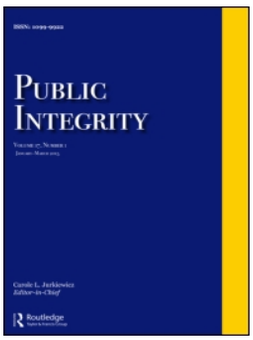

Public Integrity

ISSN: 1099-9922 (Print) 1558-0989 (Online) Journal homepage: http://www.tandfonline.com/loi/mpin20

Fighting Gender Inequality: Brazilian Feminist Movements and Judicialization as a Political Approach to Oppose Violence Against Women

Maria Ligia Rodrigues Elias & Isadora Vier Machado

To cite this article: Maria Ligia Rodrigues Elias & Isadora Vier Machado (2017): Fighting Gender Inequality: Brazilian Feminist Movements and Judicialization as a Political Approach to Oppose Violence Against Women, Public Integrity, DOI: 10.1080/10999922.2017.1364948

To link to this article: http://dx.doi.org/10.1080/10999922.2017.1364948

Published online: 28 Sep 2017.

Public Integrity, 0: 1–16, 2017

ISSN: 1099-9922 print/1558-0989 online
DOI: 10.1080/10999922.2017.1364948

Fighting Gender Inequality: Brazilian Feminist Movements and Judicialization as a Political Approach to Oppose Violence Against Women

Maria Ligia Rodrigues Elias and Isadora Vier Machado

State University of Maringa

How can oppressive structures be undermined in the pursuit of gender equality? Facing and combating violence against women is essential to reduce this inequality. This article explores the need for the judicialization of violence against women and gender inequality and the importance of the constitution of this process as a political arena in Latin America, especially in Brazil. In an unequal world, the juridical field, like many others, is characterized by complex social relations, and is therefore itself an object of dispute in the quest for greater freedom and autonomy for women. This article explores judicialization as one of the paths taken by Brazilian feminist movements as a way to combat violence against women. Feminism—both as a theory and as a political movement—is known to be manifold and heterogeneous. The judicialization of rights is one of many paths adopted in the bid to build a less unequal society. It is also important to note that the law has been used as an instrument of emancipation for various socially disadvantaged groups; it is not an exclusively feminist approach. This article analyzes the potentialities and limitations of judicialization as an instrument to combat gender-based inequality in Brazil.

Keywords: feminism, gender inequality, gender-based violence, judicialization, Maria da Penha law

How can oppressive structures be undermined in the pursuit of gender equality? Facing and combating violence against women is essential to reduce this inequality.

This article explores the need for the judicialization of violence against women and gender inequality and the importance of the constitution of this process as a political arena in Latin America, especially in Brazil. In an unequal world, the juridical field, like many others, is characterized by complex social relations, and is therefore itself an object of dispute in the quest for greater freedom and autonomy for women. This article explores judicialization as one of the paths taken by the Brazilian feminist movements as a way to combat violence against women.

Feminism—both as a theory and as a political movement—is known to be manifold and heterogeneous. Different feminist organizations act in different ways and on different fronts, ranging from cultural and awareness-raising actions on gender inequality, through the production of theoretical material and media publications, practical action in peripheral communities, participation in political councils and forums, organization in women associations, and participation in elections, among many others.

Correspondence should be sent to Maria Ligia Rodrigues Elias, Departamento de Ciências Sociais, Centro de Ciências Humanas, State University of Maringa (UEM), Av. Colombo, 5790, Maringa, Parana 87020-900, Brazil. E-mail: ligiagranado@gmail.com

The judicialization of rights is therefore one of many paths adopted in the bid to build a less unequal society. It is also important to note that the law has been used as an instrument of emancipation for various socially disadvantaged groups; it is not an exclusively feminist approach. This article analyses the potentialities and limitations of judicialization as an instrument to combat gender-based inequality in Brazil. The objective is to present and discuss three legal events: the creation in 2006 of the Maria da Penha law to prevent domestic violence; the reformulation of the Criminal Code in 2009, with regard to sexual crimes; and the specific criminalization of femicide as an offense in 2015.

Methodologically, a feminist point of view is adopted (Keller, 2006), and research techniques common to the humanities are employed, such as reading of the literature, examination of legal documents, and systematization and exposition of arguments; however, it is a feminist perspective that guides the use of all these techniques (Barta, 2012). The arguments are developed on both feminist theory and the material lives of women. In other words, this article is informed by substantive questions raised by feminist theory, which are explored in the first section of the article, drawing in particular on the contributions of Wendy Brown, Patricia Williams, Iris Young, and Sonia Alvarez. At the same time, it goes beyond the theoretical questions by exploring specific legal texts and debating their potentialities and limitations.

The three legal events that are the subject of in-depth investigation were chosen because they are federal laws, in effect throughout the whole of Brazil, that were conceived by and for women. Essentially, they constitute the main Brazilian regulations approved after the mass mobilization of women, they have a national footprint, and they resulted from a clear process of feminist advocacy, as shown in the second part of the article.

The issue of violence in general and gender violence in particular is not a problem of individual cases, but a social problem. Every time a woman is harassed, assaulted, or abused, a deep and complex social construct at play allows and sometimes reinforces the possibility of violence. Facing gender violence means dealing with persistent and widespread social practices. As such, the search for ways to address these inequalities is a question of social justice.

FIGHTING GENDER VIOLENCE FROM A POLITICAL PERSPECTIVE

Writing about the phenomenon of gender violence around the world, Elman (2013) draws attention to a peculiar feature of the way it is combatted. She argues that feminist and allied movements have had to prove the existence of male violence before persuading others it is unacceptable. The point is that such violence is not only wrong, but it is one of the facets of gender-based oppression and systematically puts women in situations of social disadvantage.

Young (1990) argues for a change in focus in theorizations of justice, making the concepts of domination and oppression their starting point, rather than the distribution of justice per se. Influenced by the use of the term "oppression" by American social movements in the 1960s and 1970s to describe the injustices of their circumstances, Young develops a conceptualization of oppression and an extensive analysis of the various conditions and situations in which it occurs.

