



EXECUTIVE SUMMARY

**MYTHS AND REALITIES
OF VIOLENCE
AGAINST WOMEN
IN VENEZUELA**

**HISTORY OF ANOTHER FAILURE
OF THE JUDICIAL POWER**

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History of another failure of the Judicial Power

1. The fight upon violence against women in Venezuela, like the evolution of human rights, is a chronology of long struggles, hopes, sufferings, conquests and half-assed achievements. To this must be added the phenomenon of the invisibility of women's rights, caused by ignorance.
2. Despite the fact that the Universal Declaration of Human Rights of 1948 recognizes «the equal rights of men and women» and in its article 1 indicates that «all human beings are born free and equal in dignity and rights», such affirmations do not they have implied an immediate recognition of women's rights. For this to happen, it took more than three decades for the approval of the Convention on the Elimination of all Forms of Discrimination against Women.
3. The legal changes sought to focus on the person, the defense of the physical integrity of the woman and her sexual freedom, leaving behind the honor, the reputation of the family to which she belonged or that of the spouse of she. This was the case in Venezuela with the repeal in 1980, by the Plenary Chamber of the Supreme Court of Justice, of the article of the Penal Code that contained the criminal type called «uxoricide». These normative changes, although positive, did not imply the establishment of public policies or even a legislative agenda that delved into the analysis of other provisions similar to the one that was annulled. Hence the importance of understanding discrimination and inequality as a cultural and historical issue, and legal changes are necessary but not sufficient.
4. The legislative focus was centered on the perspective of civil law (with the reform of the Civil Code of 1982), eliminating discriminatory norms against women in marriage and in other legal categories. This implied the emancipation of the woman in what has to do with the administration of her property and the rights that derive from the conjugal community, the equal recognition in her couple relationships and with respect to parental authority over her children.

5. The first attempts in Latin America and the Caribbean to put an end to violence against women occurred in Puerto Rico with Law 17 of Prohibition of sexual harassment in the employment of 1988; and with Law 7,142 of Costa Rica, approved in 1990, which promoted social equality for women. The Cayman Islands, Chile, and Argentina also approved regulations to punish violence in the family group.
6. The approval of the Inter-American Convention to Prevent, Punish and eradicate Violence Against Women, also known as the Convention of Belém do Pará, adopted on July 9, 1994, and which entered into force on March 28, 1996, being ratified by Venezuela on January 16, 1995, was a milestone in the development of regulations against violence as a cross-cutting phenomenon in the life of women and present both in the public and private spheres, in their family relationships, in the community in which they operate, in terms of the role of the State that should guarantee your rights, etc.
7. In Venezuela, it was necessary to wait until 1998 for the Law on Violence against Women and the Family to be approved, which did not address the problem in all its dimensions.
8. So, it took nine more years to have regulation with a more comprehensive vision of violence against women. In this sense, with the approval in 2007 of the Organic Law on the Right of Women to a Life Free of Violence, it is understood that violence against women:

«It comprises any sexist act or inappropriate behavior that has or may have as a result physical, sexual, psychological, emotional, labor, economic or patrimonial damage or suffering; coercion or arbitrary deprivation of liberty, as well as the threat of carrying out such acts, whether they occur in the public or private sphere.»
9. Despite the progress, the 2007 law was insufficient. It is not possible to fight against the phenomenon of violence against women without understanding its causes, or going from an idea of closed violence in the family and in other sectors to a general idea of it, without understanding that in addition to individuals, the State itself can be part of this aggression, which means that the vision and scope of this law were still limited. This confined vision does not admit to seeing violence against women as a matter of human rights, due to its essential link to human dignity affected by situations much deeper than a specific act of violence.

