



## Facing Domestic Violence Against Women in Brazil: Advances and Challenges

**Thiago Pierobom de Ávila<sup>1</sup>**

Monash University, Australia; University of Lisbon, Portugal; Office of the Attorney General, Brazil

### Abstract

This article aims to offer a critical overview of the Brazilian legal framework for confronting domestic violence against women. Intimate partner homicides are epidemic in Brazil: there are four deaths of women per day. In 2006, the Maria da Penha Law (MPL) introduced integrated polices and transformed criminal procedures to deal with the complexities of gender violence. Reforms included the establishment of The House of Brazilian Women, women-only police stations, specialised courts, intervention orders, interdisciplinary experts, and perpetrator programs. In 2015, a new law created the crime of femicide, designed to prevent 'honor killings' defenses in cases of intimate partner homicide and to avoid impunity. Despite law reform, structuring and articulating the network of services remains a challenge. The MPL led to great social change in Brazil regarding awareness of the violence against women, facilitating a broader discussion about gender equality.

### Keywords

Gender violence; Brazil; law reform; policies.

*Please cite this article as:*

Ávila TP (2018) Facing domestic violence against women in Brazil: Advances and challenges. *International Journal for Crime, Justice and Social Democracy* 7(1): 15-29. DOI: 10.5204/ijcjsd.v7i1.397.



This work is licensed under a [Creative Commons Attribution 4.0 Licence](https://creativecommons.org/licenses/by/4.0/). As an open access journal, articles are free to use, with proper attribution, in educational and other non-commercial settings. ISSN: 2202-8005

## Introduction

There have been a number of recent inquiries in Australia addressing domestic violence. Prominent amongst these are those by the Special Taskforce on Domestic and Family Violence in Queensland (2015), the Council of Australian Governments (COAG) Advisory Panel (COAG 2016), and the Victorian Royal Commission into Family Violence (Neave et al. 2016). These inquiries considered the need to hold perpetrators accountable and provide support for men’s behaviour change and to develop integrated responses to keep women and their children safe. Recommendation 6.3 of COAG Advisory Panel (COAG 2016: xviii) states that a national summit should be held to ‘showcase and recognise Australian and international best practice in addressing violence against women and their children’ and ‘provide opportunities to identify, develop and share innovative and integrated approaches’. However, except for the Victorian Royal Commission into Family Violence (Neave et al. 2016), these inquiries typically look only to innovations in the so-called ‘developed world’, disregarding possible contributions from the ‘global south’ (Carrington, Hogg and Sozzo 2016).

This article aims to fill a void in knowledge, offering a critical overview of the Brazilian legal framework for confronting domestic violence. It will compare the rates of violence against women in Brazil and Australia, discuss aspects of both law and policies to respond to domestic violence in the Brazilian context, and analyse the recent Brazilian law on ‘femicide’.

## The epidemic dimension of gender violence in Brazil

In 2013, 4,762 women were killed in Brazil, a rate of 4.8 female killings per 100,000 people, an average of 13 per day. In 2013, Brazil was fifth in the international ranking of female homicides, with per capita rates for homicides eight times greater than for Australia (see Table 1). The rates of female killings increased 21 per cent from 2003 to 2013; 50.3 per cent of these deaths were committed in the context of family violence, and 33.2 per cent in context of Intimate Partner Violence (IPV) (Waiselfisz 2015). This means that, in Brazil, there were four IPV deaths per day. By comparison, in Australia, approximately one woman is killed per week in the context of IPV (Cussen and Bryant 2015).

**Table 1: International ranking of female homicides**

<i>Position</i>	<i>Country</i>	<i>Year of data consideration</i>	<i>Rate of deaths per 100,000 people</i>
1	El Salvador	2012	8.9
2	Colombia	2011	6.3
3	Guatemala	2012	6.2
4	Russia	2011	5.3
5	Brazil	2013	4.8
19	United States of America	2010	2.2
37	Canada	2011	0.9
51	Australia	2011	0.6
75	United Kingdom	2013	0.1

Data source: Waiselfisz 2015<sup>2</sup>

Some Brazilian state capitals, such as Vitoria (Espírito Santo) and Maceio (Alagoas), have even more alarming rates of female deaths per 100,000 people, at 11.8 and 10.7 respectively. Still, these statistics, derived from the Ministry of Health data system, may under-report such deaths (Waiselfisz 2015).

The risk of suffering violence increases when gender intersects with racism or poverty. Black women represent 66.7 per cent of female victims of homicide (Waiselfisz 2015), whereas only 51 per cent of the total female population is black (Instituto Brasileiro de Geografia e Estatística 2010). From 2003 to 2013, the number of homicides of white women dropped 9.8 per cent, while this number increased by 54.2 per cent for black women (Waiselfisz 2015). Studies also indicate that macrosocial factors, such as income inequality and community disaggregation, increase the risk of lethal IPV (Gomes 2014).

The number of women killed in Brazil is associated with widespread levels of other forms of violence against women. In 2014, there were 47,646 reported rapes of women, equating to one rape every 11 minutes (Fórum Brasileiro de Segurança Pública [Brazilian Forum on Public Security] (FBSP) 2015). Of women interviewed in a survey, 90.2 per cent said they were afraid of being raped (FBSP 2015). Alarming, 42 per cent of Brazilian men think that, if a woman is wearing 'provocative' clothes, she cannot complain if she is raped (FBSP and Datafolha 2016). In a survey of 10,000 women living in the Northeast Region of Brazil, 27 per cent of those interviewed said they had suffered at least one act of domestic violence during their lives, and 11.9 per cent reported experiencing this form of violence in the last year (Carvalho and Oliveira 2016). Each year police reports of domestic violence against women increase: in Brasília, the capital, there were 4,258 cases of IPV against women registered by the police in 2008, and 13,100 cases in 2016, representing an increase of more than 200 per cent in that period (Office of the General Attorney of the Federal District 2017). The national hotline for violence against women ('call 180') received 4.7 million calls during its first decade of operation (2005-2015), of which 552,748 reported violence, mostly physical (56.7 per cent) and psychological (27.7 per cent) violence (National Secretary of Policies for Women Brazil 2016).<sup>3</sup>

Violence against women has long been explained by its gender sociological aspects, related to expected male roles of power and control (Bandeira and Thurler 2010; Machado and Magalhães 1999). Indeed, Brazilian national statistics of attendances in health services related to general interpersonal violence indicate a link between the age of the woman and the relationship with the aggressor (Waiselfisz 2015). During childhood, parents are the most common offenders against girls (with a prevalence of mothers as offenders); in adolescence the offenders are the parents, partners, boyfriends (current or former) and brothers. During their young and adult lives, women are offended against most commonly by partners, boyfriends and brothers; and older women are mostly offended against by their sons, followed by their partner, their brother and carer (who are 3.4 per cent of those included in the 'other' category). Table 2 shows Brazilian national statistics of attendances of women in health services related to general interpersonal violence, crossing age of patient and relation with the offender.