For the purposes of this article, it is important to highlight the broader dimension of oppression, which refers to the vast and deep injustices that some groups are subjected to. Social subordination is a complex social construct, and it is often impossible to indicate a single cause

or specific agent. This means that the reality of oppression cannot be transformed by a single measure designed to combat it.

Young (1990) characterizes violence as one of the many faces of oppression. Once again, the emphasis is on the social context that makes violence possible and, in some cases, acceptable. Undoubtedly, there is the particular dimension of the act of violence per se, but the idea is to go beyond this individual, moral dimension in order to emphasize the structural, systemic nature of violence against women that makes it a phenomenon of social injustice.

To understand violence as a structural problem and a form of oppression, it is important to contextualize the political nature of the search for judicialization as one of the paths taken by Brazilian feminist movements to combat violence against women. Social problems demand social and, thus, public (political) responses.

According to Merry (2003), the structural conditions of violence against women are rooted in political and economic practices that exist in all societies but affect women from rich and poor nations differently (Elman, 2013). This article explores recourse to the law as a specific strategy taken by Brazilian feminists in a localized context. This does not mean that judicialization as a political strategy does not receive criticism from some Brazilian feminist sectors. Even so, in presenting the three federal laws, it can be shown that although the law in Brazil should not be taken as the ultimate answer to violence against women, it has undoubtedly been important in addressing conflicts and empowering women.

Wendy Brown (2000) points out that there will always be difficulties inherent to any demand for rights; indeed, she argues that the "language of rights" for women (or other subaltern groups) in liberal contemporary society exposes some paradoxes. These paradoxes enable one to see the limits of the law, while also recognizing that rights are things "we cannot not want."

Rights designed to address inequality and injustice will be always partial, offering mitigation rather than a complete solution. They can attenuate subordination and violation, but cannot, as Brown (2000) argues, overcome either the regime or the mechanisms by which it is reproduced. This will became clearer in the exploration of the paradoxes Brown identifies.

The first paradox notes that the more specific rights are, such as rights for women, the more likely they are to encode a definition of women based on their subordination in society. As a result, while the right may protect women, it will also reinforce the fact that women are socially subordinate. A specific right has a regulatory effect insofar as a woman will exercise her rights *as* a woman; that is, the right does not liberate a woman from being a woman in an unequal social context. There is never any "free" deployment of rights, since they are always exercised within a context that is discursive and, thus, normative, where identity categories, such as the category of "woman," are used and reinforced (Brown, 2000).

Given the existence of inequality, rights will empower different social groups (and their members) differently as they have access to more or fewer social recourses and are more or less able to exercise a right. This is the main idea of the second paradox. It is worth noting that this does not mean that rights do not in any way favor those in disadvantaged social positions, but rather that access to different social resources leads to different appropriations of the rights (and the power they embody). This leads to at least two important considerations.

The first one is related to the first paradox: Rights that specify some injury, violation, or injustice reinforce the subordinate identity, while rights that avoid these specificities make them invisible and even intensify subordination. The second consideration exposes an important issue for feminist thought: the challenge of taking into account the life experiences of some women

without making overarching generalizations, while also not treating gender as something so abstract that it becomes impossible to construct political answers to its inequality.

It is important to consider the paradox of rights to show that there is more than one way to address gender inequality. Claiming rights is one way, but it is clearly not a simple way. While the paradoxes mentioned above expose certain limitations of the law, when it comes to subaltern groups, there are functional aspects of the law that cannot be disregarded. The quest for rights and specific laws is designed to allow the inclusion of social groups in social places where they have always been marginalized.

Williams (1992) has shown how the same circumstance can have many different meanings when performed by different people. For a person in a situation of social privilege (enjoying certain powers and access to rights and resources that confer advantages on his/her position in society), the solution of conflicts through means other than the law can in some measure be seen as desirable. However, it is important to note that this person has already accessed the spaces of law, has already been recognized as a citizen, and enjoys the status of one who has rights, and therefore, this person, upon realizing how laws can be oppressive and limiting, prefers to avoid the legal route and opt for other instruments to resolve conflicts and disputes.

Therefore, it is unreasonable to expect marginalized persons whose rights are not guaranteed, as is the case of women who barely enjoy the right to physical integrity, to withdraw from the legal arena because of its ambiguities and limitations. The issue is that in these cases, a right confers respect on people, allowing them to rise from the status of human body to that of social being (Williams, 1992).

Rights can therefore offer a way to construct a new social context and, in so doing, to increase women's freedom. Certainly, rights do not of themselves confront oppressive social structures, but in the search for rights, women's and feminist movements gain access to the public arena, and the conditions of women's lives begin to be recognized as a political issue.

As demonstrated above, there is no such a thing as a "universal woman"; women's experiences are multifaceted: race, class, sexuality, nationality (and other differences) have consequences in women's lives. It is important to make demands in the name of women but be aware that the differences and inequalities between women must be taken into account when doing so. The law is an important factor in constructing a citizen's status, but access to the law does not happen in the same way for everyone. Race- and class-based inequality has a big impact on the construction of a legal consciousness (Holzleithner, 2016); this is why legal frameworks have to be developed to understand the coexistence of shared and divergent interests under the umbrella of women's interests (Smooth, 2011).

Analyzing feminism in Latin America, Alvarez (2014) detects that feminist actions go beyond the traditional model of civil society organizations to incorporate other individual or collective actors, including the state, religious groups, and NGOs. These different agents are constantly clashing and in a state of cultural and political negotiation. With respect to this scenario, Alvarez asserts that in Latin America it is more appropriate to interpret feminism as a "discursive field of action" than as a unified movement. This is particularly evident in Brazil, where there is an emerging plural, heterogeneous, noninstitutionalized, and largely disconnected feminist discourse.

Recognizing that women's interests are multiple and even conflicting, and that there are diverse, fragmented political actors who constitute what Alvarez (2014) calls a discursive field

of feminist action, it is necessary and important, according to the same author, to act politically based on the recognition that we operate in a partially shared discursive universe.

Alvarez draws on the example of indigenous women given by Claudia Costa (cited in Alvarez, 2014) to portray the diversity of women's worlds and the understanding of these worlds. According to Costa, when categories such as class, race, and ethnicity are used by indigenous peoples, they do not necessarily correspond to the meanings usually attributed to them throughout history. Given this heterogeneity and assuming the will and need to build connections, albeit partial, between these worlds, a work of translation is therefore necessary.

