



MYTHS AND REALITIES OF VIOLENCE AGAINST WOMEN IN VENEZUELA

HISTORY OF ANOTHER FAILURE OF THE JUDICIAL POWER

Content

1	Evolution of positive law on violence against women	3
1.1.	The Universal Declaration and the Convention on the Elimination of All Forms of Discrimination against Women	
1.2.	Slow revision of domestic law	
1.3.	Sectoral regulations on violence and the Convention of Belém do Pará	
1.4.	Law on Violence against Women and the Family and the Organic Law on the Right of Women to a Life Free of Violence	
1.5.	Without data there are no public policies, and without public policies, there is no guarantee of human rights	
1.6.	Some general considerations on two criminal types of violence against women	
2.	Judgments of the Criminal Cassation Chamber (SCP by its Spanish name) on violence against women	16
2.1.	The decisions were classified and selected according to the criteria mentioned below. Decisions in which the intervention of the judge is perceived as contrary to the interests of women, or where prejudices, roles, or stereotypes are perceived against women as protected subjects	
2.2.	That the sentence does not take into account the principle of the intersectionality of the victim, that is, of the coexistence of contextual elements that concurrently victimize women (poverty, belonging to an indigenous ethnic group, having a disability, power relations, etc.)	
2.3.	That the sentence commits serious violations of women's rights in such a way that it distorts the process and that it does not serve the purposes that the law imposes on it (re-victimization, judicial delay, omission of fundamental elements of the process, etc.)	
3.	Judgments that establish binding criteria regarding violence against women	44
4.	Best practices on violence against women	47
4.1.	Protocol to judge with a gender perspective (Mexico, 2020)	
4.2.	Protocol to judge with a gender perspective (Bolivia, 2017)	
4.3.	Latin American protocol model for the investigation of violent deaths of women due to gender (femicide/feminicide) (OHCHR <i>et alia</i> , 2014)	
4.4.	Guide for the systematic and computerized application of the "Model of incorporation of the gender perspective in Sentences" (Ibero-American judicial Summit, 2015)	
4.5.	Model for incorporating the gender perspective in judgments (Permanent Commission on Gender and Access to Justice Ibero-American Judicial Summit, 2018)	
5.	Conclusions	57

1

Evolution of positive law on violence against women

The history of the fight against violence against women based on gender reasons, as it has happened throughout the evolution of human rights, is a chronology of long battles, hopes, sufferings, conquests, and half-baked achievements. To this, in addition, must be added the particular phenomenon of the invisibility of everything related to women's rights, in the best of cases, caused by a lack of knowledge of the context and realities of feminine ontology in society.

1.1. The Universal Declaration and the Convention on the Elimination of All Forms of Discrimination against Women

Thus then, despite the fact that since the Universal Declaration of Human Rights in 1948 it was recognized in its preamble «the equal rights of men and women», and in its article 1 it was confirmed that «All human beings are born free and equal in dignity and rights», such affirmations did not imply an immediate recognition of the challenges that this required in the particular case of women. Therefore, despite the fact that the Covenant on Civil and Political Rights continued in the same vein (Article 3),¹ it took more than three decades after the approval of the Universal Declaration for an international instrument on the rights of women, the Convention on the Elimination of all Forms of Discrimination against Women (also known as CEDAW),² thus recognizing a normative specialization in protection matters, the need of which, although obvious, had not been manifested in positive international law.

This first step was nothing more than a simple approach to the need to focus protection on women in their different dimensions. From that conception, despite the fact that violence is not an issue specifically addressed in the Convention, putting everything related to equal rights on the table required a review of what existed in normative matters and, later, of the realities of the that he was not giving any answer or in an inappropriate way.

1 «The States Parties to the present Covenant undertake to guarantee men and women equality in the enjoyment of all civil and political rights set forth in the present Covenant».

2 Adopted on December 18, 1979 and effective as of September 3, 1981. Ratified by Venezuela on May 2, 1983.

1.2. Slow revision of domestic law

This normative evolution in gender matters can be seen in the normative compilation that the Gender Equality Observatory of Latin America and the Caribbean, dependent on the Economic Commission for Latin America and the Caribbean (Cepal by its Spanish name), has on its website, and from which we take the inputs on this matter.³

Hence, it is not surprising that despite the manifest expressions of injustice that women have suffered, and which are already in themselves a manifestation of violence, the first thing in the fight against this reality has been to focus on criminal law pre-existing, where, for example, the protected legal asset was not the person or physical integrity of the woman or her sexual freedom, but the honor, the reputation of the family belonged to her or that of her spouse. This can be appreciated, for example, with the declaration in Venezuela of the nullity of the article of the Penal Code that contained the so-called «uxoricide» through a ruling of the Plenary Chamber of the Supreme Court of Justice of March 5, 1980.⁴ These changes, although positive, did not imply the determination of public policies or even the establishment of a legislative agenda that would delve into the analysis of other provisions with content analogous to the annulled one. Hereafter the importance of understanding discrimination and inequality as a cultural and historical issue, and legal changes as necessary, but not sufficient for situations so overlapping in the social structure.

Rather, the legislative focus, as is known, was approached from 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 achievement was very significant and implied emancipation of women both in what has to do with the administration of their assets and the rights that derive from the conjugal community and in equal recognition in the field of their relationships and respect. to parental authority over the children.⁵

We include these efforts to the extent that these reforms reduced to some extent the patrimonial and psychological violence exercised against women through the regulations of the Civil Code that limited her ability to act.

3 <https://oig.cepal.org/es/observatorio>.

4 It is worth remembering that this crime was "revived" in the reforms of the Penal Code of 2000 and 2005 and was a new judicial decision in 2006. This is proof that the types of crime discriminatory against women have a force greater than normative, which is none other than the force of prejudice.

5 Harting, Hermes (1986). The highlights of the Civil Code reform law promulgated in July 1982 in the UCAB Law Review, No. 35. pp. 261-284. Available at: http://www.ulpiano.org.ve/revistas/bases/artic/texto/RDUCAB/35/UCAB_1985-1986_35_284-261.pdf.

1.3. Sectoral regulations on violence and the Convention of Belém do Pará

From this, somewhat vague and uncertain beginnings in the matter of violence in Latin America, an effort that we can call sectoral come up, insofar as it identifies areas in which the existence of violence against women was perceived. Thus, we find Law 17 of Prohibition of sexual harassment in employment, enacted by Puerto Rico in 1988 , or Law 7.142, for the promotion of social equality for women in Costa Rica, approved in 1990, in which Precautionary measures are established for the benefit of women endangered by their spouses or partners.⁷

The next step in this subdivision process was the «discovery» of the so-called family or intra-family violence, initiated with the corresponding laws in the Cayman Islands (The Summary Jurisdiction (Domestic Violence) Law, 1992), Peru (Law 26.260 of Protection against to Family Violence, 1993) Chile (Law 19.325 on Intrafamily Violence, 1994), Argentina (Law 24.417 on Protection against Family Violence), among others. As is evident, the content of these legal provisions dealt with the sanction of violence in the family group or derived from the woman's partner relationships, and in some cases about harassment in the workplace, all of which under consideration that they were separate issues and that you corresponded to different realities.

In the midst of these initiatives, another important milestone is approved: 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 July 28. of March 1996, being ratified by Venezuela on January 16, 1995.⁸

This instrument is fundamental in the development of regulations against violence insofar as it runs counter to the «subdivision» described above and understands violence as a transversal phenomenon in the life of women and, therefore, present both in the public and private spheres, in their family relationships, in the community in which they operate, in the state that must guarantee their rights, etc.

6 https://oig.cepal.org/sites/default/files/1988_pri_ley17.pdf.

7 https://oig.cepal.org/sites/default/files/1990_cri_ley7142.pdf.

8 <http://www.oas.org/juridico/spanish/firmas/a-61.html>.

What has been said is derived directly from the conception of violence established in article 2, in which after indicating its different types (physical, sexual and psychological), it includes the family environment or any type of relationship that the woman has, the community, the workplace, educational institutions, health establishments, as well as violence carried out or permitted by the State or its agents. Such a conception is the origin of what will be called «intersectionality» and that is nothing other than the interrelation between the different variables that simultaneously victimize women, expose them to violence, and, at the same time, are conditioning factors of impunity.

1.4. Law on Violence against Women and the Family and the Organic Law on the Right of Women to a Life Free of Violence

In the case of the Venezuelan State, and following a pattern that has been typical of the same in the matter, the execution has been late, since it was necessary to wait until 1998 for the Law on Violence against Women and the Family to be approved.⁹

Despite it being obvious that the aforementioned law is subsequent to the Convention of Belem do Pará (and therefore a human rights issue), and even expressly mentioning it in its article 2, the lack of a link between the globalizing conception of the Convention and the manifestly focused nature of the law is surprising. within the current of family violence already described, which is evidenced in the statement of its article 4 for which, «violence against women and the family» was exercised by «spouses, common-law partners, ex-spouses, ex concubines or people who have cohabited, ascendants, descendants, and collateral relatives, consanguineous or related.» Despite the fact that the same law then refers to general types of violence, such as physical, sexual, and psychological, it does not escape the conceptual division of the time whose consequences are still present today. Evidence of this situation is in the fact that in various types of crime the taxpayer is «the woman or another member of the family», assimilating as the same two types of protected legal assets of different entities and nature.

9 Published in Official Gazette No. 36,531 dated September 3, 1998.

It took nine more years to change this conception and have a global idea on the positive law of violence against women with the approval in 2007 of the Organic Law on the Right of Women to a Life Free of Violence, finally published on September 17, 2007, in Official Gazette No. 38.770. In article 14 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. »

Despite the broadness of the definition, its own statement is limited in how much it considers violence as harm, without taking this term to the last and most serious of its consequences, that is, the death of the woman, which constitutes a tax on the same since its entry into force.

Al respecto se puede argumentar que la ley sí trató el tema al ampliar la In this regard, it can be argued that the law did address the issue by extending the penalty in the event of the woman's death, still under the classification of «homicide» when the perpetrator was «the spouse, ex-spouse, common-law partner, ex-partner, a person with whom the victim had a marital life,» but repeating this focused vision of violence and ignoring the rest of its elements in one of the most important points, such as the right to life.

For this reason, conceptual advances, in addition to being incomplete, are not accompanied by a recognition of the structural nature of the problem, and although it has a manifestly emancipatory statement, in the sense of seeking to «guarantee and promote the right of women to a free life violence «only recognizes the structural nature of that violence in a very timid way and only in its explanatory statement, stating that «Since the '70s in the twentieth century its specificity and the fact that its causes lie in the structural characteristics of society,» without going into other considerations such as the effect of these causes on the State, institutions and social dynamics.

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 We say «finally» because this normative provision is a demonstration, at least, of a lack of diligence on the part of the Legislative Power; It was published two more times: on April 23, 2007 in Official Gazette No. 38,668, and on September 10 of that same year due to «material error. »

Violence cannot be attacked without understanding its causes. Thus, going from an idea of closed violence in the family and in other sectors to a general idea of it, but without understanding that in addition to individuals, the State is part of that aggression, leads to a vision as limited as the previous ones.

In this sense, the fact that the law is based on a proactive State without prejudice against women is the same as believing that human rights are fulfilled only by their publication in the Official Gazette. This constitutes a heavy burden on Venezuelan civil service thinking, which focuses on the norm and not on the dynamics necessary to make them a reality, thus making public management still a citizen aspiration.

Thus, when the law establishes a whole series of obligations to public structures (autonomous institutes, ministries, and other public bodies) as measures to protect women, without recognizing the basic flaws that these same structures have, it starts from a conception that he does not know the very State to which he belongs; It is necessary to include that State as one of the areas in which violence must be combated.

In this regard, 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 obvious shortcomings of the law in its vision. of a feminist state that is nothing more than a chimera.

It is necessary to remember that when we speak of the right to a life free of violence, as with any other human right, its realization is fundamental, and this becomes impossible if it is not taken into account that violence can originate from the supposed guarantor itself to make it effective.

It is not in any way a presumption of guilt against public structures, but rather the admission that prejudice and violence against women represent a social phenomenon that encompasses the entire society, including the State, before which, this It must be the subject of public policies that make possible the changes that constitute it as a guarantor and not as a forced fulfillment of obligations in which it has no conviction, especially when, even having those obligations, it can become a perpetrator against whom it is practically impossible to act.

Nor is it a question of ignoring the role of guarantor of human rights of the State, but of understanding that this is also part of the problem and, consequently, it should also be part of the solution, including public policies that focus on the problems *ad intra* of the public administration. on women, also establishing clear mechanisms of accountability and co-management with civil society.