The Latin 'macho' culture combined with a generally violent environment contributes to the levels of violence against women. In fact, Brazil has high levels of interpersonal violence: there were 58,559 intentional violent deaths in 2014, 28.9 deaths per 100,000 people (FBSP 2015). Firearm numbers in Brazil are also alarming. Even though the so-called 'Disarming Law' (Statute n. 10826/2003) provided very strict rules around legal firearm ownership, including an education course and bureaucratic registration, studies estimate there are about 15.2 million firearms in private hands, 8.5 million of which are illegal firearms (Dreyfus and Nascimento 2005). The magnitude of this arsenal is closely connected to homicide rates. There were 118,379 illegal firearms recorded by police in 2014 (FBSP 2015), and 44,861 people were killed by firearms in 2014 (Waiselfisz 2016).

**Table 2: Women attending Brazilian health services for IPV, by age and relationship with offender**

Offender	per cent					
	Child (0-11)	Adolescent (12-17)	Young (18-29)	Adult (30-59)	Elder (60-)	Total
Father	29.4	10.6	1.4	0.6	0.3	6.4
Mother	42.4	10.8	1.3	0.7	0.8	8.1
Stepfather	9.7	5.1	0.9	0.2	0.0	2.5
Partner	0.0	8.4	29.7	34.0	12.9	22.5
Former Partner	0.0	2.3	12.5	11.2	1.7	7.9
Boyfriend	0.0	9.7	4.8	2.9	0.5	4.2
Former Boyfriend	0.0	2.9	3.7	1.9	0.5	2.3
Brother	5.4	13.7	11.7	8.5	7.1	9.9
Son	0.0	0.2	0.3	4.1	34.9	3.3
Unknown	15.6	21.1	11.2	9.7	7.7	13.0
Self-provoked	2.6	13.9	41.0	15.8	9.5	13.0
Other	23.7	11.8	10.0	11.0	24.4	16.2

Data source: Waiselfisz 2015

Note: The heavily shaded cells highlight standout relationship links between aggressor and IPV victim, by age

This specific violent environment fostered by the proliferation of illegal firearms in Brazil also leads to particular contexts for intimate partner homicide (IPH). In Brazil, gunshot wounds are the most common cause of IPH (48.8 per cent), followed by stab wounds (25.3 per cent), beating (8.0 per cent), strangulation or suffocation (6.1 per cent) and others (11.8 per cent) (Waiselfisz 2015). Conversely, in Australia, the most common cause of death through IPH are stab wounds (42 per cent), followed by beating (21 per cent), strangulation or suffocation (14 per cent) and, only in fourth position, gunshot wounds (11 per cent) (Cussen and Bryant 2015).<sup>4</sup>

### The evolution of Brazilian legislation to counteract domestic violence against women

Since the 1970s, Brazil has had a strong feminist movement, which led to the creation of the first women-only police stations in 1985. In spite of being a signatory to the 1979 United Nations' *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), and the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* (Belém do Pará Convention), signed by Brazil in 1994, the Brazilian legal system was still insensitive to gender perspectives into the early 2000s. In 2001, the Organization of American States convicted Brazil in the case *Maria da Penha* for omission and negligence in addressing IPV (Inter-American Commission on Human Rights (IACHR) 2001); Penha had become paraplegic after suffering two attempted murders by her husband, who remained free while the case still awaited trial after 20 years. This led the Brazilian Parliament in 2006 to approve a specific Gender Violence Statute (Brazil 2006), later called the Maria da Penha Law (MPL), after intense advocacy by feminists (see Barsted 2007).

Even though the primary rationale for the 2006 law was intimate partner violence, it uses the broad concept of 'domestic and family violence against women'. The MPL also covers 'all affective intimate relations', including dating violence, regardless of the sexual orientation of either offender or victim. The law applies to all 'gender based' action or omission related to violence, which may be physical, psychological, sexual, patrimonial or moral. The MPL considers all violence against women a violation of human rights and sets policies on three levels: prevention policies, protective measures for victims, and criminal procedures (Pasinato 2010).

The MPL stated the need for interdisciplinary, transversal and integrated policies in the fields of justice, police, social assistance, health, education, employment and housing (Brazil 2006, article 8º, item I). It also previewed preventive programs in schools and social campaigns (item II). The National Secretary of Women's Policies, created in 2003, coordinates the integration of federal, state and local governments to address gender violence. The 'National Pact to Face Domestic Violence' (National Secretary of Policies for Women Brazil 2011) previews a network of services, such as specialised women's centres, shelter houses, women-only police stations, specialised domestic violence departments for legal-aid, prosecution offices and Magistrates Courts, the National Gender Violence Hotline ('call 180'), specialised domestic violence health services, and specialised units in immigration support services.