The pursuit of rights through judicialization offers the possibility of this political translation and allows some connection between the different experiences and needs of women. The struggle for women's rights requires social recognition of the injustices that women experience, the politicization of the oppression experienced, and common ground for the articulation of the multiple feminist actors. Judicialization is not a silver bullet, but a positive process and a measure of great political importance in the fight against inequality.

The existence of instruments such as the three described in this article is unfortunately not enough in itself to ensure greater choice and freedom for women or to tackle the subordination of women in complex social structures. Legislative changes are not automatically accompanied by social change, and violence against women continues to exist. Nonetheless, such measures represent significant material progress for the women they address, and therefore constitute an important strategy in the fight against violence.

HOW CAN THE STRATEGY OF JUDICIALIZATION BE STRENGTHENED?

Before describing the three experiences, it is important to understand why the search for judicialization is such a strong and persistent political strategy in Latin America. In Brazil, efforts to combat violence against women are grounded in a clear global-local dialogue, and the three experiences presented in this article are a symbol of this connection. In general, what happens is that these legal instruments transform a real problem of women's lives into legal issues and help women realize that they are not so much victims ensnared in an unchangeable destiny, but subjects of rights that have been withheld from them (Holzleithner, 2016).

According to Reynaldo (2012), the hegemonic processes of globalization have had a direct impact on women from the global south, impairing their access to the labor market and their rights. Reynaldo uses the concept of hegemonic globalization coined by Boaventura de Sousa Santos (in Gandin & Hypolito, 2003) to mean a set of global measures used to strengthen social relations, as opposed to the so-called "counter-hegemonic globalization," which presupposes local strategies of resistance to global economic and political imposition. However, as Reynaldo points out, this international legal framework has brought significant gains, especially the construction of a set of legal protections that have consolidated the process of "globalization from below" through international rights and guarantees.

Therefore, at the same time that international treaties and conventions forced the countries of the global south, including Brazil, to adhere to a standard normative model for dealing with gender inequality, they were also fundamental in fomenting domestic lawmaking efforts. This is the process by which Brazil was compelled to adopt federal laws to protect women in different situations of violence.

Prá and Epping (2012) make a similar point, stating that women's citizenship only expanded thanks to the struggle for the creation of international instruments for the protection of human rights motivated by women's and feminist organizations.

While it is very important to take into account the critiques made of the universal language of human rights, it is also important to remember, according to Williams (1992), how the law can be an instrument for establishing identities and configuring social bodies that are autonomous in their actions.

In the international context, the first steps in the pursuit of gender equality were based on the universal ideal of human rights. The idea of undisputed, absolute, universal human rights as constituting "natural" rights, according to Hunt (2005), was constituted during the Enlightenment with the consolidation of the ideals of individuality and collective conscience. This process culminated in the approval in 1945 and 1948, respectively, of the United Nations Charter and the Universal Declaration of Human Rights. The great demand in the international arena for women to be included in the "male category" of human beings persisted until 1975 (Barsted & Herrmann, 1999).

In 1975, in Mexico City, the First World Conference on Women gave rise to a special system for the protection of the rights of women. On December 18, 1979, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was approved by the United Nations General Assembly through Resolution no. 34/180. In March 1981, Brazil signed CEDAW with some reservations, and on February 1, 1984, it ratified the convention. In 1994, Brazil withdrew all its reservations to the convention, and in 2001 it finally signed the Optional Protocol (Libardoni, 2002).

Another important event was the World Conference on Human Rights in Vienna in 1993, which resulted in the Declaration on the Elimination of Violence. The following year, the Organization of American States adopted the Convention on the Prevention, Punishment and Eradication of Violence against Women—the Belém do Pará Convention—which reinforced the work of the Vienna Conference. This convention was ratified by Brazil on November 27, 1995. The importance of the Belém do Pará Convention lies in the fact that it recognizes and condemns violence against women—a gap left by CEDAW.

These first steps in legislating the protection of women in Brazil followed the international example and focused on the normative protection of human rights. As in the international context, this general strategy of defending the rights of human beings has been also modified in Brazil to focus on the specificity of women's issues.

One peculiarity that may have favored the incorporation of the international perspective without any major cultural conflicts is that historically in Brazil there has always been a constant interchange between the political and academic feminist arenas. It was in the late 1970s, with the feminist outcry against murders allegedly motivated by love, that the issue of violence against women entered the agenda of political discussions (Grossi, 2004). Back then, many cases of murder of women did not result in convictions of the perpetrators in the Brazilian courts because one of the defense strategies was to claim that the women had been killed because of jealousy or excessive love on the part of their partner or husband.

The fight against spousal abuse gained impetus in the 1980s, especially with the creation of special police stations for women. These precincts are the outcome of the first Brazilian public policy focused on the specific care of women in situations of violence. Essentially, what

differentiates them is the fact that they are set up specifically for dealing with cases of violence against women, with teams of mainly women agents and police officers. The first one was opened in 1985 in the city of São Paulo. According to Maria Filomena Gregori (in Debert, Gregori, & Piscitelli, 2006), this specific service also expresses a kind of feminine solidarity that counteracts the very male ethos of the traditional police force.

As has been seen, the agenda of addressing violence was at the center of the consolidation of Brazilian feminism, galvanizing considerable efforts within the academic and political worlds. The evolution of feminist demands in Brazil therefore coincided with the return to democratic rule and the consolidation of values anchored in the Federal Constitution of 1988. This constitution heralded a new period of democracy after decades of military dictatorship since the 1964 coup d'état. One of the most important processes in this context was the participation of a group of women in the Constituent Assembly responsible for drawing up the terms of the new democratic Brazilian state. This "lipstick lobby" managed to ensure the inclusion in the constitution of several rights and prerogatives to guide gender equality in the country.

Interestingly, the recognition of violence was itself an important element in the drafting of the 1988 constitution. For instance, Article 226, Paragraph 8 states: "The State shall ensure assistance to families, including every one of their members, creating mechanisms to curb violence within their relationships." In fact, this is a fundamental concept that has served as the basis for other laws, including the three that are discussed in this article.