This was partially improved with the reform of November 25, 2014 (Official Gazette No. 40.548), which included the loss of life as a result of violence, but the idea of a State surrendered to the cause of women, with burdens and obligations that do not have a counterpart of control, participation, and control by the subjects of protection who remain at the mercy of a state will that may or not may appear.

1.5. Without data there are no public policies, and without public policies, there is no guarantee of human rights¹¹

One of the greatest inconsistencies of the Venezuelan State regarding women, particularly regarding the fight against violence is, without a doubt, including it within the group of issues related to human rights that have been silenced in official sources of information.

Just as for years there have been no updated data on health or education indicators, the same occurs in violence against women, despite the fact that statements such as the following are made in the explanatory memorandum of the current law:

«Every 10 days a woman dies from gender violence in Caracas. The Body of Scientific, Criminal, and Criminal Investigations reports approximately 3,000 cases of sexual violence per year, a figure that represents an unlimited percentage of reality if it is taken into account that only 10% of cases are reported. During 2005, 39 thousand 51 cases of violence were attended to in the country by specialized public and private organizations» (Bulletin in figures: Violence against Women. Figures from 2005. Prepared by AVESA, FUNDAMUJER, and CEM, UCV).

This extensive quote is not gratuitous, since it simultaneously reveals two realities: the first is that it is necessary to quantify the problems in order to establish public policies, and the second, that to do so the Legislative Power cannot resort to official sources but to surveys of information made by civil society organizations.

11 In GENERAL RECOMMENDATION No. 9 (Eighth session, 1989), the Committee for the Elimination of Discrimination against Women, “considering that statistical information is absolutely necessary to understand the real situation of women in each of the States Parties to the Convention, on gender statistics, states: “it recommends that the States Parties do everything possible to ensure that their national statistical services in charge of planning national censuses and other social and economic surveys formulate questionnaires so that the data can be disaggregated by sex, in terms of absolute numbers and percentages, so that users can easily obtain information on the situation of women in the specific sector in which they are interested.” Likewise, said Committee, in GENERAL RECOMMENDATION No. 19 (11th period of sessions, 1992), indicates the need for “States Parties to encourage the compilation of statistics and the investigation of the extent, causes and effects of violence and the effectiveness of the measures to prevent and respond to it.”

This is reiterated, in fact, in the same explanatory memorandum, when it is stated that in «The experience and statistics on violence, especially in cases of domestic and intrafamily violence» the threats end in many cases in attacks against the physical integrity or life of the victim.

Additionally, these quotes show a favorable relationship with civil society, at least to resort to their figures, which is in open contradiction with the current reality in which non-governmental organizations are the object of criminalization and persecution, both through in fact, as through normative mechanisms, as various international bodies have shown.¹²

This need for quantification is not limited to the statement of reasons but is extended to the article itself, starting with the first paragraph of article 4 of the law, which establishes information as the first guarantee for the exercise of women's rights.

Then, article 31 establishes as an obligation of the National Institute of Statistics, together with the National Institute of Women and in coordination with the other public powers, «censuses, statistics and any other study, permanent or not, that allows data to be collected. disaggregated violence against women in the national territory. » Of the aforementioned rule, it is striking that the article does not make any mention of the obligation to make the information collected public, which highlights once again the lack of coherence between recognizing the need for information and not establishing the obligation to publish it, in violation of the right to information and the obligations imposed by international treaties.

It is worth remembering that accountability is part of the obligations of the public powers, either through a report and account (Executive Power) or through an annual report as is the case of the Judiciary; Article 120 of the Organic Law of the Supreme Court of Justice establishes that said body «must provide ample, timely and truthful information on its organization, operation, and activities» in order «for the people to participate and exercise social control over its public management». Additionally, in the final part of the same article it is indicated that the Supreme Court and its auxiliary bodies must «create, maintain and update a physical and electronic information system that contains, among others, the updated scheme of its organization and operation, as well as an electronic communication and information mechanism available to all people.»

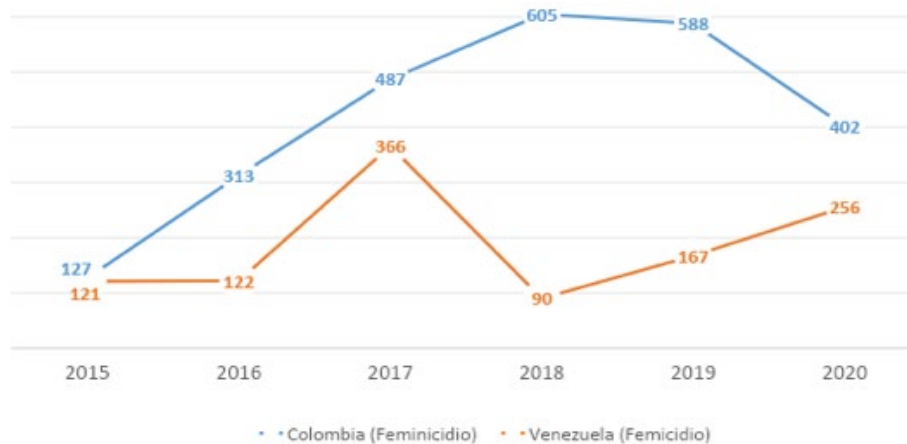
12 <https://accesoaljusticia.org/bachelet-acusa-gobierno-de-maduro-de-perseguir-ong-y-medios/>.

It is clear then the obligation of the different public powers involved to provide information to the citizenship, which has recognized, in accordance with the Constitution, «the right to participate freely in public affairs" and that the "participation of the people in the formation, execution, and control of public management is the necessary means to achieve the leading role that guarantees its full development» (Article 62).

Consequently, the lack of information is not only an obligation of constitutional duties but also a violation of citizenship, which leads to a vicious circle of non-compliance and violations of rights that feed itself.

Specifying the subject of our study, we have, for example, that, in the case of femicide, included in the 2014 reform, there are not enough data from an official source to established the evolution of this crime since the entry into force of this last reform. Rather, as can be seen in Chart 1, to reconstruct an image of several years it is still necessary to turn to civil society organizations.

Chart #1



Source: for Colombia, www.datos.gov.co (official source) was used; for Venezuela, 2015 and 2016 Public Ministry, 2017-2018 www.cotejo.info 2019-2020 www.utopix.com.

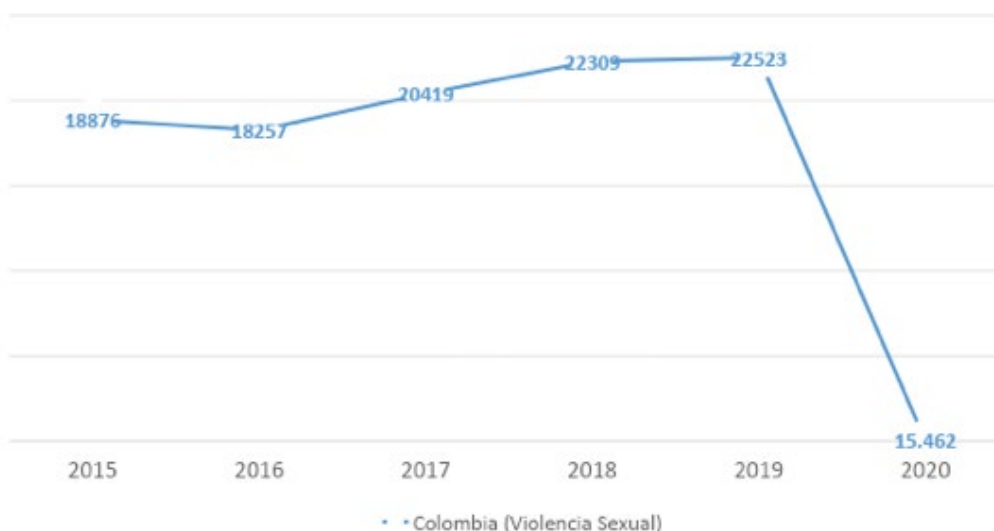
The graph also shows how the data on femicides given by the explanatory statement in 2004, although limited to the city of Caracas, is evidently exceeded by the national reality described there.

To construct the femicide data for the period 2015 to 2020, three different sources were used. The first was that of the Public Ministry, corresponding to the years 2015 and 2016; it is the only official source of information in this regard, afterward nothing else has been published about it. For the years 2017 and 2018, use was made of the portal [cotejo.info](http://www.cotejo.info), which annually publishes

figures of women murdered in the country, without making the distinction (at least for these years) of those deaths that fall within the criminal category of femicide. Finally, for 2019 and 2020, *Utopix* was used, which recently promotes a femicide monitor characterizing the types of deaths.

In the case of another type of crime such as sexual violence against women, the situation is even more devastating, since there is no public monitoring that has become general knowledge, although countries with similar environments, such as Colombia, do have them (see Chart No. 2).

Chart # 2



Source: National Institute of Legal Medicine (<https://www.medicinalegal.gov.co>).

Therefore, it is necessary to conclude that currently collecting official data released by Venezuelan authorities is impossible. Information is non-existent and the policy of opacity covers more and more and more quickly all the scales of power in the country.

In the case of sexual violence, no official information was found, only generic data on gender violence issued for the years 2015 and 2016. After that, as with the femicide line, no source provides official information in this regard, to with the exception of 2019, when at a press conference the Scientific, Criminal and Criminal Investigations Corps (CICPC by its Spanish acronym) announced a figure only until August of that year. In 2017 and 2018, no information was found, not even from a civil society monitor.

Given the nature of the issue, it is even more dramatic that since 2016 there have been no official data on gender violence, and especially on femicide. In the case of sexual violence, there are not even published figures in any period under study (2015-2020). Therefore, to compose data (at least concise) we must resort to the figures offered by civil society organizations in the monitoring they carry out, as we saw in the case of femicide, using social networks and digital media as a source, thus like the odd statement made by a government spokesperson, without clarifying or exposing the parameters of their investigation. This subrogation by civil society in the duties of the Venezuelan State to publish the information was noted in the report *Defending human rights in Venezuela: The challenges of civil society to face the closure of the democratic space*.¹³

1.6. Some general considerations on two criminal types of violence against women

Given that the sentences that we are going to analyze are those from the Supreme Court of Justice (SCJ), especially those of the Criminal Cassation Chamber (SCP) from 2015 to 2020,¹⁴ deal with criminal types linked to violence against women, it is necessary to make a few brief considerations about, at least, the two criminal types most mentioned in the cases studied, namely, femicide and sexual violence.

Regarding sexual violence, Venezuelan legislation abounds with an apparent conflict of norms, since it is a criminal type typified in different criminal norms. In the case of rape or sexual violence, it is regulated in three different criminal norms: 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 in the application of the different instruments and the need for minimum criteria to standardize their application.

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 all forms of contact or access, genital or non-genital, such as lascivious acts, violent lewd acts, violent carnal access or rape itself.¹⁵

13 https://www.dejusticia.org/wp-content/uploads/2021/04/DefenderDDHHenVenezuela_Web.pdf.

14 For being the years immediately following the entry into force of the most recent reform of the law and its application.

15 Definition according to numeral 6 of article 15 of the Organic Law of the Right of Women to a life free of violence.

In addition, the special law that regulates it, in the chapter called «Crimes» includes psychological violence, harassment, threats, physical violence, sexual violence, lewd acts, forced prostitution, sexual slavery, patrimonial violence, and workplace violence, among others.

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 consummated with the use of any object and not the penis, as regulated by other laws. Regarding femicide, we consider it more pedagogical to analyze it in comparison with a country close to our environment, such as Colombia.

In the first place, in Colombia, it is called feminicide while in Venezuela it is known as femicide. In principle, both names serve the basic criminal classification, since the two terms are used interchangeably in the region. However, it is very important to emphasize that the terminological difference is dogmatically relevant because, not every homicide of a woman is femicide, nor is every femicide a feminicide.

The term femicide assumes the objective of making visible the homicides of women **based on discrimination, oppression, inequality, and systematic violence against women, which in its most extreme form culminates in death**. But for its part, feminicide can be defined as **the murder of girls and women as a consequence of the silence, indifference, permissiveness, and impunity of the State that guarantees their rights. In other words, femicide becomes femicide when the State has failed to do so in its obligation to protect**.