This new gender paradigm also induced important changes in the traditional criminal justice system. Some of the innovations were:

- Provision of 'Urgent Protective Measures', similar to restraining or intervention orders.
- Recommendation for the creation of specialised courts with civil and criminal competence for domestic and family violence against women. Even though there is this provision of double competence, in most states, the civil competence is limited to intervention orders.
- Recommendation for the creation of more women-only police stations (first implemented on 1985).
- The MPL made physical aggression a mandatory prosecution crime, regardless of the victim's wishes. This means the victim cannot withdraw the complaint and third parties may report a battery incident to the police even without the victim's authorisation.
- The MPL still requires victim's authorisation for the prosecution of cases of threat and moral offences. Although, in these cases, if the victim withdraws her authorisation at the police station before the indictment, there must be a judicial hearing to confirm the withdrawal. After the indictment, it is not possible to withdraw the authorisation to prosecute.
- The MPL revoked the prior conciliation system, which provided for a mandatory conciliation hearing before the criminal procedure in order to encourage victims to withdraw charges in the name of a 'pacification of conflict'.
- The law allowed the police to arrest the offender when caught in the act, following a bail decision by the court. A recent general reform in 2015 introducing after-prison hearings may, if robustly implemented, strengthen the use of intervention orders on bail.
- Indirectly, the MPL forbids all kinds of plea bargaining, making the prosecution mandatory when other procedural prerequisites are present.
- The judge may order the arrest of the offender, especially if he breaches an intervention order. Currently the law is not clear if the breach of an intervention order alone would constitute an independent criminal charge or would only allow imprisonment for the previous crime. A current bill before parliament aims to specifically criminalise any breach as 'judicial disobedience'.
- The MPL prohibited the sole penalty of fine or donation of goods and introduced the penalty of attending rehabilitation programs for offenders, after the conviction. Even though the law is not clear, some legal interpretations consider that it is possible to issue a mandatory intervention order to attend these programs.
- Provision of interdisciplinary domestic violence experts to assist the specialised Magistrates' Courts to reach decisions.

One of the most important and consequential new procedures was the intervention order. According to the MPL, when a woman files a domestic violence complaint with the police, the commissioner has a duty to assist her with an application form for some of the urgent protective measures provided by the law, such as: exclusion of the respondent from the residence; prohibition of approaching and contacting the victim, child or relatives; suspension or cancellation of fire arms authority; temporary maintenance allowance; or other measures adequate to the situation. The commissioner must send this application, with relevant documentation, to the court within 48 hours, where the judge must render an urgent decision within a further 48 hours. The decision is usually immediate, on paper, with no prior hearings. For example, in Brasilia in 2016, there were 13,100 reported cases of domestic violence against women, and 11,556 applications for intervention orders were received from police (Office of the General Attorney of the Federal District 2017); this indicates that, in most cases, women apply for intervention orders, and sometimes more than one victim applies. These intervention orders had such an impressive positive impact that a further reform of the Criminal Procedure Code in 2008 broadened their reach to all other crimes, inclusive of offences outside the family context.

The MPL broadly defines psychological violence as:

... all conduct to cause emotional damage and decrease of self-confidence, or to harm or disturb the full development of the person, or intending to demean, to control the actions, behaviours, beliefs and decisions, through threat, constraint, humiliation, manipulation, isolation, constant surveillance, stalking, insulting, blackmailing, ridiculing, exploitation, as well as limitation of the right to go and come, or any other way to damage the psychological health and self-determination. (Brazil 2006: article 7, item II)

This broad concept is considered part of the civil protective measures provided in the MPL, such as intervention orders, but does not necessarily constitute a criminal offence. The most usual crimes related to psychological violence are threat, moral abuse, and the misdemeanor of breach of the peace. Other conduct such as 'decrease of self-confidence', 'isolation' or 'manipulation' without threat or cursing are not criminal offences but may provide a basis for civil interventions. This broad concept of psychological violence is a powerful tool to 'reread' old crimes with a new gender lens, encouraging practitioners to recognise a context of violence that was once invisible.

The establishment of the MPL led to the need and consequent introduction of programs for perpetrators. Initially there was resistance to acceptance of these programs due to the fear of psychologisation of domestic violence and of losing its socio-cultural insights and approach, as well as spending the limited budget for women-related policies on men. Today, these programs are recognised as an important component of the broader network of programs to address domestic violence (National Secretary of Policies for Women Brazil 2011), even though the budget source is usually outside women's policies departments. There are very generic national guidelines on the methodology of these programs (National Secretary of Policies for Women Brazil 2011, appendix 2), and, in practice, programs vary considerably in structure and funding.

Most of these perpetrator-targeted projects are supported by non-government organisations (NGOs) or local government initiatives. For example, since 2003, the Federal District has had a state-wide public funded program called 'Centre for Attendance of Families and Perpetrators of Domestic Violence' (NAFAVD). There are nine centres located either inside courts or in nearby prosecution offices. These programs run for three to six months, with individual or group sessions, as decided by the service team according to the case specificities. Usually sessions are held separately for women and men, but there are recent experiments with mixed groups as well, although never with couples together. The idea behind these mixed groups is to facilitate empathy and realisation of gender violence in another relationship. Interventions with women aim to achieve: recognition and therapeutic hearing; empowerment; citizenship strengthening; delivery

of information about the MPL; critical consideration of gender relations; intervention in the violence cycle; a life without violence; and the creation of safety plans. The interventions with perpetrators aim to achieve: accountability for the violence; reflection and education on gender stereotypes and inequalities; awareness of the MPL and human rights; change of sexist values and practices; and non-violent alternatives for conflicts resolution (Federal District Secretary of Policies for Women 2017). In addition to these programs, cases can be referred to mental health services, especially related to alcohol and drugs abuse. In 2016, there were 1,295 referrals to this program; 496 men completed the intervention during 5,897 meetings; 861 men did not attend the program; and there were 881 men on the waiting list at the end of the year (personal email communication, Federal District Secretary of Policies for Women, 14 February 2017). In recent years, the increased waiting time to begin the program has had a direct relation with the decreased engagement to complete it.

Many studies have indicated the potential of these interventions (see Aguiar and Diniz 2009 for a complete listing) but as yet there is no long-term study of recidivism with a significant sample of perpetrators and a control group. One current challenge is how to reconcile the rehabilitation programs for perpetrators with mandatory orders from the justice system, since the latter are expressly designed to take place after conviction, which may happen some years after the facts (Ávila in press). Structuring the centres to meet the huge demand is also a frequent issue.