Therefore, the aim of this article is to prove that the constitution and the express influence of the international legal framework set a firm foundation for the calls for judicialization made by Brazilian feminists. According to Maciel (2011), the institutional capacity and mobilization strategies of feminist movements were crucial in putting violence against women on the public agenda.

In this article, judicialization is understood as the search for legislative solutions and the creation of laws by and for women as one facet of a complex phenomenon. However, recourse to courts of law to settle women's issues is not its focus. Rather, as will probably become clear throughout the discussion of the three cases, judicialization is addressed here as the feminist strategy of demanding specific laws and rights.

Reynaldo (2012) points out that while in the United States and Europe, feminism has developed autonomous strategies, in Brazil and Latin America the influence of international organizations (OAS, CEDAW, etc.) and their normative prescriptions has been essential for the consolidation of feminists' demands. Having taken its place in the rights-protection system, the Brazilian government has been compelled by different social movements to build a domestic legal framework to ensure minimum guarantees for women. Different feminist groups have envisioned the interrelationship between civil society and the state as an important political channel to help put an end to violence against women.

In the next section, the three different regulations that have expanded the chain of demands and guarantees will be presented: the Maria da Penha Law, crimes against sexual dignity, and the criminalization of femicide. The central argument is that these experiences have strengthened the perspective of a life without violence and constitute important tools for confronting circumstances of oppression. These strategies are particularly important in Brazil, which has a tradition of civil law, and where the law—with all its inherent paradoxes (discussed earlier)—is the main channel for the establishment, modification, and extinction of rights.

Maria Da Penha Law

Brazilian feminists have been confronting violence against women institutionally since the 1970s. That was a decade of intense industrialization and the large-scale admission of women to the labor market. However, until 2006, the only law that provided any protection for women against several forms of violence was the criminal law. Battery, threat, and defamation were the main crimes cited in cases of violence against women, albeit with a series of limitations. For instance, a conciliatory policy was often adopted when dealing with these crimes so that the perpetrators were rarely held fully accountable or liable for their acts of violence. A culture of impunity prevailed. It was calculated that in 2001, one woman suffered violence in Brazil every 15 seconds (Fundação Perseo Abramo, 2001).

However, in 2006, Law 11.340/06, also known as the Maria da Penha Law, was passed in Brazil. An important milestone for the feminist movement, it is actually the most important document in the entire history of claims for the defense of the rights of Brazilian women. The law is called Maria da Penha after a woman who, after suffering two murder attempts by her husband, had the courage to bring her case before the Organization of American States. This is an example of how important it has been to access public and international arenas to gain recognition of women's reality and consequently women's oppression.

Maria da Penha's efforts to expose her experience, and, more broadly, violence against women in public and, indeed, international settings, led the Brazilian government to make a commitment to address violence against woman. Once again, it is clear how the bond between Brazil and international organizations has helped structure the struggle against oppression.

The Maria da Penha Law is completely different from the laws available to women until then. Crucially, it has multiple features and does not consist of a mere increase in the penalties due in cases of violence against women. Essentially, (a) it protects (providing a combination of protective measures and educational proposals, etc.); (b) it criminalizes (does not merely enforce the structures of punishment, but incorporates proposals for the treatment of the agents of violence); and (c) it constitutes norms (through the definition of several types of violence against women, the acknowledgement that violence is a violation of human rights, and the public recognition that violence is gender-based).

One important feature of the law is in its fifth article, which states: "For the effects of this Law, domestic and familial violence against women consists in any gender-based action or omission that leads to their death, injury, physical, sexual or psychological suffering, moral harm, or damage to property." The law is an explicit action against specific situations: violence and other acts based exclusively on gender.

The concept of violence developed in the law (especially Articles 5 and 7) has some peculiarities that together comprise a set of fundamental requirements for cases to fall within the ambit of the Maria da Penha law. These include: (a) the violence should be against a woman, (b) the violence should occur within a gender-based power relationship, (c) the violence must lead to any of the outcomes indicated in the law (covering the physical, psychological, property, moral, and sexual domains), (d) the violence must take place within one of the spaces mentioned in Article 5, namely, within the home or family or in any other intimate relationship, (e) the violence must be committed irrespective of the woman's sexual orientation. Briefly, it demonstrates that in affective or conjugal relationships, it does not matter whether the person who commits violence against a woman is male or female (Machado, 2013).

The Maria da Penha Law was conceived to address unequal relationships, especially based on the logic of power, which changes over time and across places (Scott, 1995). Certain legal experts have appropriated the category of gender to problematize how the law and legal discourse may be important factors of the legitimization of power relationships between the sexes.

As indicated in the first part of this article, Wendy Brown points out how specific rights are more likely to encode a definition of women that reinforces the current (subordinate) status of woman in society. In this regard, Alícia Ruiz (cited in Birgin, 2000) remarks on two aspects of the law, which operates as a social discourse that bestows meaning on the actions of humans, turning them into agents, while also legitimizing power in all its capacity to persuade and impose its will. Carol Smart (in Birgin, 2000), for instance, appropriates the term coined by Teresa de Lauretis to show that the law is similar to gender technology, insofar as our tendency is to analyze the law from the perspective of its capacity to produce fixed gender identities, rather than the way it applies to agents of a given gender (Hollanda, 1994).

This statement indicates that the law establishes a model that exceeds the status of repression, which naturally makes its enforcement harder. It is worth remembering that women are dealing with socially complex phenomena, and law enforcement often requires the flexibility of the juridical canon to address interventions derived from other nonlegal settings (especially of psychosocial origins). This is due to the fact that it is based on gender conflict, which has not been discussed or worked through comprehensively in the legal field. This process reinforces the argument that judicialization is a political strategy.

In an official 2015 survey conducted by the Brazilian Senate, it was found that 100% of Brazilian women had heard of the Maria da Penha Law, proving that the population is aware of this normative document. From 2014 to 2015, there was an over 44% increase in violence rates (Data Popular/Instituto Patrícia Galvão, 2015). This does not necessarily mean an actual increase in violence, but a greater understanding on the part of women that they can access official protection mechanisms.

