,¹⁶ and other studies were carried out that demonstrate the reduced number of specialised services, the concentration in capital cities, the deficiencies in network articulation, the lack of physical structure, material and human resources, and the inability to follow the new attributions and functions introduced by the MPL. The research also shows the low level of training of the professionals for carrying out specialised assistance from a gender perspective and a lack of institutional policies that valorise specialised knowledge and stimulate professionals to implement this knowledge.

These studies show, primarily, the low adherence of the states and municipalities in the implementation of the national policy of confronting violence against women (2005). Created in the federal government by the Secretariat of Women's Policy, the national policy functioned as the backbone of the implementation of the Maria da Penha law and was reinforced by the National Pact of Confrontation of Violence Against Women (2007) and the Women's Program, Live Without Violence (2013).

The National Pact, with its premises about capillarity, intersectoriality and transversality of the gender perspective in the state approach, permitted the federal government to activate the responsibilities previewed in the Federative Republican Pact, reaffirmed in the 1988 constitution. In this way, since 2007, the Secretariat of Women's Policy implemented a new form of management for the systematic and coordinated transfer of financial, technical and material resources in order to guarantee minimal conditions for the implementation of the MPL.

In the pact, the state and municipal governments agreed to make investments to maintain the policies, services and programmes. Nevertheless, in practice, beyond formal agreements, few times this sustentation happened in a continued way. The institutions have not always appeared favorable to an internalisation of changes proposed by the MPL, and they have also not invested in the gender perspective so as to guarantee the continuity of changes that started as the fruit of the individual effort of some professionals. The result is the instability in the responses offered by the women, directly affecting their access to the measures provided in the MPL.

Considering this scenario, the 07/2016 bill loses even more force in its justification, as its purpose contributes to show the persistence of these deficiencies, but does not offer instruments to overcome the obstacles. In short, what this bill demonstrates is a lack of comprehension about the relevance of integrality in the implementation of the MPL and the articulation of the measures guaranteed in its text. Applying the MPL partially, or creating conditions that reinforce the inequality in the proposed measures just contributes to maintain violent situations.

This year, once again the celebrations around the MPL reflect on these advances and on the remaining obstacles, but, maybe now more than ever, these reflections were balanced by threats to the integrity and applicability of the legislative text. This is due on one hand to the conservatism that has been taking over some sectors of society and of institutions, especially in the legislature. On the other hand, it is related to the threats to the institutionality of the National Policy on Combatting Violence Against Women, which was a consequence of the repositioning of the Council on Women as an organ subordinate to the Ministry of Justice and Citizenship.

There have been many reasons to celebrate in these ten years. The MPL sparked the understanding of domestic and family violence against women as a public problem, it provided significant changes in the way the society sees and thinks about domestic and family violence, specifically because it framed gender inequality as a violation of human rights. These shifts make possible the recognition of other forms of gender-based violence, that affect the lives of all women and girls in all of the stages of her life and experiences of race, ethnicity, sexual orientation, gender identity, religion, social classes, regional or national origin, among other social groups to which they belong.

This social movement took on its own forces and cannot go back now. Nevertheless, its effectiveness depends on the engagement and compromise of the state institutions and of society and it would be disingenuous to think that 10 years had been enough to break the traditional logic of the functioning of things. In this context, even though it seems pessimistic to put the obstacles and challenges at the forefront, these do not annul the advances made. Just the opposite, the threats indicate that the traditional structures resent these movements, changes and shifts, which strengthens the convictions that many more battles will be necessary and that women's rights will not lose the statute fought for during the last decade.

NOTES

1 • "Lei Nº 11.340, de 7 de agosto de 2006," Presidência da República - Casa Civil, 2006, accessed November 10, 2016, https://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Lei/L11340.htm.

2 • Valéria Pandjarijan, "Maria da Penha: una mujer, un caso, una ley," *Revista Informativa CLADEM*, nº 9, Año 6 (Noviembre, 2007): 38-51.

3 • The Maria da Penha law is cited alongside the Spanish Laws (2004) and the Mongolian Law on violence against women. Consult: "Quem responde às mulheres? Progresso das Mulheres do Mundo 2008/2009 - Género e Responsabilização," UNIFEM,

2008, p. 76, accessed November 10, 2016, http://www.unifem.org/progress/2008/media/POWW08_Report_Full_Text_pt.pdf.

4 • The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (also known as the Convention of Belém do Pará), June 9, 1994 (entered into force May 3, 1995), accessed November 10, 2016, <http://www.oas.org/juridico/english/treaties/a-61.html>.