It is necessary to link these programs with other protective strategies related to specialised networking. Local new experiences with risk assessment and management, including follow-up patrols by police units with women at high risk, special police contact devices for high risk victims, GPS monitoring anklet for offenders, and a structured protocol of interagency collaboration are ongoing (Ávila in press). National commissions from the Judiciary (Fórum Nacional de Juízes de Violência Doméstica e Familiar contra a Mulher [National Forum of Judges on Domestic and Family Violence against Women] (FONAVID)), the Prosecution Office (Comissão Permanente de Combate à Violência Doméstica e Familiar contra a Mulher [Permanent Committee to Combat Domestic and Family Violence Against Women] (COPEVID)), and the Legal-Aid Services (Colégio Nacional dos Defensores Públicos Gerais [National College of General Public Defenders] (CONDEGE)), as well as a national board of articulation sponsored by the National Secretary of Women's Policies (Campaign Commitment and Attitude) have collaborated to increase interagency articulation and sharing of best practices.

One of the current integrative programs is the 'House of the Brazilian Woman', a federal government-sponsored project through partnerships with the state and the city. A standard facility includes units of the various services related to domestic violence, in order to avoid the 'women's pilgrimage' between services, and create greater integration and referrals. A multidisciplinary team assists the victim: a police unit may receive her complaint; there are courts units assisting with intervention orders; legal advice services; employment services; and a police patrols follow up project. This program follows the trend of specialised and integrated services of the women-only police stations, which have been found to enhance women's willingness to report, increase the likelihood of conviction and may work as an important connection with other supporting services (United Nations Women 2011). A study found that establishing a women's police station in a metropolitan municipality is associated with a 17 per cent reduction of the general female homicide rate, with greater effects on younger rather than older women, those aged 15 to 24 years, where there is a 50 percent reduction in the homicide rate (Perova and Reynolds 2017).

The MPL led to considerable social change regarding the awareness of violence against women, challenging the traditional view that IPV is only a private matter. According to one study (Avon Institute 2011), 94 per cent of interviewed people had already 'heard about' the new domestic violence statute, even though only 13 per cent considered to 'know it well'. Most of the understandings of the law still associate it solely with physical offences, and not also with

psychological violence. The new law has an impressive and unprecedented popular reach in Brazil. Another study indicates that 34 per cent of interviewed men have recently ceased to practice some sexist behaviour, and 81 per cent agree that men should talk to other men in order to reduce gender discrimination (Avon Institute 2016).

In the first few years of the MPL, there were many criticisms, especially from those that considered it unconstitutional to have a gender-specific law that treats men and women differently. An important decision of the Supreme Federal Court (2012) declared the MPL constitutional. Nevertheless, there is constant parliamentary tension around the subject, with general speeches recognising the need to address domestic violence, but with several bills proposing amendments to the MPL in a conservative direction, despite the arguments of feminist organisations about the gendered nature of violence.

Notwithstanding the unquestionable advances of the new law, there are still big challenges ahead. The National Parliamentary Commission of Enquiry on Violence Against Women (2013) found serious problems with the implementation of the MPL. It concluded that most of the specialised services are concentrated in the state capitals, and there is a lack of articulation and referrals between the services. This lack of integration of services was (and still is) leading to ineffectiveness, which in turn leads to a decrease of demand by women in some places, which leads some stakeholders to believe the services are useless (Campos 2015). Indeed, structuring and articulating the network of services is currently one of the greatest challenges (Campos 2015; Pasinato 2015). Some local practices are making an effort to build integrated protection protocols (see Ávila in press).

Moreover, there is still little rigorous research and official information about the profile of cases and best practice to reduce recidivism. At the end of 2016, the National Council of the Prosecution Office created a national database on domestic violence, which began to receive data during 2017 and will produce the first national statistic in 2018, but the information will not provide detailed case profiles. Broad and indepth research on the subject is rare (for a good example of solid research about the deaths of women, see Diniz, Costa and Gumieri 2015).

Most specialised Magistrates Courts are overburdened with cases, which leads to a delayed response in granting intervention orders and punishing offenders that compromises the law's effectiveness (National Parliamentary Commission of Enquiry on Violence Against Women in Brazil 2013). Women complain that revictimisation is felt not only as a result of the process at police stations but also in the judicial system; this indicates in part a lack of proper training of legal personnel in a gender perspective. A recent National Guideline of criminal investigation of IPV, sponsored by the European Union, aims to fill this gap, recommending greater interagency integration with a gender perspective (Eurososocial Program 2016).

Besides criticism about inadequate implementation of the MPL, there are also criticisms about its overall adequacy. Despite the Brazilian feminist movement considering the mandatory prosecution of physical aggressions a necessary step to overcome the historical privatisation of such violence and thus revictimisation (see Pasinato 2010), some feminists (see Larrauri 2008) question the possibility of a traditional punitive criminal justice to attend women's real intentions and needs when looking for help in a domestic violence situation. One of the critiques is about the mandatory prosecution of all physical offences, regardless of its seriousness. It is argued that this could have a deterrent effect on reporting new cases, since women would know they would not have the opportunity to negotiate a solution that could effectively consider their interests, especially for minor offences, or where the woman decides to continue the relationship, outside the punitive criminal justice approach.

In addition, the prohibition of plea bargaining may have the effect of preventing a prompt and individualised answer from the criminal system, as well as overburdening the Courts with minor

cases and delaying responses in more serious cases. Indeed, many countries have built specific plea bargaining rules for domestic violence (Ávila 2014). Another criticism is the inadequacy of the traditional criminal investigation, with the Brazilian bureaucratic 'inquérito policial' [police investigation procedure], to face the complexity of domestic violence (Pasinato 2010).

### **The criminalisation of the femicide**

The passing of the MPL in 2006 was followed by a period of contention about the new gender paradigm. After the 2012 Supreme Federal Court decision on the constitutionality of the law, and the final report of the National Parliamentary Commission of Enquiry on Violence Against Women in Brazil (2013), there was a greater awareness of the need to incorporate the gender perspective into legal responses to cases of IPH. In 2015, the crime of 'femicide' was introduced into the Brazilian Penal Code.