In this sense, this law has leveraged the creation of an institutional structure consisting of courts specialized in dealing with cases of violence against women (following the women's police station model), care services for perpetrators of violence, a helpline (180) providing advice for women who do not know how to denounce aggressors, and other concrete mechanisms of protection. In general, this law is seen and celebrated as one of the most complete and important legal instruments for the assurance of the rights of women in the country.

It is true, as Holzleithner (2016) comments, that the law confers "legal lenses" on the phenomenon, but it is fundamental for institutions to be receptive to the enforcement of the law. Whereas law enforcement can represent an emancipatory path for women, it can also generate high costs, such as the difficult task of dealing with conflicts arising from other social roles (the good mother, the good wife, etc.).

Finally, a 2012 National Congress survey (Senado Federal, 2012) found that the main impediment to the full implementation of the Maria da Penha Law was precisely the judiciary itself, since the offer of specialized support is limited to a few locations around the country and their *modus operandi* is still essentially male, offering a service that falls far short of women's expectations, presenting low conviction rates and little understanding of what a gender-based conflict means.

From Crimes Against Morality to Crimes Against Sexual Dignity

The paradox between the concrete changes provided by law and the institutional boundaries that often undermine such changes is also clear in this second normative case. In 2003, the Brazilian Congress began an investigation into the sexual exploitation of children and adolescents, based on the Convention on the Rights of the Child (United Nations, 1989), to which the country is a signatory. In this case, the influence of the international regulatory network comes through the framework of legal protection for children, but also serves as a catalyst for other actions by the Brazilian state (Brasil. Congresso Nacional, 2004).

Although this investigation focused on children, it eventually resulted in a legislative amendment aimed directly at women. Law 12.105/2009 modified an entire chapter of the Brazilian Penal Code. From 1940 to 2009, sexual crimes were framed as "crimes against morality," but this legislative amendment resulted in their being reworded as "crimes against sexual dignity." By moving from the idea of protecting morals and correct behavior, this modification brought better prospects for improved material equality between men and women. The act also benefited children themselves, including, for example, the crime of rape of "vulnerable" persons.

Until 2009, only women could be victims of rape. Since then, victims can be any person, and the penalties have become stricter in cases where the victims cannot defend themselves. This change is important, particularly because before 2009 other forms of sexual assault that did not consist of penis-vagina penetration were understood as constituting a different type of sexual crime than rape.

Nowadays, for these different forms of sexual assault, whose victims may be men or women, the penalty is the same as for rape. Thus, rape has become a broader crime, since the criminal law provides that any kind of sexual violence fits this definition, and that both women and men can be victims of serious offenses.

Providing severer penalties, there is no doubt that the criminal justice system provided an important step forward for Brazilian women, publicizing the concept of rape and drawing attention to the idea of sexual dignity rather than sexual morality. Another key concrete change has been the creation of a specific category of "vulnerable" people, including people who are drugged or intoxicated and then raped, and thus unable to defend themselves.

In 2016, several cases of gang rape came to light and were interpreted as being part of a so-called rape culture. On May 26, a video was posted on social media in which a 16-year-old teenager from Rio de Janeiro appears naked and being touched by several men. There are reports that more than 30 men raped her. From then on, the case received intense media coverage, with feminist movements demarcating a discourse of defense of the victim's sexual freedom, calling for her protection, regardless of her previous sexual history. In the course of the investigations, as a result of the public reaction, the police chief was dismissed on suspicion of favoring the accused men. The victim and her family were included in a victim-protection program. High-profile investigations ensued until the cell phone of one of the rapists was found with a video that expressly recorded the teenager's refusal to have sex. Seven people were eventually charged (Rossi, 2016).

This case proves how the 2009 law constitutes a concrete advance in Brazilian women's condition of life, especially by recognizing that legal protection must cover the sexual freedom and dignity of women, not the upholding of public morals. This discursive change allows

women to perceive their position in situations of sexual violence and to gain access to the authorities to defend their rights. Unfortunately, despite the legislative gains, Brazil is far from ensuring a minimally safe society for women. Women are constantly involved in cases of abuse, harassment, and rape in which the nature and moral conduct of the victim is questioned, even by the legal authorities. This arbitrary moral judgment is often decisive in the decision as to whether the law is enforced.

The Brazilian Annual Report on Public Security indicates that there were more records of rape in Brazil than of homicide in 2012, when there were 50,617 cases of this crime. Since 2009, with legislative changes, what is clearly seen is an increase in the total number of recorded cases of crimes against sexual dignity, with an annual average of 50,000 (Fórum Brasileiro de Segurança Pública, 2017). It is important to understand that statistics can play a dual role, since increased reporting levels can also be interpreted as revealing greater knowledge about rights and access to the law. However, it is clear that in view of such shocking figures, no conclusion can be drawn other than that sexual violence remains a major indicator of public insecurity and flagrant gender inequality, since women continue to be the main victims, despite the legal changes.

Femicide Law

In 2012, more than 40% of women murdered in Brazil were killed by their partner or former partner (Waiselfisz, 2012). In response to this, the National Congress opened an investigation with the purpose of "within 180 (one hundred eighty) days, investigating the situation of violence against women in Brazil and investigating claims of failure to act on the part of the public authorities regarding the enforcement of legal instruments to protect women in situations of violence" (Senado Federal, 2012). One of the objectives included in the summary of responsibilities of this investigation was the creation of a legal concept called "femicide" and the assignment of higher penalties for this extreme form of gender violence.

To Segato (2006), femicide is a crime of power, because it retains, maintains, or reproduces a logic of power to which women are subjected. The main idea of femicide is that. despite the specific way the woman's body (interpreted here as a territory, as put forward by Segato), is violated in the attempted or effective consummation of its death, from a gender perspective this act is now imbued with undeniably political connotations.

Once again, it is relevant to mention the indisputable influence of the international context on local policies, because, as was the case with the Maria da Penha Law, for the very first time the various forms of violence against women are explicitly recognized as violations of human rights, which allows other kinds of extreme violence to be included in the same context (Prá & Epping, 2012).