According to Marcela Lagarde in her essay Femicide Violence and Human Rights of Women,¹⁶ for femicide to occur, the convergence of omission, negligence, and partial or total collusion of authorities in charge of preventing and eradicating said crimes is necessary. For example, when incomplete investigations are carried out and there is lax action in the prosecution of crimes after a threat complaint, and violent death occurs.

Second, the intentionality of the crime: in Venezuela, it is essential that the intentionality is duly proven, while in Colombia femicide can occur even in the context of guilt.

16 <http://mujeresdeguatemala.org/wp-content/uploads/2014/06/Violencia-feminicida-y-derechos-humanos-de-las-mujeres.pdf>

Third, there is probably more similarity in terms of action: both in Colombia and in Venezuela the criminal type requires that it must be motivated in relation to the condition of women, however, in the Colombian penal code it adds the term «gender identity.»

The penalties are also different: in Venezuela, it is punishable by a prison sentence of twenty to twenty-five, while in Colombia the maximum penalty can be extended to forty years in prison, almost double that of its counterpart.

Regarding the grounds for the commission of the crime, in the case of Venezuela, it is a formula used by the legislator to characterize the subjection, hatred, or contempt towards a woman, while in Colombia they are circumstances of the commission other than the first section of the crime, very similar to what we know as aggravating or mitigating, but without increasing or decreasing the penalty.

In both cases, there are six, and three are very similar, especially those related to the previous relationship (love, friendship, work, etc.) between active and passive subjects, and the superiority in the relationship expressed in the hierarchy, domination, or subordination. The others distance themselves a little more, since in Colombia, for example, the crime is considered consummated when there is an interruption in communication (kidnapping, forced disappearance, or kidnapping), and in Venezuela hatred or contempt is configured when the author exhibits in public the corpse, for example.

2

Judgments of the Criminal Cassation Chamber (SCP by its Spanish name) on violence against women

The decisions were classified and selected according to the criteria mentioned below.

2.1. Decisions in which the intervention of the judge is perceived as contrary to the interests of women, or where prejudices, roles, or stereotypes are perceived against women as protected subjects

2.1.1. Sexist comment of the court judge goes unnoticed (sentence N° 108 of 02/26/2016, appeal: conflict of jurisdiction, SCP)¹⁷

In this sense, the first decision to consider has to do with the judge's prejudices with respect to sex workers, who according to the interpretation of an instance judge have not protected subjects of the law because of their activity. Thus, the SCP ruled in a conflict of jurisdiction because an instance judge considered that the special law was not applicable because the victim of femicide was allegedly a sex worker. To justify itself, the court of instance makes the following argument:

«In numeral 3 of the aforementioned law, which establishes: " When the act has been committed in contempt of the victim's body or to satisfy sexual instincts. " This fact that o (sic) is neither established nor proven in the present case since she was allegedly called to perform services as a companion "and therefore she declared herself incompetent.»

In response to this manifestly sexist statement, the SCO said:

«In this way, it is clear that the legislator expressed his will to establish the jurisdiction of the specialized courts in matters of violence against women to hear all those cases in which the victim is a woman, for the sake of the effective protection of women against mistreatment and attacks on their personal and physical integrity, including death, regardless of the age of the female victim, for reasons of gender. Now, this competence is for the purpose of the judge in matters of gender to determine or verify that the facts in which the victim is a woman, fit within the criminal types provided for in the special law, otherwise if the investigation that said facts are not found typical adequacy in the law of the matter, this is not

17 <http://historico.tsj.gob.ve/decisiones/scp/febrero/185775-108-26216-2016-CC15-450.HTML>.

an obstacle so that he cannot raise his incompetence. From the foregoing, it is necessary to conclude that in accordance with the provisions of article 67 of the Organic Law on the Right of Women to a Life Free of Violence, and given the stage in which the present process is, its knowledge corresponds to a court of the special jurisdiction of violence against women.»

The SCP corrects the invalid criterion, but does not make any mention of the court's sexist comment, nor does it draw the court's attention to such allegations. The Chamber should have warned that the fact that prostitutes are not considered victims of gender violence has important consequences, in addition to the obvious ones of invisibility, but instead of making such a call, it prefers to ignore the essentially discriminatory content of the judge of instance.

Decisions like this prevent certain victims from accessing protection and using the material resources that the State must make available to them. This is an obligation of the State derived from the articles of the Convention on the Elimination of All Forms of Discrimination against Women, especially articles 2 and 5, to adequately train and train the judiciary on the treatment of crimes of violence sexual, so that you make decisions in a gender-sensitive way, ensuring that judicial decisions are free from the moral prejudices and personal values of whoever fails.

The influence of discriminatory socio-cultural patterns can result in a disqualification of the credibility of the victim during the criminal process in cases of violence, as well as a tacit assumption of responsibility of her for the facts, either because of her dress, work occupation, sexual conduct and/or relationship or kinship with the aggressor, which translates into inaction on the part of prosecutors, police, and judges in the face of reports of violent acts.

Due to the above, it is evident that the lack of diligence of the SCP in drawing the attention of the trial judge before the issuance of a concept contrary to the interest of justice and, therefore, of the victim, highlights the lack of assumption by part of the high court of the basic principles that inform the norms of protection of women.

2.1.2. Error in the classification of the offense for the purposes of determining jurisdiction (judgment N° 98 of 10/22/2020, appeal: conflict of jurisdiction, SCP) ¹⁸

Faced with the alleged commission of crimes related to sexual violence against a woman, explicitly indicated in the case, an instance court specialized in violence against women, refrains from hearing the case found in the following way: «this Judge is considered INCOMPETENT to hear of the said process (...) since the conduct displayed by the *ut supra* is criminally individualized and is not related by reason to their gender».

Given this, the SCP makes the following remarks:

«Faced with these circumstances, we certainly have the conduct displayed by the citizens YONNY MANUEL GARCÍA JIMÉNEZ, for the alleged commission of the crime of AGGRAVATED ROBBERY IN A NECESSARY DEGREE OF COMPLICITY, YEISON MANUEL GARCÍA URIBE, for the alleged commission of the crime of USE OF THINGS ARISING FROM THE CRIME, ANTONIO JOSÉ ZAMORA, for the alleged commission of the crime of AGGRAVATED ROBBERY, and SEXUAL VIOLENCE, foreseen and sanctioned in article 43 of the Organic Law on the Right of Women to a Life Free of Violence; NELSON RAMOS SEQUERA and RONNY XAVIER ARIAS ARIAS, for the crime of ILLICIT POSSESSION OF DRUGS, could be considered as crimes related to the facts, which is motivated by the fact that the action taken by citizens YEISON MANUEL GARCÍA URIBE, NELSON RAMOS SEQUERA and RONNY XAVIER ARIAS ARIAS, mentioned above, would not constitute a crime without the primary action taken by citizens YONNY MANUEL GARCÍA JIMÉNEZ and ANTONIO JOSÉ ZAMORA, that is: AGGRAVATED ROBBERY and SEXUAL VIOLENCE.

*Consequently, this Chamber of Criminal Cassation of the Supreme Court of Justice, orders the referral of the file to the Second Court of First Instance in functions of Control, Hearing, and Measures in matters of Crimes of Violence against Women of the Criminal Judicial Circuit of the Carabobo State, based in Valencia, in order to continue hearing the present matter. **So, it is decided.**»*

18 <http://historico.tsj.gob.ve/decisiones/scp/octubre/310221-98-221020-2020-cc19-114.html>.

In addition to the concise and almost non-existent motivation of the court decision, where the criterion of the existence of other crimes against property seems to undermine the jurisdiction of the court without giving even sufficient motivation to justify such an assertion, it is striking that in This assumption takes so long for the justice system to decide the conflict of the jurisdiction (more than two years); This in itself is an offense for the victims, to the extent that with the decision of the conflict of jurisdiction the process against the alleged aggressors would barely begin, with the uncertainty that this may generate whether or not they will obtain justice in the case.

In conclusion, there is a jurisdiction of attraction regarding the jurisdiction for the matter of the courts specialized in gender violence, for which purpose, whenever crimes of this nature are committed to the detriment of a woman, girls or female adolescents whose accused is a man of legal age, the jurisdiction for the matter must correspond to the courts with competence in matters of gender violence, even if it concurs with the imputation of crimes whose competence corresponds to ordinary criminal judges, in order to guarantee the rights of the due process and the natural judge.

2.1.3. Error in the classification of the crime and negligence in the processing of the conflict of the jurisdiction (sentence N° 80 of 07/30/2020, appeal: conflict of jurisdiction, SCP)¹⁹

Faced with a simply astonishing criterion, to say the least, of the lower court that declared itself incompetent, despite the victim being a thirteen-year-old adolescent, and where provisions of the Penal Code were invoked, the SCP establishes its criteria as follows:

«Having specified the foregoing, the Chamber must indicate that, in the case at hand, given that the taxpayer of the crime for which the representation of the Public Ministry accused is a woman protected by the Organic Law on the Right of Women to a Life Free of Violence, who due to her age, in accordance with the provisions contained in the Organic Law for the Protection of Boys, Girls and Adolescents, is a 13-year-old adolescent, whose discernment does not reach full maturity, in which lies the sexual vulnerability of the same before an adult which cannot be ignored, consequently this Criminal Cassation Chamber, given the circumstances clearly specified, what is appropriate and adjusted to the law is to declare COMPETENT to the Courts of First Instance in Trial Functions with

19 <http://historico.tsj.gob.ve/decisiones/scp/julio/309996-80-30720-2020-CC20-30.HTML>.

Competence in Matters of Crimes of Violence Against the Woman of the Criminal Judicial Circuit of the Aragua State to continue hearing the case followed by citizen WALTER ENRIQUE CERA OCAMPO for the alleged commission of the crime classified as a CARNAL ACT WITH A SPECIALLY VULNERABLE VICTIM foreseen and sanctioned in article 44 numeral 1 of the Organic Law on the Right of Women to a Life Free of Violence, and consequently it is ordered to send the file to the Court of Competent Appeals in Crimes of Violence Against Women of the Criminal Judicial Circuit of the aforementioned Criminal Judicial Circuit, in order that the process continues its legal course. This is how it is decided. Finally, after the study and verification of the documents and records that are in the file, this Criminal Cassation Chamber cannot obviate the breach of the Appeal Courts involved with respect to the provisions contained in article 82 of the Organic Procedural Criminal Code, which should immediately once raised the conflict, refer the proceedings to this Highest Court, in this sense a call is made for the purposes that are not repeated in the future situations of the aforementioned tenor; All of this, in keeping with the fundamental values of the Venezuelan legal system regarding transparency and responsibility in the exercise of the judicial function in order to avoid situations that affect effective judicial protection and due process established in the Constitution of the Bolivarian Republic of Venezuela, consequently it is ordered to refer the case to the General Inspectorate of Courts in order to determine responsibilities if any. So, it is decided» (own emphasis)..

This case is particularly serious, both due to the age of the victim and the way the courts handled it. It is relevant to note that the complaint was filed on 10, 2015, and the proceedings began the following day by a court with jurisdiction over crimes of violence against women.

However, at a later stage, another court with the same jurisdiction declared that it cannot know, invoking that the applicable rate was one of the Penal Code (consensual carnal act, article 378). This occurred in a sentence published on November 24, 2017, after the alleged aggressor was released in August of that year.

Despite this, as has been seen, the decision of the Chamber is dated July 30, 2020, which translates into the fact that the process is restarted more than five years after the initial complaint, and despite this, barely a "call" is made so that this type of unjustified delay is not carried out again, without forwarding the file to the competent disciplinary bodies, and no allusion is made to the totally out of place change of qualification that originated all this delay and injury to justice and to the victim.

2.1.4. Failure to consider crimes of violence against women (judgment N° 212 of 04/17/2015, appeal, SCP)²⁰

Although the sentence establishes touching the victim as one of the proven facts, the conviction of two of the defendants was only for kidnapping and a third was acquitted of charges of lewd acts without indicating why despite the facts considered as proven.

In this sense, the Chamber says:

«The facts established in the aforementioned judgment are as follows: (...) The Public Ministry narrated in its accusatory brief the circumstances of the manner, time and place of the events in which the citizen's JULIO CÉSAR VELOZ COBOS and JOSÉ CASTILLO TORREALBA identified above, are involved in the commission of the aforementioned criminal offenses: On June 20, 2010, at 3:00 in the afternoon, citizen MARYURI FREITES (sic) FERNÁNDEZ, was in Plaza Miranda, waiting for a public transport van to go to Paradise, when suddenly subjects manning a small light brown car, which was stopped in the place, approached it by getting a subject off the back of the car, using force and threatening his physical integrity. He pushed towards the back of the car, placing a sharp object on one side, introducing his hand to all parts of his body including the intimate parts, being that to the very moment in which the criminal action was carried out, by chance was witnessed by a brother-in-law of the victim named: CARLOS EDUARDO LUGO, who was able to see what was previously narrated.»