The criminalisation of femicide in Brazil followed similar legislation in 14 other Latin America countries (Machado 2015). Despite possible more remote references, the most known reference for the expression 'femicide' is attributed to Diana Russell, who used it in 1976, during an international meeting (Russell 1992), to describe a form of sexist terrorism against women, in the murder of women due to being women (Caputi and Russell 1992). When translated into Spanish, the expression mutated to 'feminicide' to differentiate from the similar 'homicide', emphasising the gender perspective (Lagarde 2004).

The expression was also used in the Inter-American Court of Human Rights (I/A Court HR) judgement of the case *Gonzalez and others vs Mexico*, also known as the *Cotton Field* case. The case, presented in 2002 and judged in 2009, was related to a series of murders and disappearances of women in Ciudad Juárez, a Mexican city close to the USA border, in an environment of male organised crime and increasing female independence due to employment in cosmetic industries in the region, followed by State omission of proper investigation and punishment. The I/A Court HR convicted Mexico of the violation of the right to life and non-discrimination, considering these crimes 'were influenced by a culture of discrimination against women' (I/A Court HR 2009: 98).

The use of the new expression femicide as a category of analysis has usually been linked to the political goal of preventing the categorisation of the killing of women as 'crimes of passion' or 'honour killings', in contexts of IPH. It is also designed to denounce gender discrimination in different homicide contexts in order to avoid impunity (see Pasinato 2011). In addition, the expression draws attention to the omission/failure of the state in preventing these crimes and to the importance of implementing policies to enhance gender equality. After all, naming the phenomenon makes it more possible for the gendered killing of women to be recognised, understood and categorised (Diniz, Costa and Gumieri 2015), which in turn facilitates the gathering of official statistics.

Despite the criticism about the viability of using one homogeneous category to analyse such heterogeneous situations—from the IPH (with different possible contexts) to serial murders perpetrated by unknowns (Pasinato 2011)—as well as the strengthening of punitive responses instead of global policies (Diniz, Costa and Gumieri 2015), the new crime was introduced to the legal framework and was received with great enthusiasm by feminist organisations.

The reform introduced an aggravated form of homicide, when perpetrated 'against a women, for reasons related to the condition of the female sex' (Brazilian Penal Code, article 121, § 2<sup>o</sup>, item VI). A section of the law (§ 2<sup>o</sup>-A) explains the reach of the new crime: 'There are reasons related to the condition of the female sex when the crime is related to: (i) domestic and family violence; (ii) contempt or discrimination towards the condition of being women'. It also increases the

penalty when violence is perpetrated against pregnant women, children under 14 years, elders of 60 years, or in the presence of the victim's children or parents.

The original bill, supported by the National Parliamentary Commission of Enquiry on Violence Against Women in Brazil (2013), the National Secretary of Women's Policies and feminist organisations, used the expression 'for gender reasons' but, during the legislative procedures, conservative lobbyists caused this to be replaced with the expression by 'female sex' and 'women', fearing that the expression 'gender' would strengthen the lesbian, gay, bisexual, transgender and intersex agenda. In fact, currently in Brazil there is a moral crusade by conservative movements against the so-called 'gender ideology', focused on the prohibition of gender relations discussions in schools, in an attempt to prevent greater acceptance of diverse sexualities.

Femicide is closely associated with IPH, and interpretations of the law have almost unanimously related its application to the situations described in the MPL (domestic, family and intimate relations). Before the reform, it was possible to prosecute IPH as aggravated homicide, considering the sexist reasoning behind the crime as a 'frivolous or vile motivation'. Nevertheless, the moral behaviour of the victim, the offender's honour in cases of alleged (or actual) betrayal and the supposed uncontrollable feeling of 'love' during the separation of the couple were often taken into consideration. In many cases, these arguments have led to an acquittal or reduction of the penalty, reclassifying the case as 'privileged homicide'. The new legislation automatically considers all homicides in the context of domestic and family violence femicide and therefore aggravated homicide. Since in Brazil homicides are judged by Jury, this simplifies oral debates at trial.

The law also aims to cover others situations of non-intimate femicide. The Brazilian legal literature has not fully explored the potential of this new approach. A interpretative statement of the National Commission of the Prosecution Office for Domestic Violence (2015) considers non-intimate partner femicides to cover deaths of women in contexts of trafficking in persons, sexual exploitation, sexual violence, sex workers, collective murders, and killings with a body's mutilation, disfiguration or similar.

The introduction of this new juridical category has also engendered a debate about gender violence, with professionals who are usually different individuals to those working in the specialised domestic violence units, working in police homicides units, prosecution offices, and jury courts. An example of progress in this area is the National Guideline on Femicide to investigate, prosecute and judge gender-based homicides, a protocol sponsored by the United Nations Women which was developed—based on a similar Latin-American protocol—by a working group of members of the law enforcement agencies involved in the project (United Nations Women 2016). This document forms an important training tool which brings a new perspective for comprehending the dynamics of gender violence and its implications for criminal investigation and trial, such as collecting evidence related to the couple's previous history of violence and respecting the victim's memory on trial.

Another example of progress was the definition of femicide as the special goal for the 2016 'National Strategy of Justice and Public Safety' (ENASP), a joint program of the Ministry of Justice, National Council of the Judiciary and the National Council of the Prosecution Office to prioritise the investigation, prosecution and judgement of specific crimes. This program verified that, during the first year of the new femicide law, from 15 March 2015 to 15 March 2016, there were 3,818 cases, which led to 2,686 formal criminal investigations. Furthermore, by the end of year 2016, 52.8 per cent of these cases had been prosecuted, 3.35 per cent were filed, 3.2 per cent were reclassified as a less serious crime, and 40.58 per cent remained under investigation (National Council of the Prosecution Office 2016). The level of effectiveness in substantiating the investigations varies considerably between the states, from a very effective 90.9 per cent prosecution of cases in the Federal District (Brasilia), to a clearly ineffective 4.7 per cent

prosecution percentage in Sergipe. Indeed, police inefficiency in concluding investigations of all crimes, including homicides, and the judicial system slowness in judging cases are long-standing serious issues in Brazil: in general, only 8 per cent of homicide investigations are substantiated (National Council of the Prosecution Office 2012). The gap between homicide incidents and formal investigations is also a sign of another long-standing problem: the summary filing of cases in police stations, without any investigation and control.