Immediately after the enactment of the Femicide Law, which symbolically took place on International Women's Day (March 8), UN Women (United Nations, 2015) congratulated Brazil for what was expressly defined as a "political act," placing the country on the list of 15 other Latin American nations that have typified the practice. The organization also has an extensive document called the Latin American Model Protocol for the investigation of gender-related killings of women (2014), which sets forth guidelines for the effective criminal investigation

of gender-related killings in alignment with the international obligations taken on by states (ONU, 2014).

The Femicide Law is clearly an expression of transnational legal activism (Santos, 2007) in the attempt to politicize human rights. Therefore, the expected change depends on the combination of legal and political mobilization, transforming judicialization into a very clear political strategy. It was due to this complex framework that the internal legislative process for the approval of the new law took place. The first step was to introduce Bill 292/13 in the Senate, which proposed changing the Brazilian Penal Code by including femicide as a form of murder.

Two years after the law was passed, the legal category still raises much discussion. In terms of a concrete balance of this legal change, the act of naming the phenomenon has enabled femicide to be tackled systematically from a gender perspective.

In addition to the national campaigns and statistics, a key step in this process was the creation of an official document in collaboration with UN Women, establishing guidelines for the main agents involved in processing cases of femicide. The National Guidelines on Femicide (CJN, 2016) establish procedures for investigations, prosecutions, and the adjudication of cases, expanding victims' access to justice in cognizance of the gender considerations at play in these occurrences.

THE LIMITS OF JUDICIALIZATION

There are many factors that have helped to expand the potential for tackling violence against and oppression of women, thanks to judicialization: some cases attract public attention; the authorities are held accountable for their actions; more statistics are produced; internal and external budgets are set aside for dealing with the subject; there is more research; public policies for the protection of women are created; and so forth.

Despite the argument that judicialization has favored the creation of a basic legal framework for Brazilian women and that it is therefore an important political strategy for fighting gender inequality, judicialization does have its limits. In the first part of this article the normative and theoretical difficulties of focusing on rights in a context of inequality was discussed; in this section another three (material) elements of the limitations of judicialization are explored.

The first is the progressive weakening of the international bodies that impose certain duties on the Brazilian state. As discussed in this article, the judicialization policy is supported by the international rights-protection system—in Brazil, mainly the UN and the OAS. However, in recent years a systematic weakening of these entities has been seen. With regard to the UN, Reynaldo (2012) explains that its role is not cogent, and is restricted to the mere definition of policies and modes of operation, with no ability to bind the decisions of states. As such, the UN's power to overcome member states' resistance or to tackle the conservatism prevalent in many of the societies that are beneficiaries of its programs is limited (Reynaldo, 2012).

Regarding the OAS, the current situation is still more critical, because the legal oversight bodies that were crucial in the adoption of the Maria da Penha Law are directly affected by the global economic crisis. According to the president of the Inter-American Commission, they are facing imminent collapse because the amount passed on to the commission to fund its activities is much lower than expected. Many judgment sessions have been suspended (Charleaux, 2016).

The second limitation of judicialization is the fact that the law is operated by men and women who occupy privileged positions in society, and do not have the necessary understanding of how social structures reinforce gender inequality. In 2014, the Brazilian National Council of Justice published a census indicating the profile of Brazilian magistrates. They are people who enter their careers at an average age of 26 to 34, and are mostly white, heterosexual men who are married and have children (CJN, 2014). These attributes undoubtedly affect the stance adopted in the implementation of any kind of law of interest here.

The corpus of court rulings demonstrates an ambiguous trend. In some cases, there is evidence of the strict enforcement of legal resolutions and provisions, but there are also signs of more rigorous reflection based on scientific and interdisciplinary statements resulting in the enforcement of the law according to its spirit and ideals.

The discretionary nature of law enforcement means that in each and every particular situation the law is subject to the judge's interpretation, which includes the judge's theoretical perspective and the fact that an oppressive sexist social construction runs through the psychological and sociocultural formation of legal professionals, which must surely influence the judges enforcing the law in each case. This is why there are so many discrepancies in the enforcement of the same laws in similar cases.

The judiciary should take on its primary role of law enforcement and in so doing seek out theoretical inputs to optimize the exercise of its institutional role in the pursuit of social justice. The definition of situations of violence must be compatible with women's expectations (Debert, Gregori, Piscitelli, 2006) so that the challenge of combating gender violence can be met adequately.

The third challenge to judicialization is the internal political crisis that Brazil is experiencing today, endangering the legal breakthroughs and indicating the potential erosion of the advances made in recent years. In 2015, several state and municipal legislatures decided to derail gender discussions in education curricula. At the same time, there is today a systematic attempt in the Brazilian National Congress to dismantle public and political rights, especially women's rights, won over decades, showing a leaning toward hard, inflexible, and clearly antidemocratic tendencies.

For instance, currently there are some attempts to undermine some of women's legal rights. One example is Bill 5069/2013, being voted by the Federal Congress (Brasil. Congresso Nacional, 2013), authored by Eduardo da Cunha, which severely curtails the care provided for female victims of rape and all prophylactic measures resulting from this violence, and links care and assistance for women in these cases to the presentation of material evidence of the crime.

Another example is Bill PLC 07/2016, which adds new provisions to the Maria da Penha Law regarding the right of victims of domestic violence to receive ongoing police assistance from specialized agents, preferably women.

As Scott (1995) asserts, the battle lines in the field of gender are clearly set. Different feminist movements are fundamental in speaking out about the underlying prejudices and limitations of legal professionals, as well as in organizing public and political actions and reactions to the backsliding seen in the public agenda.

FINAL CONSIDERATIONS

This article explores three Brazilian legal texts related to violence against women and explores how judicialization has become an important tool for translating the demands of women and

feminist movements. It is important to note that the focus is on a specific dimension of this phenomenon, namely the search for legislative solutions and the creation of laws by and for women.

The juridical field is an important arena for disputes, and the pursuit of rights allows connections to be drawn between the different experiences and needs of women, which does not mean that it extinguishes the differences that exist between women. Even when dealing with the law, the access to and appropriation of legal vocabulary and the understanding of being a subject with rights is also the result of social conditions linked to different social and inequality markers such as class, race, and sexuality. Despite this, the struggle for women's rights requires social recognition of the injustices that women are subject to; it requires the politicization of the oppression experienced, regardless of its limits, providing common ground for the articulation of the multiple feminist actors.