As can be inferred from the above transcribed, the touching of the woman's private parts was evidenced as a proven fact, and in spite of this, there was no conviction for this fact, even though it was explicit.

20 <http://historico.tsj.gob.ve/decisiones/scp/abril/176451-212-17415-2015-C14-441.HTML>.

2.1.5. Omission on subjects liable to criminal responsibility (judgment N° 379 of 06/05/2015, appeal, SCP)²¹

This case is particularly serious, as it may be related to patterns of abuse in prestigious educational institutions and, therefore, in which the victims are faced with authority figures who can use their condition to commit abuses. This requires specific protection standards from this type of institution, but in this case, unfortunately, it is taken for granted that the victim reported the abuses to various representatives of the institution without taking her statements into account. Despite this, in the trial the accused was only charged as the perpetrator of the abuses without mentioning those that left the victim within reach of the perpetrator until the latter was able to meet with her family, days later, to make the corresponding complaint.²²

The SCP's ruling leaves no room for misunderstandings:

«Once the aforementioned girls were asleep in one of the two rooms of room 1409, he began to touch the adolescent, kiss her, violently, threatening her, requesting oral sex, penetrating her vaginally and trying to penetrate her anally, remaining in the room until half-past two in the morning, telling the teenager to take a bath, not to say anything, leaving the room, which the teenager obeyed, and the next day she began to seek help by telling what happened to [two other adolescents whose names were by express provision of Article 65 of the Organic Law for the Protection of Children and Adolescents] (...) and the adults in charge of caring for them, the citizen professor Lidia Carolina Gómez Torres, the citizen professor Jesicca Yheli Moreno Rodríguez, the citizen Cura and Director Rodrigo Lozano Salvador, who continued with the routine activities and did not inform the parents of the adolescent or the authorities. police communities, holding the Concert and the scheduled photo session, returning to Villa de Cura on Sunday, November 28, 2004, so the adolescent (...) told her family what happened and in the company of them (...) he moved to the city of Caracas and filed a complaint about what happened.» (Own emphasis).

21 <http://historico.tsj.gob.ve/decisiones/scp/junio/178297-379-5615-2015-C14-439.HTML>.

22 The lack of assumption of responsibility by the institution is such that as of the date of preparation of this report (July 2021), whoever was convicted of the events, Miguel Augusto Alayón, is mentioned on the website of said organization without making any reference to the abuses committed. Niños Cantores de Villa de Cura, (<http://ninoscantoresvilladecura.blogspot.com/2012/05/coro-de-ninas.html>).

As regards the Judicial Power, its failure is manifest, firstly due to the lack of instruction to the Public Ministry on the fact that there were subjects liable to criminal responsibility expressly mentioned by the victim, and on the other hand, as the ruling indicates cited, the case was reported in November 2004, while the judgment in cassation was handed down almost 10 years later, and although it led to a conviction, it was after clear evidence of an unjustifiable judicial delay to the detriment of the victim.

2.1.6. Omission of fundamental means of proof (judgment N° 393 of 10/25/2016, appeal, SCP)²³

The court of appeal, in this case, sets aside the condition of a particularly vulnerable victim due to a formality since, at the time of the events, he was thirteen years and ten months (the law says under thirteen) and uses the figure of courtship to establish a consent outside the principles of the law.

According to the Court of Appeals, the opinion of the experts who carried out the psycho-social study with a motivation that tries to establish consent based on the existence of a sentimental relationship was rejected:

«In the present case, it is observed that the adolescent had the ope lege discernment to decide whether or not she wanted to have sexual relations with the accused, since she was thirteen years and ten months old (over thirteen) and the accused twenty-six years, and the experts who testified in court determined that she did not lack such discernment, but on the contrary, she knew and understood the fact of the sexual act and its consequences, which is corroborated by the verbatim of the adolescent, who manifests between other things that: she had a boyfriend who was older than her, she went out with him and they (parents and siblings) asked her where she was, until they found out who she was dating, with a 26-year-old boy, her brother checked her phone and he saw a message, they called but he did not answer because his phone was turned off, but since his father is a policeman, he tracked the number via satellite and they located him and spoke to him, well what they did was insult him, and his mother told him about it.

23 <http://historico.tsj.gob.ve/decisiones/scp/octubre/191490-393-251016-2016-C15-298.HTML>.

She announces because he is 26 and she is 14 years old, who had relationships, they asked her and she told them that if they had had relationships she had problems at home, she felt lonely, and since she was already dating him, one day they went out and it happened, they lasted seven months of boyfriends, they "tied" in January and decided to have sex in May, at that time he wanted to get closer to his mother but she did not leave her, she always put a but, she told her now, I feel bad, I'm busy, I'm tired, with that relationship she looked for a little bit of happiness.»

Additionally, the Court noted:

«Erroneous interpretation of the qualified opinion of the experts who carried out the psycho-social study in the present case, on an emotional vulnerability, which has nothing to do with the adolescent's discernment to decide on her sexual freedom, being that on the contrary, it showed full discernment in the dating relationship she had with the accused, with which she felt full and happy.»

Corrects the Chamber in the following terms:

«For this reason, the Chamber warns that we are in the presence of the crime of carnal act with a particularly vulnerable victim, even if the relationship is consensual if said consent is not free, but violated or imposed. Since the breaking or manipulation of the will to decide on her sexual freedom is an impediment to full individual development of the human being. This specific aspect is what must be determined at the time of issuing an acquittal or conviction: that the consent of the sexual act has not been manipulated by the active subject in search of her sexual satisfaction.»

In this case, the formalism of considering that by being a few months older to consider the victim as especially vulnerable and by the way in which the opinion of the experts is discarded based on a supposed happy and consensual relationship is striking, all Under assumptions, they obviate the notable age difference of the alleged perpetrator and the manipulation that the victim may be subjected to precisely because of the family situation described by the experts, as well as because of their age.

2.1.7. Omission of criminal offenses by the judge due to his prejudices on what is sexual freedom (sentence N° 252 of 11/08/2019, appeal: conflict of jurisdiction, SCP)²⁴

The trial judge ruled out in this case that the facts (masturbation under threat in the framework of a robbery) were considered an attack on the victim's sexual freedom. The court of first instance considers that a subordinate affective relationship with the victim is necessary for a gender crime to be possible:

«(...) SECOND: After the exhaustive review of the minutes, this Court considers that we are in the presence of a crime of AGGRAVATED ROBBERY (...); In this sense, when we find ourselves holding this hearing (...) by declination of the Ninth (9th) Court in Ordinary Control Functions, and the accused being duly provided with public defense (sic) (...) consequently, analyzing the particular case is It is evident that the person who is detained and indicated as the alleged perpetrator of the punishable act, there is no affective relationship between them and there is no evidence of the relationship of subordination and discrimination of marras to the detriment of the victims (...) he declares INCOMPETENT to continue knowing of the present case (...) consequently agrees to raise the CONFLICT OF NOT KNOWING, before the common superior court, that is, the honorable Court of Appeals of the Carabobo State Criminal Judicial Circuit (...).»

SCP Criteria:

«In this sense, this Criminal Cassation Chamber is concerned about the increase in conflict procedures of not knowing before the existence of related crimes, among special ones contained in the catalog of the Special Law on Gender Violence and others, contemplated in other laws and codes, which are in contradiction with constitutional principles and guarantees, and the special and comprehensive protection of women, girls and adolescents contained in national and international legislation to eradicate violence against women, for which reason it exhorts the Judges and Criminal judges to comply with this obligation with a gender perspective, abandoning "... the traditional patterns of the

24 <http://historico.tsj.gob.ve/decisiones/scp/noviembre/308050-252-81119-2019-CC19-113.HTML>.

prevailing patriarchal and androcentric social system, of the beliefs, behaviors, roles, expectations and attributions that sustain said system as well as discrimination and violence against women in general, and faithfully adopt the special protection regime in favor of women, in favor of the social justice, because otherwise the physical and moral integrity of those who demand that special protection would be violated... ”(Sentence no. 486 dated May 24, 2010, of the Constitutional Chamber of the Supreme Court of Justice). This Chamber reiterates the knowledge of those matters by the Courts with Competence in matters of crimes of violence against women, established by the Constitutional Chamber of the Supreme Court of Justice, on crimes against girls, or whether boys and girls are involved. , and adolescents, or indigenous women, and human trafficking, contained in their order in binding rulings no. 449 dated May 19, 2010, no. 514 dated April 12, 2011, no. 1325 dated August 4, 2011, and no. 213 of June 6, 2017» (own emphasis).

The Chamber does not draw the attention of the court due to this ignorance, but rather is manifested by a general situation of declines of jurisdiction, and also makes general considerations about the patriarchal social system.

It should also be emphasized that it is the SCP itself that indicates that there is a tendency to avoid the jurisdiction of the courts against violence in the presence of other crimes, and this, in the best of cases, speaks of a lack of knowledge of the law on the part of the judges, as well as of the applicable criteria in matters of jurisdiction, where the only ones affected are the victims.

We reaffirm that the concept of male abuse of women as something private has a powerful ideological force in consciousness. Being considered as a private matter, we reaffirm it as an individual problem that involves only an intimate and particular relationship, which prevents the generation of social responsibility to find a legal solution.

2.1.8. Lack of diligence on the part of the Chamber in determining the types linked to a particularly vulnerable victim, especially when allusion is made to other protected legal rights (judgment N° 161 of 12/10/2020, appeal: 'avocamiento', SCP)²⁵

The Chamber says:

«On May 3, 2020, the citizen MAIKER GERMÁN BREINDEMBACH SALAS, holder of the identity card V-15.518.932, in the company of the citizens Raúl Alejandro Zerpa Silva, Inés María Páez Farfán, Adelfa Ron Farfán, and María Nohelia Ponce Caro, was apprehended for being involved in one of the crimes provided for in the Penal Code, "Against Good Customs and Good Family Order".»

It is understood that the arrest carried out by the police agencies was for a crime of the Penal Code and not of the special law, despite the fact that from the beginning the first judicial body that heard the case accepted the prequalification of:

«CARNAL ACT WITH ESPECIALLY VULNERABLE VICTIM foreseen and sanctioned in article 44 in its first section of the Organic Law on the Right of Women to a Life Free of Violence, in accordance with article 217 of the Organic Law for the Protection of Children, Girls and Adolescents and the crime of PORNOGRAPHIC EXHIBITION OF ADOLESCENTS foreseen and sanctioned in article 24 of the Special Law against computer crimes».

In this sense, we consider that the Chamber missed an opportunity to draw attention to the qualification of the facts by the police bodies, since even though it is not binding on the Public Ministry or the judge, it reveals a lack of knowledge of the legal figures associated with violence against women, a situation that is known, unfortunately, and is not exceptional.

25 <http://historico.tsj.gob.ve/decisiones/scp/diciembre/310971-161-101220-2020-A20-67.HTML>.

2.1.9. Use of expressions incompatible with gender violence. The victim's environment is not taken into account (judgment no. 542 of 08/03/2015, appeal, SCP)²⁶

In a case of adolescent sexual abuse in which a new trial is ordered for defects in the conduct of a hearing, the expression "secondary victimization" is used, which degrades the idea of victimization.

The Chamber states:

«Thus, the Chamber concludes that, in the present case, what is appropriate and in accordance with the law is to declare IN PLACE the cassation appeal filed by the defense representation and given the indeterminacy of the factual circumstances and responsibility of the defendant, it is a new debate on the facts is necessary, due to the requirement of immediacy and contradiction, which strictly respond to a criminal judicial process –in the trial phase– adjusted to the law. Consequently, the Chamber ORDERS the holding of a new trial and the issuance of a new sentence, which complies with the precise and detailed determination of the proven facts and the responsibility or not of the accused, in accordance with the provisions of article 459 of the Organic Code Criminal Procedure. So, it is decided.

The Chamber notes that in the holding of the new trial, the statement of the adolescent victim is pertinent and necessary, who in the investigation had to safeguard her right to be protected from the effects of secondary victimization, through her statement as evidence anticipated, subject to the contradiction of the parties.