10. The lack of a leading, binding and permanent role of civil society, and in particular of organizations that for decades have fought for women's rights, is one of the most evident shortcomings of the law, despite the fact that it recognizes their importance and their contributions.
11. One of the greatest breaches of the international commitments of the Venezuelan State regarding the fight against gender violence is, without a doubt, having silenced the official sources of information. There are no updated data on violence against women, despite the fact that the law, in its article 31, orders the carrying out of "censuses, statistics and any other study, permanent or not, that allows the collection of disaggregated data on violence against women. women in the national territory." This is a violation of the right to information, as well as the obligations of the Convention on the Elimination of All Forms of Discrimination Against Women.
12. In the case of femicide, included in the 2014 reform of the Organic Law on the Right of Women to a Life Free of Violence, there is not enough data from an official source to establish the evolution of this crime since it entered validity of this last reform.
13. In the case of sexual violence, no official information was found, only generic data on gender violence from the years 2015 and 2016. After that, as with the line of femicide, no official information source reports on the matter, to with the exception of 2019, when the Scientific, Criminal and Criminal Investigations Corps (CICPC by its Spanish name) announced a figure at a press conference only until August of that year. In 2017 and 2018, except for some inaccurate information on networks and without development in official portals, it did not locate any information, not even from a civil society monitor.
14. Given that this report will analyze judgments of the Supreme Court of Justice (TSJ by its Spanish name), specifically of the Criminal Cassation Chamber (SCP by its Spanish name) and the Constitutional Chamber (SC), between 2015 and 2020, that is, from of the latest reform of the law that regulates the matter of violence against women, it is necessary to make brief considerations about, at least, the two types of criminal offenses most mentioned in the cases studied: sexual violence and femicide.
15. Sexual violence is typified in different criminal laws. It is regulated in the Penal Code; Organic Law for the Protection of Boys, Girls, and Adolescents, and the Organic Law on the Right of Women to a Life Free of Violence, with the obvious consequences of confusion generated by the application of the different instruments.

16. Venezuela defines sexual violence as any conduct that threatens or violates the right of women to voluntarily and freely decide their sexuality, including not only the sexual act, but also all forms of sexual, genital, or non-genital contact or access, such as lewd acts, violent lewd acts, violent carnal access, or rape itself. In addition, the special law on the matter covers psychological violence, harassment, threats, physical violence, sexual violence, lascivious acts, forced prostitution, sexual slavery, patrimonial violence, workplace violence, among others.
17. Of these crimes, two important elements stand out: the first is that Venezuelan law includes threats as a formula to constrain the consent of the victim, and the second is that it establishes the possibility that the sexual act is consumed with the use of any object and not only of the virile member as regulated by other laws.
18. Femicide, according to Venezuelan law, is to kill a woman because she is a woman, and for this, it is essential that the intent is duly proven. This definition is very limited and simplified, since it is something more complex, and therefore does not conform to international standards on the matter, since there is no indication of the responsibility of the state when it fails to comply with its duty of protection. The law punishes the perpetrators of this crime with a prison sentence of twenty to twenty-five years
19. This report analyzes the jurisprudence of the SCP of the Supreme Court of Justice from 2015 to 2020 to determine whether or not it has contributed to combating gender violence. Ten sentences were found in the indicated period in which the judge's intervention is perceived as contrary to the interests of women, or where prejudices, roles, or stereotypes are perceived against women as protected subjects.
20. Two other judgments of the SCP were also found that do not take into account the principle of the intersectionality of the victim, that is, the coexistence of contextual elements that concurrently victimize women (poverty, belonging to an indigenous ethnic group, having a disability, power relations, etc.).
21. In addition, six other rulings were analyzed in which the highest court committed serious violations of women's rights that distorted the process and made it not serve the purposes established by law (re-victimization, judicial delay, omission of fundamental elements of the process, etc.).

22. In the last thirteen years, the Constitutional Chamber (SC by its Spanish name) has also established jurisprudence and established binding criteria in relation to gender violence. In this report, sixteen judgments of the SC were analyzed in this regard. Some of these decisions have had a positive meaning; To mention a few, there is the one that allows evacuation as early evidence of statements by children and adolescents, in order to avoid re-victimization; the sentence that foresees the possibility that the victims may present their own private accusation in some circumstances, and the one that annuls the article of the Penal Code that alludes to the «honesty» of women.
23. In the study carried out on the jurisdiction of violence against women, it highlighted the fact that more than a decade after the entry into force of the Organic Law on the Right of Women to a Life Free of Violence, which created the Specialized courts in the matter, these do not exist in all the districts or states of the country. This forced the SC to give that jurisdiction to other courts that do not have the specialty that they should have. This shows that this area has not been, even though the official narrative says otherwise, a priority for the judicial authorities.
24. An example that highlights institutional violence on gender issues is the case of a request for correction of identity due to gender change, which after seventeen years still does not have a decision, in flagrant violation of the right to freedom. effective judicial protection.
25. Starting from Latin American comparative law, as it is the closest and with realities more similar to that of Venezuela, as well as from the proposals of regional international organizations, we have selected a sample of the tools that have been developed to transmit the best practices in the matter. of prosecution of facts related to violence against women and that reveal the lag in which Venezuela is.
26. The 2020 protocol for judging with a gender perspective in Mexico is a very complete document and has the endorsement of the country's Supreme Court of Justice.
27. Bolivia's protocol for judging with a gender perspective is another good example since it includes in its analysis the judging criteria of both the universal and inter-American systems. This instrument was adopted by a government politically related to the Venezuelan, which recognizes the systems for the protection of human rights, including the inter-American, unlike what has happened in Venezuela.