Certainly, judicialization is not a silver bullet in the fight against violence against women and gender inequality. Complex social problems demand diverse strategies for their solution or at least the mitigation of their oppressive consequences. Feminist theory has successfully shown that rights are not enough to construct equality. Every day, in contemporary society, there is a coexistence of rights assured and oppressive material realities experienced. As Wendy Brown (2000) well pointed out, despite their limitations, rights are things "we cannot not want." That is why judicialization must be understood as an important political strategy in expanding the range of options for tackling violence and oppression in an unequal world.

FUNDING

This work was supported by the Comissão de Aperfeiçoamento de Pessoal do Nível Superior (CAPES BR).

REFERENCES

Alvarez, S. E. (2014). Para além da sociedade civil: Reflexões sobre o campo feminista [Beyond civil society: Reflections on the field of feminism]. *Cadernos Pagu*, *43*, 13–56. doi:10.1590/0104-8333201400430013.

Barsted, L. L., & Herrmann, J. (1999). *Instrumentos internacionais de proteção aos direitos humanos* [International instruments for the protection of human rights]. Rio de Janeiro, Brazil: CEPIA.

Barta, E. (2012). Acerca de la investigacion y la metodologia feminista [On feminist studies and methodology]. In N. B. Graf, F. F. Palacios, & M. R. Everardo (Eds.), *Investigación feminista: epistemología, metodología y representaciones sociales* (pp. 67–79). Mexico City, Mexico: UNAM, Centro de Investigaciones Interdisciplinarias en Ciencias y Humanidades: Centro Regional de Investigaciones Multidisciplinarias: Facultad de Psicología. Retrieved from http://computo.ceiich.unam.mx/webceiich/docs/libro/Investigacion%20Feminista.pdf

Birgin, H. (Ed.). (2000). *El derecho en el género y el género en el derecho* [The law in gender and gender in the law]. Buenos Aires, Argentina: Bilbos.

Brasil. Congresso Nacional. (2013). Projeto de Lei 5069/2013. Acrescenta o art. 127-A à Lei n. 2.848 de 7 de dezembro de 1940 - Código Penal. [Bill 5069/2013. Adds art. 127-A to Law no. 2.848 of December 7, 1940 –Penal Code]. Retrieved from http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=565882.

Brown, W. (2000). Suffering rights as paradoxes. *Constellations*, *7*, 208–229. doi:10.1111/1467-8675.00183.

Charleaux, J. P. (2016). *Como a comissão interamericana de direitos humanos chegou "à beira de um colapso"* [How the Inter-American Commission on Human Rights came close to collapse]. Retrieved from https://www.nexojornal.com.br/expresso/2016/05/30/Como-a-Comiss%C3%A3o-Interamericana-de-Direitos-Humanos-chegou-%E2%80%98%C3%A0-beira-do-colapso%E2%80%99

CJN. (2016). *Diretrizes nacionais do feminicídio* [National guidelines on femicide]. Brasília, Brazil. Retrieved from http://www.compromissoeatitude.org.br/wp-content/uploads/2016/04/Diretrizes-Nacionais-Feminicidio.pdf

CNJ. (2014). *Censo do poder judiciário* [Judiciary´s Census]. Brasília, Brazil: CNJ.

Congresso Nacional do Brasil. (2004). *Relatório final da Comissão Parlamentar Mista de Inquérito criada com a finalidade investigar as situações de violência e redes de exploração sexual de crianças e adolescentes no Brasil* [Final report of the Mixed Parliamentary Inquiry Commission created to investigate situations of violence and child and adolescent sexual exploitation networks in Brazil]. Retrieved from http://www2.senado.leg.br/bdsf/bitstream/handle/id/84599/RF200401.pdf?sequence=5

Data Popular/Instituto Patrícia Galvão. (2015). *Percepção da sociedade sobre violência e assassinato de mulheres* [Society's perception of violence and murder of women]. Retrieved from http://www.compromissoeatitude.org.br/wp-content/uploads/2013/08/livro_pesquisa_violencia.pdf

Debert, G., Gregori, M. F., & Piscitelli, A. (2006). *Gênero e distribuição da justiça: as delegacias de defesa da mulher e a construção das diferenças* [Gender and the distribution of justice: Women's police stations and the construction of differences]. Campinas, Brazil: PAGU.

Elman, A. (2013). Gender violence. In G. Waylen, K. Celis, & S. L. Weldon (Eds.), *The Oxford handbook of gender and politics*. Oxford, UK: Oxford University Press. doi:10.1093/oxfordhb/9780199751457.013.0009.

Fórum Brasileiro de Segurança Pública. (2017). *Crimes contra a dignidade sexual* [Crimes against sexual dignity]. Retrieved from http://www.forumseguranca.org.br/estatisticas/tableau-dignidade

Fundação Perseo Abramo. (2001). *A mulher brasileira nos espaços público e privado* [Brazilian women in public and private spaces]. São Paulo, Brazil: Fundação Perseo Abramo. Retrieved from http://www.fpabramo.org.br/o-que-fazemos/pesquisas-de-opiniao-publica/pesquisas-realizadas/vinculo-com-o-agressor.

Gandin, L. A., & Hypolito, Á. M. (2003). Dilemas do nosso tempo: globalização, multiculturalismo e conhecimento [Dilemmas of our time: Globalization, multiculturalism, and knowledge]. (Interview with Boaventura de Sousa Santos). *Currículo sem Fronteiras*, *3*(2), 5–23. Retrieved from http://www.curriculosemfronteiras.org/vol3iss2articles/boaventura.pdf

Grossi, M. P. (2004). A *Revista Estudos Feministas* faz dez anos: uma breve história do feminismo no Brasil [The tenth anniversary of *Revista Estudos Feministas:* A short history of feminism in Brazil]. *Revista Estudos Feministas, Florianópolis*, *12*, 211–221. doi:10.1590/S0104-026x2004000300023.

Holanda, H. B. (1994). *Tendências e impasses: o feminismo como crítica da cultura.* [Trends and impasses: Feminism as a culture´s critique]. Rio de Janeiro, Brazil: Rocco.