This stems from the content of the Law for the Protection of Victims, Witnesses, and other procedural subjects, as an instrument that pursues the physical and emotional integrity of people who have been injured in the commission of crimes and who are primary victims, and furthermore, vulnerable due to their special condition, whether they are older adults, boys, girls and adolescents, persons subject to sexual abuse or domestic abuse, as well as preventing them from suffering from the secondary victimization that undergoing procedures derived from the persecution of the crime and that represent an impact on their general well-being, given the need for the historical-narrative reproduction of the events under investigation.»

26 <http://historico.tsj.gob.ve/decisiones/scp/agosto/180467-542-3815-2015-C14-496.HTML>.

The repeated use of the term "secondary victimization" four times throughout the ruling, puts in second place the damage that the justice system can cause in a victim and, therefore, diminishes her own responsibility. It is not minor damage that can be done by the person who has the responsibility of punishing the alleged perpetrator of the crime, and therefore the use of this term, which seeks to reduce the weight of the great responsibility that the Power has with the victim. Judicial, it must be objected to the extent that it is not consistent with the basic principles of victim protection cited in the decision itself.

2.1.10. Prejudices of the police officers (sentence N° 029 of 02/20/2017, appeal, SCP)²⁷

The Chamber expresses:

«Before verifying the admissibility of the appeal, this Chamber considers it prudent to bring up an aspect of the investigation that draws attention. This is the ninth question that was asked the victim at the time of filing the complaint at the Zaraza Sub-Delegation of the Scientific, Criminal and Criminal Investigations Corps: "NINTH QUESTION: Say, at the time of the events, did your person was a virgin? ANSWERED..."».

The Chamber's attention is drawn to the fact that this question was asked by "... THE RECEIVING OFFICIAL...", which is the way in which the person who signs the complaint is identified. In this regard, it is important to consider that a crime of sexual violence such as rape not only leaves physical but especially psychological consequences, which in the moments close to its perpetration can generate in the victim an emotional state whose approach requires knowledge and great prudence of the recipient of the attack. the complaint, who should be, preferably a woman.

That an adolescent victim of rape should report in an office in front of an unknown man, who also asks her "... if at the time of the events her person was a virgin ...", generates an unsuitable image for those who allege that they have just suffered such

27 <http://historico.tsj.gob.ve/decisiones/scp/febrero/196379-029-20217-2017-C16-251.HTML>.

inhuman act. Hence, the approach to those who report must be handled with discretion, in an environment where the privacy of the complainant is guaranteed and with an official trained to care for the victim, with the guarantees imposed by human dignity.

In addition to this, it would seem of little use to ask about the existence of sexual relations prior to the moment of the victimization, since this does not in any way aggravate or reduce the possible penalty that could be imposed on the aggressor, nor does it indicate how it could affect the investigation since the victim could lie about it, for religious or social reasons, being the task of the forensic doctor to give the investigator the elements that he requires to discover the truth.

Ultimately, the Criminal Cassation Chamber calls the auxiliary criminal investigation bodies to be prudent in handling cases like this one, where the human will be reduced to the designs of the active agent, for which care must be taken to the victim, in order to avoid that a case of double victimization could be generated. »

CICPC officials asked the victim if she was a virgin at the time of the events, with manifest impertinence and subsequent re-victimization. »

It is possible to observe the influence of a set of socio-cultural values and notions based on the inferiority of women that negatively affect the processing of their cases within the judicial systems, and influence the perception of the problem as not a priority (for example, it was not a virgin) and belonging to the private sphere.

These discriminatory socio-cultural patterns affect the actions of lawyers, prosecutors, judges, and officials of the administration of justice in general, as well as the police. The Convention of Belém do Pará and the Convention on the Elimination of All Forms of Discrimination against Women have affirmed the link that exists between violence against women and discrimination, and the way in which certain stereotypes and social and cultural practices, based on the concept that women are inferior to men, they can negatively influence the actions of public officials.

Another important element, in this case, is the procedural delay since the complaint about the punishable acts was made on November 26, 2005, while the decision on the appeal is dated February 20, 2017, that is, more than eleven years for closing a case, which is clearly unacceptable, in addition to a denial of justice and a violation of effective judicial protection.

- 2.2. That the sentence does not take into account the principle of the intersectionality of the victim, that is, of the coexistence of contextual elements that concurrently victimize women (poverty, belonging to an indigenous ethnic group, having a disability, power relations, etc.)

Lack of sensitivity towards the victim, lack of appreciation of intersectionality, of the seriousness of the events denounced, and omission of fundamental means of evidence (judgment N° 413 of 06/12/2015, appeal, SCP)²⁸

In a case where an adolescent girl denounces that since she was ten years old she has been abused by her father on different occasions and over time, the Court of Appeals dismisses the value of the expert evidence and the same saying of the victim, fundamentally based on in which some of the assertions of the latter could not be corroborated, ignoring that it was not a matter of a particular event but of a continuous series of abuses of which the testimony of the experts, also rejected, gave evidence.

To support its decision, the Court of Appeals stated:

«It should be noted that neither the technical reports nor the testimonials provided by the experts LUIS GUILLERMO PIÑANGO LEÓN, Psychiatrist, JHONNY ALEXIS MORENO GÓMEZ, Clinical Psychologist, XEIDA MORA DE LEÓN, Psychologist, KARELBYS MIQUILENA RUÍZ, Psychiatrist (...) elements arise that can be used to determine the criminal responsibility of the citizen (...) this criterion that this Appeal fully shares, inasmuch as taking into account as it was established ut supra that the expert does not know the facts that are the subject of the controversy but that obtains information from them through the examination or expert reports of objects or situations related to them, it is established that by the mere fact of having concluded that the adolescent victim at the time of the psychological tests that were carried out, presented post-stress

28 <http://historico.tsj.gob.ve/decisiones/scp/junio/178490-413-12615-2015-C14-293.HTML>.

syndrome traumatic, it should be noted that the sufficiency of the victim's statement, as evidence of the charge to disprove the presumption of and innocence requires that reasons that question its veracity do not concur, verifying that in the present case the affirmations of the adolescent victim during the development of the debate could not be corroborated.»

This is confirmed by the Chamber in the following terms:

«In this sense, the Court of Appeals found that the testimonies received during the trial were examined, appraised and confronted by the judge as part of his procedural activity in order to establish the legality of the defendant's acquittal, which resulted from the examination methodical and exhaustive of all the evidentiary means, which created a reasonable doubt in the judge regarding the participation of the accused in the particular case.

In this regard, the Criminal Cassation Chamber has repeatedly established that the motivation of a ruling implies stating the legal reason that serves as the basis for the judge to assume a certain resolution, through the study and evaluation of all the specific circumstances of the controversial case, as well as the evidentiary means that arise during the development of the criminal process; and the court of appeal, when ruling on an appeal, must control the factual and legal grounds presented by the court of the first instance, as part of the review work exercised by the court on the decision on which the claim is based appeal.

Duty of review that constitutes effective protection of the right to the presumption of innocence, when analyzing the rationality of the evaluation of the evidence made by the trial judge in the motivation of the sentence.

Therefore, the judgment under appeal provides the logical and legal arguments sufficient to guarantee the fundamental right to obtain from the judicial bodies a reasoned resolution founded in law, as well as to know the reasons that they adopted for the determination of the judgment, as provided in the articles 26 and 49 of the Constitution of the Bolivarian Republic of Venezuela.»

To confirm the decision of the Court of Appeals, the SCP takes a formalistic position in which the motivation must comply with the existence of «sufficient logical and legal arguments» without considering that the dismissal of the testimony of an adolescent victim traumatized by continued abuse cannot be precise in any detail, but it can be coherent, the latter being what the experts' reports showed. Hence, the lack of corroboration of a specific fact does not distort what the victim said and is not enough to dismiss her testimony.

Thus, Miranda Estrampes cites a ruling from the Spanish court to confirm the importance of the victim's testimony:

«It is common, for example, that the crime of rape produced by intimidation does not leave visible and external traces of violence that corroborate the version of the victim. Aware of this, the T.S. in a judgment of September 13, 1991, the victim's statement admitted the sufficiency even when there was no expert or other complementary evidence and provided, obviously, there are no reasons that question its veracity.»²⁹

Additionally, the cited judgments omit that even though the complaint revealed a continuing crime, such a situation is omitted and the facts are limited to specific situations that are later used to rule out due to some imprecision in the victim's testimony, without considering the global nature of the situation and the multiple elements of violence that the events involve, thus also rejecting the principle of intersectionality in this case.

2.2.2. Error in the classification of the crime by the court of instance. Omission of the situation of threat to the victim (intersectionality) (judgment N° 452 of 07/03/2015, appeal: conflict of jurisdiction, SCP)³⁰

Faced with a situation of violence by an official belonging to a police agency, the various elements of violence that this can generate in the victim are ignored (intersectionality) and that go beyond the fact or the specific threat that has been made. , since the patterns of impunity increase when the perpetrators are members of this type of public body.

29 Miranda Estrampes, Manuel (1997). Minimum evidentiary activity in criminal proceedings. Bosch. Barcelona p. 190.

30 <http://historico.tsj.gob.ve/decisiones/scp/julio/179164-452-3715-2015-CC15-12.HTML>.

Thus, the Court of Instance justified not hearing the case as follows:

«Being consummated for the last time in Apure state, ceasing the offense consummated in that same state, as is clear from the victim's statement, the forensic expert examination, among other considerations, which affect the minutes of the present case, where it is clearly evidenced that the victim citizen stated that she had consented to sexual contact on two (2) occasions but not desired, being in the APURE state, the place where the consummation of it ceased.»

The Chamber corrects the previous criterion, which denies the existence of a continuing crime, according to these arguments:

«Now, of the certified copies that were sent and that make up the file, the complaint made by the victim on July 29, 2014, is verified before the Office of the One Hundred and thirty-fourth of the Metropolitan Area of Caracas and the extension of the same carried out on August 22 (22), 2014, before the Eighty-Second National Prosecutor's Office with Competence in Defense for Women, verifying, according to what was stated, that he had unwanted sexual contact with the accused in the city of Maturín, Monagas state and Apure state, the latter place where he was also a victim of other events.

In this sense, the crime of SEXUAL VIOLENCE typified in article 43 of the Organic Law on the Right of Women to a Life Free of Violence, by which the representatives of the Public Ministry filed a formal accusation against citizen WILMER JOSÉ DESIDERIO RAMÍREZ, provides a penalty of ten to fifteen years in prison, a penalty that is higher than that provided for the crimes of SERIOUS INJURIES, typified in article 414 of the Penal Code, in relation to the crime of PHYSICAL VIOLENCE, typified in article 42 of the Law Organic Law on the Right of Women to a Life Free of Violence (three to six years in prison), and the crime of THREATS, provided for in 41 eiusdem (ten to twenty-two months in prison) for which the aforementioned is also being tried. citizen.

However, the Chamber observes that with respect to the first of the illicit crimes indicated and in accordance with the above, it was carried out in both jurisdictions (Monagas and Apure states) considering that it is in the presence of the alleged commission of a continuing crime since various actions were carried out in different jurisdictions, but which offend a single victim and violate the same criminal precept; being that the last known act materialized in the Apure state.

Consequently, since the crime of SEXUAL VIOLENCE has occurred continuously and the last act of its execution being verified in the jurisdiction of the Apure state, the competence for the knowledge of the process followed by the citizen WILMER JOSÉ DESIDERIO RAMÍREZ, corresponds to the Second Court of First Instance in Functions of Control, Hearing and Measures with Competence in Crimes of Violence against Women of the Criminal Judicial Circuit of the Apure State, by virtue of the provisions of article 58 (second part) of the Organic Code of Criminal Procedure. So, it is decided.»

Although the TSJ does not reaffirm the criterion of the Monagas court, this court certainly indicates that the crime is consummated and not continued (as in effect it was) and also admits that there were consensual sexual acts, omitting the threat status of the victim and the fact that the perpetrator was a CICPC official.

The naturalization or minimization of violence, the assignment of responsibilities to the victims, and the delegitimization of their statements constitute continuity of patriarchal standards in the justice administration system. Sexual consent is a gender-branded social phenomenon that contributes to male dominance.

The problem is that legal consent, which is based on individual freedom, cares little about the relationship of force between the contracting parties. As for intimidation, it involves the use of any form of psychic vision that leads the taxpayer to give in to the agent's purposes, «before the announcement or warning of an imminent and serious evil, rational and well-founded, capable of causing annulment of the defensive springs of the offended woman, seriously and sharply disturbing her volitional faculty.»³¹

31 <https://blog.portillaarnaiz.es/2018/04/el-delito-de-agresion-sexual-y-el-delito-de-abuso-sexual/>.