### **Final considerations**

The MPL has produced a great change in Brazilian society and institutions, shaking the traditional vision that a 'couple fight is a private matter'. It promoted a broader discussion about gender relations and induced the proliferation of informal feminist movements, with its climax in a 2015 social media campaign against harassment and sexual violence, the so-called Brazilian 'Spring of Women' (see Khazan 2015). Marches against gender violence are happening constantly, the media often highlights domestic violence cases and e-campaigns viralise on the Internet.

In a country with authoritarian and punitive traditions, using the criminal law has a strong symbolic power to recognise the seriousness of human rights violations and to induce social change. Despite the broad perspective of the MPL, most of the solutions are yet thought of in a solely punitive perspective, disregarding the importance of integrated policies to support victims and to meet their expectations of protection.

The full implementation of the MPL remains a challenge, as does punctually reviewing it under constant conservative questioning. Today, the Brazilian feminist strategy is blocking all attempt to amend the MPL, in order to protect it from backlash.

Notwithstanding the contention and challenges, the integration of the justice system with other agencies in a problem-oriented perspective is something new in the Brazilian context, and the MPL has provided a fertile and promising field for this development. In fact, there are innovative Brazilian policies, as demonstrated by the women-only police stations, the House of the Brazilian Woman, and the specialised courts and prosecution offices. This specialisation of police and the integration with multi-disciplinary centres has recently been pointed out as a promising policy to address domestic violence in the Australian context (Neave et al. 2016: 62-64). As Carrington and colleagues argue, observing this Brazilian policy, 'there is also much that feminists from the global North can learn from the struggles for justice by women in the global South' (Carrington, Hogg and Sozzo 2016: 12).

In an environment of massive human rights violations against women, the adaptation of the Brazilian law and policies to respond to domestic violence represents a move towards better days for Brazilian women.

*Correspondence:* Dr Thiago Pierobom de Ávila, Postdoctoral Visiting Researcher on Gender and Family Violence – New Frameworks in Prevention Research Program, School of Social Sciences, Faculty of Arts, Monash University, Scenic Boulevard, Clayton VIC 3800, Australia; Researcher, Centre of Research for Criminal Sciences, Law Faculty, University of Lisbon, Portugal; Prosecutor, Domestic Violence Prosecution Office of Brasilia, Office of the Attorney General, Brazil. E-mail: Thiago.PierobomdeAvila@monash.edu

- 
- <sup>1</sup> The author acknowledges Professor Jude McCulloch, Professor JaneMaree Maher, Dr Kate Fitz-Gibbon and Dr Jasmine McGowan, from Monash University, for the discussions and contributions to this paper.
- <sup>2</sup> This study considered the data from the World Health Organization regarding the deaths of women in 83 countries, in the most recent year available, creating a rate ranking.
- <sup>3</sup> Other calls were related to information, suggestions, complaints, and referral to services.
- <sup>4</sup> The Brazilian statistic quoted considers only female victims of intimate partner homicide, while the Australian statistics consider both male and female victims of intimate partner homicide, even though 75 per cent of the victims are female.

## References

- Aguiar LHM and Diniz GRS (2009) Gênero, masculinidades e o atendimento a homens autores de violência conjugal. In Lima FR and Santos C (eds) *Violência Doméstica: Vulnerabilidades e Desafios na Intervenção Criminal e Multidisciplinar*: 137-146. Rio de Janeiro, Brazil: Lumen Juris.
- Ávila TAP (in press) Articulação do trabalho em rede para a proteção à mulher em situação de violência doméstica e familiar. *Revista do CNMP*.
- Ávila TAP (ed.) (2014) *Modelos Europeus de Enfrentamento à Violência de Gênero: Experiências e Representações Sociais*. Brasília, Brazil: ESMPU.
- Avon Institute (2011) *Percepções sobre a violência doméstica contra a mulher no Brasil*. Available at <http://compromissoeatitude.org.br/wp-content/uploads/2012/08/Avon-Ipsos-pesquisa-violencia-2011.pdf> (accessed 1 November 2017).
- Avon Institute (2016) *O papel do homem na desconstrução do machismo*. Available at [http://agenciapatriciagalvao.org.br/wp-content/uploads/2016/12/Pesquisa-FSM\\_2016.pdf](http://agenciapatriciagalvao.org.br/wp-content/uploads/2016/12/Pesquisa-FSM_2016.pdf) (accessed 1 November 2017).
- Bandeira LM and Thurler AL (2009) A vulnerabilidade da mulher à violência doméstica: aspectos históricos e sociológicos. In Lima FR and Santos C (eds) *Violência Doméstica: Vulnerabilidades e Desafios na Intervenção Criminal e Multidisciplinar*: 159-167. Rio de Janeiro, Brazil: Lumen Juris.
- Barsted LL (2007) A resposta legislativa à violência contra as mulheres no Brasil. In Almeida SS (ed.) *Violência de Gênero e Políticas Públicas*: 119-137. Rio de Janeiro, Brazil: Editora UFRJ.
- Campos CH (2015) Desafios na implementação da Lei Maria da Penha. *Revista Direito GV* 11(2): 391-406. DOI: 10.1590/1808-2432201517.
- Caputi J and Russell DEH (1992) Femicide: Sexist terrorism against women. In Radford J and Russell DEH (eds) *Femicide: The Politics of Women Killing*: 13-21. New York: Twayne Publisher.
- Carrington K, Hogg R and Sozzo M (2016) Southern criminology. *British Journal of Criminology* 56(1): 1-20. DOI: 10.1093/bjc/azv083.
- Carvalho JR and Oliveira VH (2016) *Pesquisa de condições socioeconômicas e violência doméstica e familiar contra a mulher: Prevalência da violência doméstica e impacto nas novas gerações*. Available at [http://www.compromissoeatitude.org.br/wp-content/uploads/2016/12/Pesquisa-Nordeste\\_Sumario-Executivo.pdf](http://www.compromissoeatitude.org.br/wp-content/uploads/2016/12/Pesquisa-Nordeste_Sumario-Executivo.pdf) (accessed 7 November 2017).
- Council of Australian Governments (COAG) (2016) *COAG Advisory Panel on Reducing Violence Against Women and Their Children: Final Report*. Canberra, Australian Capital Territory: Commonwealth of Australia. Available at <http://www.coag.gov.au/sites/default/files/communique/COAGAdvisoryPanelonReducingViolenceAgainstWomenandtheirChildren-FinalReport.pdf> (accessed 7 November 2017).