5 • Wânia Pasinato, "Violência Contra as Mulheres e Legislação Especial, Ter ou Não Ter? Eis Uma Questão," *Revista Brasileira de Ciências Criminais*, no.

70 (jan.-fev. 2008).

6 • Wânia Pasinato et al., "Medidas Protetivas para as Mulheres em Situação de Violência," in *Pensando a Segurança Pública: Direitos Humanos, Grupos Vulneráveis e Segurança Pública* (vol. 6), org. Ana Carolina Cambeses Pareschi, Cíntia Liara Engel, Gustavo Camilo Baptista and Alex Jorge das Neves (Brasília: Ministério da Justiça/SENASP, 2016): 230-62; Wânia Pasinato, "Oito Anos de Lei Maria da Penha: Entre Avanços, Obstáculos e Desafios," *Revista de Estudos Feministas* 23, no. 2 (Aug. 2015): 533-45; Wânia Pasinato, "Avanços e Obstáculos na Implementação da Lei Maria da Penha," in *Lei Maria da Penha Comentada na Perspectiva Jurídico-Feminista*, org. Carmen Hein de Campos (Rio de Janeiro: Lumen Juris, 2011).

7 • "Projeto de Lei da Câmara nº 7, de 2016", accessed November 20, 2016, <https://www25.senado.leg.br/web/atividade/materias/-/materia/125364>.

8 • This article does not intend to question the personal positions of the professionals that spoke out for or against the change in legislation. One of the great fortresses of the MPL are the professionals that are engaged in its application and that devote themselves to finding more effective ways to respond to the women they assist day in and day out. However, this same daily work has been captured in research and diagnoses that show how individual efforts are often blocked and are calibrated by the institutional policies in the different sectors of public policy and in the criminal justice system. In this sense, the questions underlying this article do not address the professionals but rather the institutions.

9 • Also known as the "bullet caucus". Along with the "beef caucus" (made up of ruralists) and the "cattle caucus" (made up of evangelicals), these fronts express the conservative and fundamentalist character of the federal congress, often responsible for bills and proposals that threaten social and political rights in the country.

10 • The debate stalled specifically because of the technical notes emitted by the representative

organs of the judicial classes and the public manifestations by the feminist movements. The National Forum of Police Delegates, The Brazilian Magistrate's Association, the National Association of Members of the Attorney General's Office, the National Council of General Prosecutors of the Attorney General's Offices of the State and the Nation and of the National Collegiate of Public Defenders all emitted technical notes.

11 • Here the discussion is presented in a shortened form. On the site of the senate, it is possible to follow the documents step-by-step.

12 • CEPIA, *Violência Contra as Mulheres e Acesso à Justiça* (Rio de Janeiro: CEPIA, 2013); Pasinato et al., "Medidas Protetivas para as Mulheres em Situação de Violência," 2016.

13 • Débora Diniz e Sinará Gumieri, "Implementação das Medidas Protetivas da Lei Maria da Penha no Distrito Federal entre 2006-2012," in *Pensando a Segurança Pública: Direitos Humanos, Grupos Vulneráveis e Segurança Pública* (vol. 6), org. Ana Carolina Cambeses Pareschi, Cíntia Liara Engel, Gustavo Camilo Baptista e Alex Jorge das Neves (Brasília: Ministério da Justiça/SENASP, 2016): 205-31.

14 • CEPIA, *Violência Contra as Mulheres e Acesso à Justiça*, 2013.

15 • OBSERVE, *Condições para aplicação da Lei 11.340/2006 (Lei Maria da Penha) nas Delegacias Especializadas de Atendimento à Mulher (DEAMS) e nos Juizados de Violência Doméstica e Familiar nas Capitais e no Distrito Federal* (Salvador: Observe, 2010); OBSERVE, *Identificando Entraves na Articulação dos Serviços de Atendimento às Mulheres Vítimas de Violência Doméstica e Familiar em Cinco Capitais* (Salvador: Observe, 2011).

16 • Senado Federal, *Relatório Final da Comissão Parlamentar Mista de Inquérito Sobre a Violência Contra a Mulher* (DF: Brasília/Senado Federal, 2013): 1049.

17 • Ana Paula Antunes Martins, Daniel Cerqueira e Mariana Vieira Martins Matos, *Nota Técnica nº 13: A institucionalização das políticas públicas de enfrentamento à violência contra as mulheres no Brasil (versão preliminar)* (Brasília: IPEA, 2015): 37.

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