2.3. That the sentence commits serious violations of women's rights in such a way that it distorts the process and that it does not serve the purposes that the law imposes on it (re-victimization, judicial delay, omission of fundamental elements of the process, etc.)

2.3.1. Silence of evidence, omission by the higher courts of violations of due process, a formalistic perspective of the criminal process (judgment N° 051 of 02/10/2016, appeal, SCP)³²

In a case of sexual abuse of a girl, the prosecutor denounced the silence of the evidence, and although this was accredited by the Court of Appeals, it was dismissed because it did not sufficiently explain how that silence could affect the decision, that is, there was no initiative to the Chamber to intervene ex officio before accredited violations of the right to due process, which according to this criterion are the sole responsibility of the complainant of such vice.

In this sense, it is worth mentioning what the appellant said on appeal:

«The Court of Appeals only limited itself to establishing the existence of the defect [of] Immotivation, noting the following (...) the lack of evaluation of the following means of proof, of the FORENSIC PSYCHOLOGICAL RECOGNITION dated August 28, 2013, signed by Lic. Lisette Marcano Narváez, attached to the Corps of Scientific, Criminal and Criminal Investigations and LEGAL MEDICAL RECOGNITION No. 9700.159-1675 dated September 3, 2013, practiced by Dr. Gilmary Siritt, Forensic Physician attached to the Forensic Department of Porlamar of the Corps of Criminal and Criminal Scientific Investigations. It must be indicated that the silence of the test ". room:" We have already seen that there is a breakdown of a complaint with an invariable structure in which the authorizing precept and the infringed rules are mentioned, but the explanations shown are not determining factors, in addition to what this procedural act contains, such as an appeal, which, as has been said, must have arguments focused on exposing the shortcomings included in the ruling, specifying when, how and in what sense it has been infringed. the law that leads to its bankruptcy».

32 <http://historico.tsj.gob.ve/decisiones/scp/febrero/184930-051-10216-2016-C15-213.HTML>.

These contrasts, and greatly, with the ex officio actions that are constantly appreciated in courts when the State is the defendant, and even when it has not alleged a specific defect, the court proceeds to rule on them, under the excuse of defense of the law. Constitution, even if it is not the case. It is a double discourse of jurisdictional activity that in this case behaves as if it did not have procedural powers to intervene as a defender of constitutionality and human rights.

2.3.2. Error in the classification of the crime by the court of instance (judgment N° 179 of 06/11/2018, appeal, SCP) ³³

Despite the quite graphic description of the proven facts, the alleged perpetrator was not charged with rape but with lewd acts.

Facts established by the court of instance:

«He inserted his fingers into her vagina, pushing upwards and indicating her to push and cough; this type of act was carried out on five occasions, without the use of gloves».

The SCP confirms the qualification in the following terms:

«For the Criminal Cassation Chamber, it is necessary to clarify that the real or material competition, like the ideal competition, can occur under assumptions of homogeneous and heterogeneous competition. An interesting assumption resolved by jurisprudence occurs in the case of crimes against sexual freedom. In this sense, it has been resolved that in those cases in which the subject performs a plurality of touching, and/or penetrations, the homogeneous contest is updated».

The Chamber does not dispute the accusation and, in fact, indicates that it is possible that the type of lascivious acts with penetration could lead to the violations being punished with a much lower penalty. Let us remember that according to the law (article 44) rape is "an unwanted sexual contact that includes vaginal, anal or oral penetration, even though the introduction of objects of any kind by any of these routes", so the factual assumption is clear and perfectly applicable to the case, but it is striking that none of the intervening parties in the process objected to such an accusation, not even the Chamber, which leaves a gray area that could benefit the perpetrators.

33 <http://historico.tsj.gob.ve/decisiones/scp/junio/212103-179-11618-2018-C17-65.HTML>.

2.3.3. Serious violations of due process (police officer) (judgment N° 301 of 10/05/2018, appeal, SCP)³⁴

In a femicide trial where a CICPC official was accused, serious irregularities are committed that put into question the role of the judges who intervened in it, given the negligence, at least, in carrying out basic acts of the process, such as signing decisions, which were not carried out and which leave a lot to say about our Judicial Power.

The SCP says about it:

«This Chamber confirms that the record of the Preliminary Hearing, which refers to folio 225 of the third piece, was not signed by the Control Judge. Likewise, this Court confirms that on-page fifteen (15), of the separate appeal notebook of the present case, there is an Order of Admission of the Appeal of Judgment with Suspensory Effect, which is not signed by the judges Dra. Gilda Mata Cariaco and Dra. Sandra Yurisma Avilez (Judge Speaker).

In the same way, it was observed that it shines to folio thirty-six (36) of the aforementioned procedural pieces, Record of Oral Hearing of Judgment Appeal, which was not signed by the judges Dr. Gilda Mata Cariaco and Dr. Sandra Yurisma Avilez (Judge-Rapporteur).»

Despite these serious procedural errors, from which the doubt arises as to whether the non-signatories simply did not do so due to carelessness or for other extra-legal reasons, it is not ordered to notify the disciplinary bodies of the Judicial Power, and the nullity decreed by the Room is based on the lack of notification.

Thus, the fact that unsigned decisions reach the Criminal Cassation Chamber shows the seriousness of the situation of the courts in the country.

2.3.4. Error in the evaluation of the tests. (Judgment N° 351 of 11/26/2018, appeal, SCP)³⁵

We will summarize the vice declared by the Chamber as an abuse of the «cut and paste» resource.

34 <http://historico.tsj.gob.ve/decisiones/scp/octubre/302082-301-291018-2018-C18-222.HTML>

35 <http://historico.tsj.gob.ve/decisiones/scp/noviembre/302643-351-261118-2018-C18-133.HTML>.

The Chamber says:

«Precisely in relation to the reasoning required for the proper substantiation of the evidentiary assessment, in the section of the sentence published by the Court of Merit, related to the "DOCUMENTARY AND OTHER MEANS OF EVIDENCE" mentions among its arguments to reject the probative value of some of the aforementioned media the following: "... this Court does not give probative value to this documentary since, during the debate, no testimonial or documentary evidence was presented to determine the procedure used for the collection of the evidence described ..." to continue in the same vein with other means of evidence admitted as documentary, at the legal opportunity, indicated the following "... however, during the debate, no documentary or testimonial evidence was presented to demonstrate the procedure used to collect the samples of appendixes. drivers of the defendant of the cars described in the present expert opinion, and even less was evidenced if the due constitutional and legal guarantees that assist the accused of this type of procedure were met; for these reasons, it is not valued as evidence against the accused..."».

The argument that was concurrent and grammatically similar to reject the 37 means of evidence admitted as a documentary, in this case, even anticipating the dismissal of some of these evidentiary means on the occasion of the "non-corroboration with other elements of evidence," which were similarly rejected and previously by the nullifier, thereby incurring a circular argument, in addition to disregarding the principle of unity and the need for proof.

Now, the author Ignacio Colomer Hernández in relation to the requirement of justification of the sentences indicates that "... [t] he judicial bodies are, in effect, subject to the constitutional duty to motivate the resolutions they issue, that is to indicate which or what are the legal norms applicable to the alleged debated and the interpretation of the same that leads, logically, to the meaning of the judgment pronounced "(The Motivation of the Sentences:

Their Constitutional and Legal Requirements, Department of Criminal, Procedural and History Law, Editorial Tirant Lo Blanch, Valencia, 2003.)

In this sense, to this Criminal Cassation Chamber, the absence in the jurisdictional discourse of the scrutinized sentence is clear, the reasoning expressed by the jurisperit, of why he considered rejecting the probative value of the aforementioned means of demonstrative claims, briefly alluding to the non-conformity with the adjective criminal regulations, without expressing because it considers that what is stated by the evidence bodies does not conform to the provisions of the criminal procedural law, as was its duty.

In relation to the aforementioned dismissal of probative value by the First Trial Court of the Criminal Judicial Circuit of the State of Zulia, Santa Bárbara extension, it is disturbing and unavoidable for this Chamber, to observe how other means of evidence were applied a treatment arbitrarily analogous to that explained in previous sections, since the rejection of the probative value is enforced in affirmations not supported by the reasons that motivate them, and worse still, other means of demonstrative claims are ignored, alluding to what Aristotelian logic calls affirmations of circular reasoning -those that try to include the conclusion that is intended to prove as part of the premises- contributing to the fact that the process emptied of content, and therefore the contradictory principle degenerates to its smallest expression, which is none other than the merely symbolic, deriving such error from the jurisdictional activity to a point of distortion according to which the principles and the law could be respected but not fulfilled.»

Although the Chamber ex officio annuls the decision, it is striking that repeating the same thirty-seven times to reject evidence is not enough for the SCP to refer the decision to the judicial disciplinary bodies.

Equally serious is to note that the femicide that gave rise to the trial occurred on July 17, 2010, which makes the classification is for homicide since it occurred before the reform of the law that created the aforementioned type, and the decision that replaces the case for a new trial is from 2018, which shows a manifest violation of the right to effective judicial protection and a judicial delay that goes against the interests of justice.

2.3.5. Omission of fundamental means of evidence. Violation of due process (judgment N° 69 of 04/12/2019, appeal, SCP)³⁶

In a case of sexual abuse of a girl, forensic reports ordered by a court to protect the victim were not taken into account. Nor was another made to the alleged perpetrator, nor was the statement to the victim taken into account. The elements of evidence presented by the representative of the victim's father were also ignored, and all this without a clear and logical motivation as to why that decision was made.

To this end, the Chamber stated the following:

«Hence, it is undeniable that the contested decision in cassation also contains an incongruous argument, since the aforementioned Chamber Eight of the Court of Appeals gave an answer that was in no way related to the appellant's complaint that:“(...) The Judge of the appealed judgment silenced the brief dated December 13, 2017, and its 45 annexes, in which I requested not to accept the request for dismissal of the Provisional Prosecutor, and requested the referral of the proceedings to the Superior Prosecutor of the Ministry Public to complete all the means of proof required by the Law (...)”, since it was limited to wielding a reasoning allusive to the legal opportunity in which the procedural acts must be dictated” or in its absence consigned”, in the understanding that the judge as director of the process issues the corresponding decision based on “sound criticism, the maxims of experience and rules of logic”, and based on this conclude that in the opportunity in which the appellant attorney promoted the evidence “(...) it is not adequate for a Court of Instance to issue a ruling in this regard (...)”, in addition to the fact that “(...) it did not indicate the usefulness, relevance and necessity of the evidence (...).»

The massive dismissal of evidence against the defendant is worrying, that this is not a unique event and that said decision was made practically without motivation, leaves a judge in evidence, in the best of cases, without due diligence in his justification work for their decisions.

36 <http://historico.tsj.gob.ve/decisiones/scp/abril/304526-069-12419-2019-C18-194.HTML>.

2.3.6. Absence of specialized courts and attribution of courts only due to their geographical proximity (judgment N° 103 of 06/10/2019, appeal, SCP)³⁷

In the absence of courts specialized in violence against women in certain districts, the Chamber determines which ones should hear these causes:

«... [!] n the cases in the process not decided, inattention to articles 26, 49 and 257 of the Basic Text, which, in an exceptional, exclusive and exclusive way, in those municipalities where there are no Control, Hearings and Measures Courts with jurisdiction in crimes of Violence Against Women and an investigation is initiated for the commission of any crime provided for in the Organic Law on the Right of Women to a Life Free of Violence, the hearing of the case will correspond, exceptionally to the Court of Municipal Control of the locality, who will know and substantiate the process that takes place according to the special procedure provided for in the Law that governs the matter until the intermediate phase of the process...”..

From the aforementioned sentence, it is evident that the Constitutional Chamber reached such a decision considering that the Municipal Control Courts can be considered as the closest to the communities and with the understanding that victims of gender violence deserve intimate treatment, Immediate and specialized From the aforementioned sentence, it is evident that the Constitutional Chamber reached such a decision considering that the Municipal Control Courts can be considered as the closest to the communities and with the understanding that victims of gender violence deserve an intimate, immediate and specialized treatment» (bold type of the text).

Given that the decision is from 2019, it is striking that after twelve years of issuing the Organic Law on the Right of Women to a Life Free of Violence, which created these specialized courts, the Venezuelan State has not been able to establish them in all judicial districts, a situation that continues to this day, two years later.

37 <http://historico.tsj.gob.ve/decisiones/scp/junio/305441-103-10619-2019-CC19-87.HTML>.