28. The United Nations model of Latin American protocol for investigating the violent deaths of women for reasons of gender is also a valuable instrument, as well as the model for incorporating the gender perspective in the judgments of the Ibero-American Judicial Summit. The latter contains many elements in common with the previous documents, but it contains a practically unprecedented topic in Venezuelan justice, such as reparation for damage. This is fundamental because in our country judicial decisions focus exclusively on sanctions without incorporating an element of reparation. What is related to the reparation of the damage is not a proposal or an innovation, but an established international standard, so that its inclusion is not at the discretion of the State.
29. We must also admit that in our country there is no custom on the part of victims to request compensation or reparations because getting a conviction is difficult enough to add another concern; It is a pending task in the training of professionals and organizations related to the issue to include it so that it has a permanent presence in the matters to be decided by the court in cases of violence against women.
30. In Venezuela, the normative evolution regarding violence against women has been not only slow but also prey to perceptions and stereotypes that have made it difficult to see the mainstreaming of the problem in society. National regulations follow these patterns and, although in general, they respond to international standards, it has important shortcomings by not identifying the institutional violence generated by the State and establishing obligations to it, without any means of real control in a country where there is no State of straight.
31. The lack of statistics on violence against women complicates the development of public policies since without information it is not possible to make a true diagnosis of the situation and to plan public policy.
32. The judgments analyzed by the SCP reveal an excess of formalism and handling of violence against women as if it were another common crime, without establishing the obligation to comply with international standards such as the appreciation of intersectionality, power relations, the victim's social environment or the reparations in his favor.
33. For the Supreme Court, the victims have an anodyne and undifferentiated character, where violence is just a criminal type like any other, without special character, and above all without meriting any urgency of action, resolution, or measures to address it. It was observed that the SC in its sentences draws the attention of police officers to sexist comments, but not when it comes to judges, which shows the double yardstick in this regard.

34. The fact that cases of more than ten years were found without a final sentence, and even some in which the reinstatement implied the beginning of the trial after years, shows that solving the procedural delay is not a priority; even simple processes such as disputes of jurisdiction can take years.
35. The determination of the SCP itself that there is a high number of conflicts of jurisdiction may indicate that there is insufficient training of judges on the criteria of competence or that they do not want to hear about this type of case.
36. There is a serious breach of the duty to protect human rights of the Venezuelan State, and in particular the judiciary; An example of this is the fact that more than fourteen years after the approval of the Organic Law on the Right of Women to a Life Free of Violence, there are still constituencies that do not have specialized courts.
37. Although the SCP has corrected several serious irregularities in the court decisions, the failure to refer these cases to competent disciplinary bodies is worrying.
38. It should also be noted the almost total absence of criteria by the SCP that complement or interpret the rules of violence against women, and that such a role has been assumed by the SC, although this has not, unfortunately, implied better justice.
39. The comparison between the best practices in the environment of Latin American countries showed us the enormous distance, even in those cases of governments with ideologies similar to the Venezuelan, such as the Bolivian, in the application of prosecution criteria in matters of gender and, for this reason, the urgent need exists for the international standards, which must be applied by Venezuela due to the international instruments that it has signed on the matter, be of immediate application.
40. As a general conclusion, we can say that, despite the invasive official propaganda that describes individual cases as a consequence of the application of successful public policies in the matter, the debt of the Venezuelan State with women not only exists but also it tends to increase to the detriment of its integrity.

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