- Cussen T and Bryant W (2015) Domestic/family homicide in Australia. *Research in Practice* 38. Canberra, Australian Capital Territory: Australian Institute of Criminology.
- Diniz D, Costa BS and Gumieri S (2015) Nomear feminicídio: conhecer, simbolizar e punir. *Revista Brasileira de Ciências Criminais* 23(114): 225-239.
- Dreyfus P and Nascimento MS (2005) Small arms holdings in Brazil: Toward a comprehensive mapping of guns and their owners. In Fernandes R (ed.) *Brazil: The Arms and the Victims*: 64-125. Rio de Janeiro, Brazil: 7 Letras, Viva Rio, ISER.
- Eurosocial Program (2016) *Diretrizes nacionais de investigação criminal com perspectiva de gênero*. Available at [http://sia.eurosocial-ii.eu/files/docs/1460019818-DP\\_28 percent20\(montado\).pdf](http://sia.eurosocial-ii.eu/files/docs/1460019818-DP_28_percent20(montado).pdf) (accessed 7 November 2017).
- Fórum Brasileiro de Segurança Pública [Brazilian Forum on Public Security] (FBSP) (2015) *Anuário Brasileiro de Segurança Pública 2015*. Available at [http://www.agenciapatriagalvao.org.br/dossie/wp-content/uploads/2015/10/9-Anuario-Brasileiro-de-Seguranca-Publica-FSB\\_2015.pdf](http://www.agenciapatriagalvao.org.br/dossie/wp-content/uploads/2015/10/9-Anuario-Brasileiro-de-Seguranca-Publica-FSB_2015.pdf) (accessed 7 November 2017).
- Fórum Brasileiro de Segurança Pública [Brazilian Forum on Public Security] (FBSP) and DATAFOLHA (2016) *A Polícia Precisa Falar Sobre Estupro: Percepção Sobre Violência Sexual e Atendimento a Mulheres Vítimas nas Instituições Policiais*. Available at [http://www.forumseguranca.org.br/wp-content/uploads/2017/01/FBSP\\_Policia\\_precisa\\_falar\\_estupro\\_2016.pdf](http://www.forumseguranca.org.br/wp-content/uploads/2017/01/FBSP_Policia_precisa_falar_estupro_2016.pdf) (accessed 7 November 2017).
- Federal District Secretary of Policies for Women (2017) *Informação sobre o NAFAVD*. Available at <http://www.sedest.df.gov.br/conheca-os-demais-servicos/nafavd.html> (accessed 7 November 2017).
- Gomes APPF (2014) *Como Morre uma Mulher?: Configurações da Violência Letal contra Mulheres em Pernambuco*. PhD Thesis. Brazil: Federal University of Pernambuco.
- Instituto Brasileiro de Geografia e Estatística [Brazilian Institute of Geography and Statistics] (2010) *Censo Demográfico 2010: Características Gerais da População, Religião e Pessoas com Deficiência*. Brazil: IBGE. Available at [http://biblioteca.ibge.gov.br/visualizacao/periodicos/94/cd\\_2010\\_religiao\\_deficiencia.pdf](http://biblioteca.ibge.gov.br/visualizacao/periodicos/94/cd_2010_religiao_deficiencia.pdf) (accessed 7 November 2017).
- Khazan O (2015) Sexism in paradise. *The Guardian*, 21 December. Available at <https://www.theatlantic.com/international/archive/2015/12/brazil-women-abortion-sexism/421185/> (accessed 7 November 2017).
- Lagarde y de Los Rios, M (2004) Por la vida y la libertad de las mujeres: Fin al femicidio. *El Día*, V. Available at <http://www.cimacnoticias.com/especiales/comision/diavlagarde.htm> (accessed 22 November 2017).
- Larrauri H (2008) *Mujeres y Sistema Penal: Violencia Doméstica*. Buenos Aires, Brazil: Editorial BdeF.
- Machado LZ and Magalhães MTB (1999) Violência conjugal: Os espelhos e as marcas. In Suárez M and Bandeira L (eds) *Violência, Gênero e Crime no Distrito Federal*: 173-237. Brasília, Brazil: Paralelo 15, Ed. UnB.
- Machado MRA (2015) *A Violência Doméstica Fatal: O Problema do Femicídio Íntimo no Brasil*. Brasília, Brazil: CEJUS, SRJ/MJ, FGV. Available at [http://www.compromissoeatitude.org.br/wp-content/uploads/2015/04/Cejus\\_FGV\\_femicidiointimo2015.pdf](http://www.compromissoeatitude.org.br/wp-content/uploads/2015/04/Cejus_FGV_femicidiointimo2015.pdf) (accessed 7 November 2017).
- National Commission of the Prosecution Office for Domestic Violence (2015) *Enunciado n. 25*. Available at <http://www.compromissoeatitude.org.br/enunciados-da-copevid-comissao-nacional-de-enfrentamento-a-violencia-domestica-e-familiar-contr-a-mulher> (accessed 7 November 2017).