At the same time, in addition, a counterproductive social imaginary arises, regarding the fact that the crimes contemplated in the Organic Law on the Right of Women to a Life Free of Violence, are not so important as they are judicially known by competent courts in the processes of less serious crimes. Social imaginaries can be considered true "matrices of meaning" constituting the basis of the "minimum ideational common denominator that unites all social groups."³⁸

That said, it is also incongruous to give jurisdiction to ordinary municipal criminal courts since gender violence deserves "intimate, immediate and specialized" treatment. In this sense, we highlight the first and last terms, since it is not understood, nor does the Chamber explain it, what this intimate treatment to which it alludes is about and which apparently is given simply by the supposed geographical proximity. Now, what does this geographical proximity has to do with an "intimate" relationship is a doubt that we believe is difficult to resolve.

Finally, and no less important than the above, is the incoherence of calling courts specialized, which precisely are not, because specialized are the courts that the law ordered to create and that fourteen years later still do not exist in various parts of the country.

38 Baeza, M.A. (2008) "Real world, imaginary social world. Theory and practice of deep sociology," Santiago: RIL editors.

3

Judgments that establish binding criteria regarding violence against women

Given that, as we were able to appreciate in the previous section, it is the Constitutional Chamber (SC by its Spanish name), instead of the SCP that establishes most of the binding criteria in the matter of violence against women, a brief list of the sentences of this, in which there are criteria for the application of the norms for the protection of women that do not appear in the literal sense of the law, in some progressively and in others in the opposite direction.

In the positive sense, to mention a few, we have the decision that allows the evacuation as advance evidence of statements of children and adolescents, in order to avoid re-victimization, as well as the possibility that the victims may present their own private accusation in certain circumstances or the invalidity of the article of the Penal Code that alluded to the «honesty» of women.

On the contrary, a negative aspect is that specialized courts in the matter were created more than a decade after the entry into force of the law and, furthermore, these do not exist in all the country's constituencies, which is why that jurisdiction to other courts that do not have the corresponding specialty. This shows that, despite the communication campaigns saying otherwise, this area has not been a priority for the judicial authorities. Likewise, it is an example of institutional violence on gender issues, the case of a request for correction of identity due to gender change that after seventeen years still does not have a decision, in flagrant violation of the right to effective judicial protection.

However, as the analysis of the judicial decisions was made under the format of case law files, which include extracts from the judgments, if they were copied in this report, it would be too long. For this reason, we decided to include only the titles that identify the main subject of the ruling, and in the event that the reader wants to know its content, the hyperlink is included in the title that will take them to the Access to Justice page with the corresponding content. Next, the list of the most relevant decisions found on the matter:

- 3.1. Exceptional jurisdiction in crimes of violence against women of the municipal courts of the first instance in the function of control.³⁹
- 3.2. The statement of children and/or adolescents in the criminal process, either as victims or witnesses, may be taken as early evidence to avoid their re-victimization (binding sentence).⁴⁰

39 <https://accesoaljusticia.org/competencia-excepcional-en-delitos-violencia-contra-la-mujer-de-los-juzgados-primera-instancia-municipal-control/>.

40 <https://accesoaljusticia.org/declaracion-de-ninos-y-adolescentes-en-el-proceso-penal-como-victimas-o-testigos-tomada-como-prueba-anticipada/>.

- 3.3. Binding sentence on the number of precautionary and protection measures that can be imposed in the procedure on crimes of violence against women.⁴¹
- 3.4. Judgment of the SC that declares that the judges specialized in crimes of violence against women will be aware of the crime of trafficking in persons when the passive subjects of the crime are women, girls, boys, and adolescents.⁴²
- 3.5. On the so-called suspensive effect in the case of decisions ordering the release of detainees when they are appealed and the exceptions to the principle of trial in freedom.⁴³
- 3.6. Before the imputation of any of the crimes whose competence corresponds to the judges specialized in violence against women, even if it concurs with the imputation of crimes whose competence corresponds to the ordinary criminal judges, the competence of the case will correspond to the former.⁴⁴
- 3.7. Binding sentence on the prohibition of granting procedural benefits in some crimes of violence against women.⁴⁵
- 3.8. Binding sentence that establishes the possibility that the victim presents his own private accusation, regardless of the Public Ministry in cases for less serious crimes.⁴⁶
- 3.9. Admission of the facts by the accused in court before the receipt of evidence.⁴⁷
- 3.10. Due to «judicial notoriety», the SC partially annulled the second section of article 393 of the Penal Code, with regard to the expression if she is single or widowed and, in any case, «honest», for colliding with article 61 of the Constitution.⁴⁸

41 <https://accesoalajusticia.org/medidas-cautelares-y-de-proteccion-en-procedimiento-sobre-delitos-de-violencia-contra-la-mujer/>.

42 <https://accesoalajusticia.org/juez-competente-delito-de-violencia-contra-la-mujer-conocera-del-delito-de-trata-de-personas-si-sujeto-pasivo-es-mujer-nino/>.

43 <https://accesoalajusticia.org/sobre-las-medidas-cautelares-y-de-proteccion-procedimiento-violencia-contra-la-mujer/>.

44 <https://accesoalajusticia.org/prevalece-competencia-juez-en-materia-de-violencia-contra-la-mujer-asi-concurra-en-la-imputacion-un-delito-competencia-juez-ordinario/>.

45 <https://accesoalajusticia.org/prohibicion-de-otorgamiento-de-beneficios-procesales-en-algunos-delitos-de-genero/>.

46 <https://accesoalajusticia.org/la-victima-puede-presentar-acusacion-particular-con-prescendencia-del-ministerio-publico-en-delitos-menos-graves/>.

47 <https://accesoalajusticia.org/extension-de-la-oportunidad-para-admitir-los-hechos-en-casos-de-violencia-de-genero/>.

48 <https://accesoalajusticia.org/nulidad-parcial-segundo-aparte-del-393-del-codigo-penal-si-fuere-soltera-o-viuda-y-en-todo-caso-honesta-por-colidir-con-el-art/>.

- 3.11. The criminal judge ex officio or at the request of a party, may exceptionally and under a duly motivated order, request the participation of the multidisciplinary team assigned to the Courts for the Protection of Children and Adolescents of the Judicial District (or any other body with competence to it).⁴⁹
- 3.12. Before a request for correction of identity due to gender change, the ideal means to protect such a claim is an unnamed action for the protection of fundamental rights, not habeas data attempted by the plaintiff.⁵⁰
- 3.13. SC ruling that interprets *flagrante delicto* in gender crimes.⁵¹
- 3.14. Judgment that establishes that judges, in matters of gender, must abandon the prejudices of the patriarchal social system and faithfully adopt the special protection regime in favor of women.⁵²
- 3.15. The order to open the trial, which includes, among other aspects, the total or partial admission of the accusation, the admission of the evidence offered by the parties, as well as the resolution of the exceptions, is not susceptible of being challenged.⁵³
- 3.16. Judgment of the SC according to which the judges who hear crimes of violence against women must be careful when decreeing absolute nullities, to avoid that said crimes go unpunished, as well as the fact that the victim may be subjected again to face related facts with his physical and mental integrity of her.⁵⁴

49 <https://accesoalajusticia.org/el-juez-penal-podra-solicitar-la-participacion-del-equipo-multidisciplinario-adscrito-a-los-tribunales-de-proteccion/>

50 <https://accesoalajusticia.org/derecho-a-la-identidad-por-cambio-en-su-condicion-humana/>.

51 <https://accesoalajusticia.org/interpretacion-de-la-flagrancia-en-los-delitos-de-genero/>.

52 <https://accesoalajusticia.org/jueces-deben-abandonar-los-tradicionales-esquemas-del-sistema-social-patriarcal-y-androcentrico-imperante-y-adoptar-fielmente-el-regimen-es/>.

53 <https://accesoalajusticia.org/jueces-competencia-violencia-contra-la-mujer-deben-instruir-los-procesos-penales-demostrar-la-comision-del-hecho-punible-asi-como-la-responsabilidad-penal/>.

54 <https://accesoalajusticia.org/jueces-delitos-de-violencia-contra-la-mujer-deben-ser-cuidadosos-al-decretar-nulidades-absolutas/>.

4

Best practices on violence against women

Based on Latin American comparative law, as it is the closest and with realities more similar to that of Venezuela, as well as 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 prosecution of facts related to violence against women.

It is not about establishing comparisons and ranges of successes between neighboring countries, but learning from the paths traveled by others, because for example, a common element among the different contributions that we are going to point out is the use of international standards in the matter, the application of criteria established in judgments of the Inter-American Court that indicate the way forward, or the application of concepts derived from international treaties such as intersectionality. None of the foregoing is evident in the judgments of our country that is the object of this study, where the way in which each case is treated does not differ practically at all from any other crime, which calls into question the suitability of the specialized training they require. judges on violence against women.

That it is said then that in a sentence of our country the intersectionality criterion is not applied, nor are the power relations existing in the investigated facts, or the social or cultural prejudices of a case is simply to describe a constant in the sentences analyzed, including those of the Supreme Court of Justice in the two Chambers studied.

Hence, then, we consider it pertinent to bring to our environment good practices from other countries that allow us to see the complexity of the reality of violence against women and that goes far beyond the establishment of a typical criminal offense, and begins with the understanding of the social context, the conditions that exist on women, such as poverty, lack of formal education, race, age or disability, all of which generally do not occur once in a case, but on the contrary, they converge at the same time in the situations known to the judiciary.

Nothing that is appreciated in the decisions of the Venezuelan judges that we have read, and therefore, that any operator of the Venezuelan justice can have access to these good practices, would already be a reason to celebrate the efforts of those who made this document.

Likewise, for reasons of space, we will only highlight in each cited document those elements that we consider relevant to the Venezuelan reality, but always making the exception that for the interested reader the links are incorporated to download these writings and thus have full access to the experiences and recommendations. from each of the sources cited.

4.1. Protocol to judge with a gender perspective (Mexico, 2020)⁵⁵

The protocol is a very complete document and only published last year, so that it summarizes very recent experiences in that country and that, in addition, has the endorsement of the Mexican Supreme Court of Justice.

This publication consists of three chapters, the first dedicated to the basic concepts of gender and justice, the second includes a very detailed study of the gender perspective given by the Inter-American Court of Human Rights, as well as the criteria that for this purpose it has given the Supreme Court of Justice, and finally, the third chapter where a “guide to judge with a gender perspective is given.”

Regarding the latter, the section called “How to do gender stereotypes and prejudices impact when assessing the facts and evaluating the evidence?” Developed from page 177. This is due to the fact that Cases analyzed by the Inter-American Court are mentioned, such as other countries such as Canada and Mexico itself, establishing that it is perfectly possible to bring international standards into domestic law.

In particular, in this section the following elements are analyzed:

- a. Cases in which a fact or evidence that is not relevant is considered relevant, based on a gender stereotype or prejudice.
- b. Cases in which certain tests are given or downplayed, based on a preconceived idea about gender.
- c. Cases in which only the evidence that confirms the stereotyped or prejudiced idea is taken into account, ignoring those that contradict it.
- d. Cases in which, based on a gender stereotype or prejudice, relevance is given to a fact that is irrelevant for the resolution of the controversy.

55 <https://amij.org.mx/wp-content/uploads/2020/11/Protocolo-para-juzgar-con-perspectiva-de-g%C3%A9nero-191120.pdf>

- e. Cases in which, due to a stereotypical view of gender, the differentiated impact that it can cause goes unnoticed that category.
- f. Assumptions in which a gender stereotype or prejudice is used as a maximum of experience to take a fact for granted.

All these considerations have enormous significance insofar as they imply studying precisely one of the basic elements of any judgment, namely, the influence that prejudices and stereotypes have on the analysis and assessment of the evidence the operator of justice, and therefore the greatest value of this study is that it starts from concrete facts where it can be seen how they should be taken into account in order to achieve a process consistent with the justice that women demand at this time.

4.2. Protocol to judge with a gender perspective (Bolivia, 2017)⁵⁶

We bring up this publication of the Gender Committee of the Judicial Organ of the plurinational State of Bolivia because it comes from a country with a government ideologically close to the Venezuelan, and despite this, it includes in its analysis the judging criteria given both by the universal system as well as by the Inter-American for the purposes of being followed by the Bolivian courts, showing that ideology should not be an obstacle to the fulfillment of human rights, nor the following of criteria of international organizations in defense of these.