Holzleithner, E. (2016). Emancipação por meio do direito? [Emancipation through the law?]. *Revista Direito e Práxis*, *7*(3), 889–900. doi:10.12957/dep.2016.25363.

Hunt, L. (2005). O romance e as origens dos direitos humanos: interseções entre história, psicologia e literatura [The novel and the origins of human rights: Intersections between history, psychology, and literature]. *Varia Historia. Belo Horizonte*, *21*(34), 267–289. doi:10.1590/S0104-87752005000200002.

Keller, E. F. (2006). Qual o impacto do feminismo na ciência? [What is the impact of feminism on science?]. *Cadernos Pagu*, *27*, 13–34. doi:10.1590/S0104-83332006000200003.

Libardoni, A. (Ed.). (2002). *Direitos humanos das mulheres: em outras palavras. Subsídios para capacitação legal de mulheres e organizações* [Human rights of women: In other words, help in building the legal capacity of women and organizations]. Brasília, Brazil: AGENDE.

Machado, I. V. (2013). *Da dor no corpo à dor na alma: uma leitura do conceito de violência psicológica da Lei Maria da Penha* [From pain in the body to pain in the soul: An interpretation of the concept of psychological violence in the Maria da Penha Law] (Doctoral dissertation). Universidade Federal de Santa Catarina, Florianópolis, Brasil. Retrieved from https://repositorio.ufsc.br/handle/123456789/107617

Maciel, D. A. (2011). Ação coletiva, mobilização do direito e instituições políticas: O caso da campanha da Lei Maria da Penha [Collective Action, galvanizing the law and political institutions: The case of the campaign for the Maria da Penha Law]. *Revista brasileira de Ciências Sociais*, *26*(77), 97–111. doi:10.1590/S0102-69092011000300010.

Merry, S. E. (2003), Constructing a global law-violence against women and the human rights system. *Law & Social Inquiry*, *28*, 941–977. doi:10.1111/j.1747-4469.2003.tb00828.x.

ONU. (2014). *Modelo de protocolo latino-americano de investigação das mortes violentas de mulheres por razões de gênero (femicídio/feminicídio)* [Model Latin American protocol for investigating gender-related killings of women (femicide/feminicide)]. Retrieved from http://www.onumulheres.org.br/wp-content/uploads/2015/05/protocolo_feminicidio_publicacao.pdf

Prá, J. R.; Epping, L. (2012). Cidadania e feminismo no reconhecimento dos direitos humanos das mulheres [Citizenship and feminism in the recognition of the human rights of women]. *Revista Estudos Feministas*, *20*, 1. doi:10.1590/S0104-026x2012000100003.

Reynaldo, R. G. (2012). *O fenômeno global e o papel dos movimentos feministas na efetivação de uma globalização contra-hegemônica* [The global phenomenon and the role of feminist movements in achieving a counter-hegemonic globalization]. Retrieved from https://repositorio.ufsc.br/bitstream/handle/123456789/99336/305019.pdf

Rossi, M. (2016, May 31). O que já se sabe sobre o estupro coletivo do Rio de Janeiro [What is already known about gang rape in Rio de Janeiro]. *El país*. Retrieved from https://brasil.elpais.com/brasil/2016/05/31/politica/1464713923_178190.html

Santos, C. M. (2007). Ativismo jurídico transnacional e o Estado: reflexões sobre os casos apresentados contra o Brasil na Comissão Interamericana de Direitos Humanos [Legal transnational activism and the state: Reflections on cases presented against Brazil in the Inter-American Commission on Human Rights]. *Sur: Revista Internacional de Direitos Humanos*, *4*(7), 27–57. doi:10.1590/S1806-64452007000200003.

Scott, J. (1995). Gênero: uma categoria útil de análise histórica [Gender: A useful category of historical analysis]. *Educação & Realidade*, *20*(2), 71–99. Retrieved from http://seer.ufrgs.br/index.php/educacaoerealidade/article/view/71721/40667

Segato, R. L. (2006). *Que es un feminicídio* [What is femicide?] (Mora, 12). Buenos Aires, Argentina: Instituto Interdisciplinario de Estudios de Género, Universidad de Buenos Aires.

Senado Federal. (2012). *Relatório final. Comissão Parlamentar Mista de Inquérito: com a finalidade de investigar a situação da violência contra a mulher no Brasil e apurar denúncias de omissão por parte do poder público com relação à aplicação de instrumentos instituídos em lei para proteger as mulheres em situação de violência.* [Final report. Mixed Parliamentary Inquiry Commission: With the objective of investigating violence against women in Brazil and claims of failure to act on the part of the public authorities in enforcing legal instruments to protect women in situations of violence]. Retrieved from http://www2.senado.leg.br/bdsf/item/id/496481

Smooth, W. (2011). Standing for women? Which women? The substantive representation of women's interests and the research imperative of intersectionality. *Politics & Gender*, *7*, 436–441. doi:10.1017/S1743923x11000225.

United Nations. (1989). *Convention on the rights of the child*. New York, NY: United Nations. Retrieved from http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx.

United Nations. (2015). *ONU Mulheres parabeniza aprovação de lei que qualifica assassinato de mulheres como crime hediondo.* [NU Women congratulates law enforcement that qualifies murder of women as heinous crime]. Retrieved from https://nacoesunidas.org/onu-mulheres-parabeniza-aprovacao-de-lei-que-qualifica-assassinato-de-mulheres-como-crime-hediondo/.

Waiselfisz, J. J. (2012). *Mapa da violência 2012: Caderno complementar 1—homicídio de mulheres no Brasil* [Map of violence 2012: Supplement I—Homicide of women in Brazil]. São Paulo, Brazil: Instituto Sangari. Retrieved from http://www.mapadaviolencia.org.br/pdf2012/mapa2012_mulher.pdf

Williams, P. (1992). The pain of word bondage. In P. Williams (Ed.), *Alchemy of race and rights: Diary of a law professor* (pp. 146–166). Cambridge, MA: Harvard University Press.

Young, I. M. (1990). *Justice and the politics of difference*. Princeton, NJ: Princeton University Press.