- National Council of the Prosecution Office (2012) *Relatório Nacional da Execução da Meta 2: Um Diagnóstico da Investigação de Homicídios no Brasil*. Available at [http://www.cnmp.mp.br/portal/images/stories/Enasp/relatorio\\_enasp\\_FINAL.pdf](http://www.cnmp.mp.br/portal/images/stories/Enasp/relatorio_enasp_FINAL.pdf) (accessed 7 November 2017).
- National Council of the Prosecution Office Brazil (2016) *Relatório Preliminar da Meta 2016 da ENASP*. Brasilia, Brazil: CNMP.
- National Parliamentary Commission of Enquiry on Violence Against Women in Brazil (2013) *Final report*. Available at <http://www2.senado.leg.br/bdsf/item/id/496481> (accessed 7 November 2017).
- National Secretary of Policies for Women Brazil (2011) *Pacto Nacional pelo enfrentamento à violência contra as mulheres*. Available at <http://www.spm.gov.br/sobre/publicacoes/publicacoes/2011/pacto-nacional> (accessed 7 November 2017).
- National Secretary of Policies for Women Brazil (2016) *Balanço 10 anos: Ligue 180*. Available at <http://www.spm.gov.br/central-de-conteudos/publicacoes/publicacoes/2015/balanco180-10meses-1.pdf> (accessed 7 November 2017).
- Neave M, Faulkner P and Nicholson T (2016) *Royal Commission into Family Violence Volume III: Report and Recommendations*. Melbourne, Victoria: Government of Victoria. Available at <http://www.rcfv.com.au/Report-Recommendations> (accessed 12 November 2017).
- Office of the General Attorney of the Federal District (2017) *Estatística do MPDFT referente à violência doméstica e familiar contra a mulher no Distrito Federal 2006-2016*. Available at <http://www.mpdft.mp.br/portal/index.php/conhecampdft-menu/nucleos-menu/nucleo-de-genero-pro-mulher-menu/209-nucleos/nucleo-de-genero/7339-estatisticas> (accessed 12 December 2017).
- Pasinato W (2010) Lei Maria da Penha Novas abordagens sobre velhas propostas. Onde avançamos? *Civitas* 10(2): 216-232. DOI: 10.15448/1984-7289.2010.2.6484.
- Pasinato W (2011) 'Femicídios' e as mortes de mulheres no Brasil. *Cadernos Pagu* 37: 219-246. DOI: 10.1590/S0104-83332011000200008.
- Pasinato W (2015) Oito anos de Lei Maria da Penha: entre avanços, obstáculos e desafios. *Estudos Feministas* 23(2): 533-545. DOI: 10.1590/0104-026X2015v23n2p533.
- Perova E and Reynolds SA (2017) Women's police stations and intimate partner violence: Evidence from Brazil. *Social Science & Medicine* 174: 188-196. DOI: 10.1016/j.socscimed.2016.12.008.
- Special Taskforce on Domestic and Family Violence in Queensland (2015) *Not Now, Not Ever: Putting an End to Domestic Violence in Queensland*. Brisbane, Queensland: Queensland Government. Available at <https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/about/not-now-not-ever-report> (accessed 12 November 2017).
- Russell DEH (1992) Preface. In Radford J and Russell DEH (eds) *Femicide: The Politics of Women Killing*: xi-xv. New York: Twayne Publisher.
- United Nations Women (2011) *Women's Police Stations in Latin America Case study: An Entry Point for Stopping Violence and Gaining Access to Justice (Brazil, Peru, Ecuador and Nicaragua)*. Available at [http://www.endvawnow.org/uploads/browser/files/security\\_wps\\_case\\_study.pdf](http://www.endvawnow.org/uploads/browser/files/security_wps_case_study.pdf) (accessed 7 November 2017).
- United Nations Women (2016) *National Guidelines on Femicide: Investigating, Prosecuting and Judging Violent Deaths of Women with Gender Perspective*. Available at [http://www.onumulheres.org.br/wp-content/uploads/2016/04/diretrizes\\_femicidio.pdf](http://www.onumulheres.org.br/wp-content/uploads/2016/04/diretrizes_femicidio.pdf) (accessed 7 November 2017).
- Waiselfisz JJ (2015) *Mapa da Violência 2015: Homicídios de Mulheres no Brasil*. Brasilia: Flacso. Available at

[http://www.mapadaviolencia.org.br/pdf2015/MapaViolencia\\_2015\\_mulheres.pdf](http://www.mapadaviolencia.org.br/pdf2015/MapaViolencia_2015_mulheres.pdf) (accessed 7 November 2017).

Waiselfisz JJ (2016) *Mapa da Violência 2016: Homicídios por Armas de Fogo no Brasil*. Brasília: Flacso. Available at [http://flacso.org.br/files/2016/08/Mapa2016\\_armas\\_web.pdf](http://flacso.org.br/files/2016/08/Mapa2016_armas_web.pdf) (accessed 7 November 2017).

### **Legislative material cited**

Brazil (1940) *Law decree n. 2848*. Penal Code. Available at

[http://www.planalto.gov.br/ccivil\\_03/decreto-lei/Del2848compilado.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm) (accessed 5 December 2017).

Brazil (1941) *Law decree n. 3689*. Criminal Procedure Code. Available at

[http://www.planalto.gov.br/ccivil\\_03/Decreto-Lei/Del3689Compilado.htm](http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del3689Compilado.htm) (accessed 5 December 2017).

Brazil (2003) *Statute n. 10826*. Disarmament Law. Available at

[http://www.planalto.gov.br/ccivil\\_03/leis/2003/L10.826.htm](http://www.planalto.gov.br/ccivil_03/leis/2003/L10.826.htm) (accessed 5 December 2017).

Brazil (2006) *Statute n. 11340*. Maria da Penha Law. Available at

[http://www.planalto.gov.br/ccivil\\_03/\\_ato2004-2006/2006/lei/l11340.htm](http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11340.htm) (accessed 5 December 2017).

United Nations (1979) *Convention on the Elimination of All Forms of Discrimination Against Women*. Available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

(accessed 5 December 2017).

Organization of American States (1994) *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*. Available at

<https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf> (accessed 5 December 2017).

### **Case law**

Inter-American Commission on Human Rights (IACHR) (2001) *Case Maria da Penha Maia Fernandes vs. Brazil*, Report n. 54/2001, Petition n. 12.051, 4 Apr. 2001. Available at

<http://cidh.org/annualrep/2000eng/ChapterIII/Merits/Brazil12.051.htm> (accessed 14 December 2017).

Inter-American Court on Human Rights (I/A Court HR) (2009) *Gonzalez and others vs Mexico*. Series C, n. 205. Available at

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf) (accessed 14 December 2017).

Supreme Federal Court (2012) *ADC 19 and ADIN 4424*. Main Chamber, Judge-Rapporteur Marco Aurelio.