However, from the extensive analysis that the document carries out from this perspective, we want to highlight the one under the title "How to judge from a gender perspective?" (p. 151 and following) and in particular when it deals with what is related to a practical argumentative scheme to study a specific case and which we will now quote:

56 <https://tsj.bo/wp-content/uploads/2021/03/Protocolo-de-Genero.pdf>

Table #1

<p>Identification of the legal problem to be solved</p>	<ul style="list-style-type: none"> • Identify if women or people with diverse sexual orientation and gender identity are involved • The context of the case is analyzed
<p>Identification of the applicable legal norm or norms and analysis</p>	<ul style="list-style-type: none"> • Relevance issues • Interpretive arguments • Weighting arguments • Application of the equality test and not discrimination from a gender perspective • Analysis of the existence of structural or intersectional discrimination
<p>Fact-Finding: Analysis of the case</p>	<ul style="list-style-type: none"> • Assessment of the evidence • Legal qualification of the fact • Verification of its compatibility with the constitutionality framework. • Analysis of stereotypes and relationships of subordination or structural inequality
<p>Decision</p>	<ul style="list-style-type: none"> • Clear definition of the case • Foresighted and consequentialist interpretation • Repair

This simple scheme allows us to analyze the presence or absence of arguments necessary for a judgment with a gender perspective, and any of them that are not reflected in the decision would imply a lack of knowledge of said perspective.

Finally, we would like to cite a case study (pp. 160-161) that is put into the document, and that precisely because it seems to be civil law, shows the implications that even in such situations a gender perspective has:

«Juana, an elderly woman, files a demand for recognition of the best owner's right regarding the ABC property against Alberto, arguing that said property is registered in Royal Law in her name and that of her minor grandchildren who are in her custody. because his mother and father died; However, Alberto, in frank ignorance of his proprietary right, argues that both he and his mother

and father previously lived in that place, without having any title that supports that possession, so protected in arts. 105 and 1538 of the CC, among other norms, requests that the claim and the dispossession of the real estate be declared proven.

Note that the example given corresponds to a civil process, in which, as explained in this document, a gender perspective must also be adopted; In addition, in the case, not only should the applicant's status as a woman be considered, but also the constitutional protection and the norms of the constitutionality block for the elderly and, additionally, who is in charge of their grandchildren, who also enjoy enhanced protection in the constitutional text. The clear identification of the legal problem already allows having an initial mapping of the issues that the jurisdictional authority must resolve, who should not limit itself to analyzing the Civil Code norms but must resort to the standards to judge with a gender perspective, as well as the constitutional and international protection of the elderly and of girls, boys, and teenagers. As it is noted, from the legal problem, the jurisdictional authority sets out the issues that will be developed, which evidently serves as a guide for the argumentation that it will develop and that undoubtedly has numerous advantages in order of coherence, clarity, and easy understanding for the defendant. »

This case shows that an apparently simple claim for real estate has other aspects that require the consideration of the justice operator and that therefore require that the scope of its protection, in the exercise of effective judicial protection, goes beyond the mere declaration of who is the legitimate owner of the property, to the extent that a manifestation of violence is clearly perceived, as well as the need for protection by the subjects already mentioned in the appointment.

This shows how the attitude and sensitivity of the judge in the case cannot be the same as common law, but rather that the analysis of the context is essential for the exercise of truly effective judicial protection for women.

4.3. Latin American protocol model for the investigation of violent deaths of women due to gender (femicide/feminicide) (OHCHR⁵⁷ *et alia*, 2014)⁵⁸

This very interesting document establishes international standards for the treatment of violent deaths by both police and judicial authorities and has an extensive repertoire of useful tools for this purpose.

Therefore, we will only highlight the point related to the “Strategic objectives of the investigation of femicides” (p. 37 et seq.), which are identified as follows:

«Identificar las conductas que causaron la muerte y otros daños o sufrimientos físicos, psicológicos o sexuales a la mujer (ante o post mortem).

Verify the presence or absence of gender motives or reasons that originate or explain the violent death of the woman by identifying in particular:

- *the context of death,*
- *the circumstances of death and the disposition of the body,*
- *the history of violence between the victim and the perpetrator,*
- *the modus operandi and the type of violations used before and post mortem,*
- *of the family, intimacy, interpersonal, community, work, educational, or health relationships that link the victim and the perpetrator/s,*
- *the risk or vulnerability situation of the victim at the time of death,*
- *of the existing inequalities of power between the victim and the perpetrator/s.*

Clarify the degree of responsibility of the active subject (or the active subjects) of the crime, investigating if the perpetrator was an individual or a group if he is or has been a public official, or if he is a private person who acts with acquiescence, tolerance or collusion of state agents.

57 Oficina del Alto Comisionado para los Derechos Humanos de Naciones Unidas.

58 <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2014/modelo%20de%20protocolo.ashx?la=es>

Promote the participation of indirect victims, family members, and survivors in the process of judicial clarification of the truth about the facts."

The aforementioned elements seem so far removed from the Venezuelan reality, among other aspects, with regard to indirect victims and analysis of the victim's context, which is precisely why they are relevant to our study.

4.4 Guide for the systematic and computerized application of the “Model of incorporation of the gender perspective in Sentences” (Ibero-American judicial Summit, 2015)⁵⁹

This document consists, in addition to some basic criteria in matters of gender judging, of a series of matrices, files and checklists that can help the judicial operator take into account all the elements that must be considered in a case of violence against women, in such a way that the final decision is the result of a structured series of reasoning aimed at the protection of women.

Among the tools contained in the document are the following:

- Matrix of gender categories.
- Consolidated checklist - navigation chart.
- Checklist for deciding cases with a gender perspective in judicial decisions.
- Sheet of the indicator application of the gender perspective.
- Sheet of the indicator of effectiveness in the use of gender perspective criteria.
- Sheet of the indicator use of criteria applicable to the perspective of Gender.
- Sheet of the statistical indicator of application of the criteria of the Verification list.
- Sheet of the indicator for the use of categories applicable to the gender perspective.
- Sheet of the indicator of use of jurisdictions in cases applicable to the Gender Perspective.

59 <http://www.cumbrejudicial.org/productos/97-edicion-xviii-2014-2016/915-guia-para-la-aplicacion-sistematica-e-informatica-del-modelo-de-incorporacion-de-la-perspectiva-de-genero-en-las-sentencias>

Of the aforementioned documents, we must highlight the “Checklist for deciding cases with a gender perspective in judicial decisions.” We highlight it because it covers the elements that must be found before, during and after the judicial process. Thus, for example, we go on to cite the concepts that the operator has to keep in mind prior to the process and with respect to the subjects:

1. Regarding questions prior to the process

1.1 Analyze the admissibility of the cases in accordance with the postulates of the gender perspective and the control of conventionality.

1.2 Check if special protection measures are appropriate.

2. Regarding the subjects involved.

2.1 Identify the existence of an unbalanced power relationship and the person who is in a situation of vulnerability or formal, material and / or structural inequality.

2.2 Apply strict scrutiny to suspicious categories such as race, ethnicity, language, religion, political or philosophical opinion, sex, gender and / or sexual preference/orientation.

2.3 Pay particular attention to cases where two suspicious categories converge, such as sex and race with conditions of poverty, street situation, migration, disability, victims of armed conflict and deprivation of liberty.

2.4 Review situations of stereotypes or manifestations of sexism in the process.

2.5 Identify characteristics of double discrimination because it is a case of Intersectionality. »

4.5. Model for incorporating the gender perspective in judgments (Permanent Commission on Gender and Access to Justice Ibero-American Judicial Summit, 2018)⁶⁰

From this model, which contains many elements in common with the previous documents, we would like to highlight what is related to a practically unprecedented issue in Venezuelan justice, such as the reparation of damage.

60 <https://observatoriodegenero.poder-judicial.go.cr/images/Biblioteca/Otros/modelo-incorporacion-perspectiva-de-genero-en-sentencias.pdf>

This is fundamental because, in our country, judicial decisions focus exclusively on punishment without incorporating an element of reparation. What is related to reparation is not a proposal or an innovation, but an established international standard so that its inclusion is not at the discretion of the state. In the same way, 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 to the victims, so it is a task pending in the training of professionals and organizations related to the issue to include it so that it is a permanent presence of the matters to be decided by the court.

For this reason, we will quote what is stated in this text on this fundamental topic:

"Repair of the damage

- *Does the damage caused generate a differentiated impact based on the sex, gender, sexual preference, or orientation of the person involved?*
- *What kinds of reparation measures take care of this differentiated impact?*
- *If asymmetric power relations and conditions of structural inequality were detected, what are the measures that sentences can adopt to reverse said asymmetries and inequalities?*
- *Is the reparation measure based on a stereotypical or sexist conception of the person in question?*
- *Based on the damage caused, the sex, gender, and sexual preferences/orientation of the victim, what are the most appropriate measures to repair the damage?*
- *In defining the reparation measures, was the victims will take into account?*
- *What was the impact of the damage on the victim's family, work, and community roles and responsibilities? If it is negative, how can this impact be corrected?*
- *Was there "collective damage"? Is it possible to repair it?*

- *Is it a case where the damage was caused by belonging to a certain group?*
- *Does the repair cover all the damages detected? »*

This issue is particularly important in cases of systematic and structural abuse, where the conviction of an individual does little to prevent the continuation of a culture of violence and impunity, so the judiciary must bear this in mind to impose on the institutions public or private the obligation to take compensatory measures that avoid the repetition of the damage and serve as protection for especially vulnerable populations.

5


Conclusions


1. In Venezuela, the normative evolution regarding violence against women has been not only slow but also prey of perceptions that have prevented seeing the transversely 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 law or by civil society.
2. The non-existence of statistics on violence against women, carried out systematically and with the appropriate methodology, puts the foregoing in evidence, as well as the non-existence of public policies, since without information it is not possible to make a truthful diagnosis of the situation and public policy planning. The fact that there is still a dependence on data collected by organized civil society organizations is the clearest proof of this situation.
3. In the judgments analyzed by the Criminal Cassation Chamber (SCP by its Spanish name), an excess of formalism and handling of violence against women is revealed 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.
4. What has been said makes it clear that, except in cases where there are girls and adolescents, the rest of 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 requiring any urgency of action, resolution or measures to address it.
5. It was observed that the SCP 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.
6. It was found that, repeatedly, there is an erroneous evaluation of evidence, especially in cases of girls and adolescents, in which even if there are ongoing crimes, a precision was required that does not correspond to the reality of this type of crime. crimes, and because it was also observed how psychiatric and psychological evaluations were discarded with empty arguments and from prejudice.

7. The fact that cases of more than 10 years were found without a final sentence, and even some in which the replacement implied the beginning of the trial after years, shows that solving the procedural delay is not a priority, even simple processes such as the Jurisdiction disputes can last for years.
8. The determination of the SCP itself that there is a high number of conflicts of jurisdiction indicates that there may be insufficient training of judges on the criteria of competence or that they do not want to hear about this type of case and declare themselves incompetent not to serve them; in fact, the use of simple prejudices and arguments without legal basis was found to be considered incompetent, in violation of due process and effective judicial protection.
9. Another manifestation of the SCP's formalism in the appeals before it is that, by rejecting appeals because they are poorly argued, there is a total lack of initiative to investigate ex officio the factual elements of the complaints, especially when they are related to serious violations of due process such as the silence of evidence or the grounds for sentencing.
10. There is a serious breach of the duty to protect the human rights of the Venezuelan State and in particular the judiciary, the fact that more than 14 years after the approval of the LOSDMVLV there are still constituencies that do not have specialized courts.
11. The fact that sentences have been found in which the participation of a police officer is an alleged perpetrator and that said processes are full of serious irregularities such as lack of signatures of the decisions or the change in the classification of the crime to benefit them, highlights the absence of an independent judiciary and free from pressure.
12. It is worrying that, although the SCP has corrected several serious irregularities in the court decisions, at least the body of the sentences does not record that these cases are referred to the competent disciplinary bodies.
13. One of the most surprising findings of the study is the almost total absence of criteria on the part of the SCP that complement or interpret the norms of violence against women, and that such a role has been assumed by the Constitutional Chamber, although this has not been implied, unfortunately, better justice.

14. The comparison between the best practices in the environment of Latin American countries, made us verify the enormous distance, even in those cases of governments similar to Venezuela, in the application of prosecution criteria in matters of gender, and therefore the urgent There is a need for international standards, which must be applied by Venezuela due to the international instruments it has signed on the matter, to be immediately applicable.
15. 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 on the matter, the debt of the Venezuelan State with women not only exists but also tends to increase. increase to the detriment of its integrity.

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