



Acceso a la
Justicia

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EXECUTIVE SUMMARY

Myths and realities of violence against women in Venezuela:

story of another failure of the Judiciary (2018- 2022)

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In collaboration with 

INTRODUCTION

1. More than a year after Acceso a la Justicia published the second edition of its book *Mitos y realidades de la violencia contra la mujer en Venezuela: historia de otro fracaso del Poder Judicial*, which analyzed the rulings of the Criminal Cassation Chamber (SCP) of the Supreme Court of Justice (TSJ) corresponding to the period 2018-2020, as well as the most relevant of the Constitutional Chamber (SC) on the matter, an update was made. The same refers to the analysis of both Chambers's sentences in 2018-2022.
2. With this update, we document judicial action in the face of violence against women as a way of exposing the reality of their access to justice in a context of complex humanitarian emergency and generalized violation of human rights, as is the Venezuelan context, where women are affected in a differentiated manner.
3. The estimate by civil society of the occurrence of 282 femicides consummated and 120 attempted murders during 2022 shall mean an urgent commitment to the effective incorporation of the gender perspective in the Venezuelan justice system and with concrete and rapid measures against violence against women.
4. The analysis of the available decisions was performed in two parts: quantitative and qualitative.
5. In this update of the original research, first of all, a general selection criterion is determined based on judgments that have some content related to the subject matter alluded to, that is, the existence of acts of violence of any nature against a woman, girl or adolescent, even if the provisions of the Organic Law on the Right of Women to a Life Free of Violence (LOSDMVLV) were not applied by the courts in the cases.

QUANTITATIVE ANALYSIS OF DECISIONS

6. As mentioned above, the quantitative analysis of the decisions includes the SCP and SC rulings of the period 2018-2022, i.e., of the last five years on violence against women, to see possible fluctuations and the general trend of cases on this matter concerning the overall total of decisions of both Chambers.
7. A first analysis exposes that there were few sentences in 2020, because COVID-19 practically paralyzed the Venezuelan Judiciary. It also highlights that in 2019, before the pandemic, fewer rulings were issued than in 2021, although this disease's restrictions on the global society were still maintained in that year. Likewise, a significant increase in the number of decisions is observed from 2021 onwards, exceeding 1,000 in 2022.
8. The above contrasts with the 1,621 decisions handed down by the SC in 2000, a phenomenon already analyzed by Acceso a la Justicia in its performance report on the Judiciary from 2001 to 2015,¹ in which a marked downward trend was noted since 2006 in both the number of cases filed and those decided, which is not in keeping with the conflictive nature of a country that is sunk in a complex humanitarian emergency.
9. It should also be noted that, in relative terms, the number of sentences on violence against women in the SC remained between 2% and 4% during the period analyzed, with a total of only 120 sentences on this matter during the five years under review, which represents 3% of the total number of sentences for the period.
10. In the case of the SCP, although the total number of rulings is much lower than in the SC, those related to violence against women range between 8.84% and 14.45% of the total, leaving the year 2022 with 14.45%; This means that the presence of the topic in this Chamber is more recurrent than in the SC, it means that the consolidated decisions for the period under study show that the decisions on violence against women of the SCP represent 12.20% of the total decisions of this Chamber, that is, in relative terms, three times more than the SC.
11. Thus, when the total number of rulings of both Chambers is estimated, i.e., 5,276 decisions, we obtain 306 rulings on violence against women, representing approximately 5.80%.
12. The ideal would be to contrast this data with the cases entered in the TSJ in this matter, as well as in the courts and with the sentences issued by the latter. Still, this comparison cannot be made because there is no information in this regard since the highest court has not published the annual report of the Judiciary since 2012. The figures for the State on gender violence are also unknown. However, there are some recent partial data contained in the communiqués of the Public Prosecutor's Office (MP), which refer, for example, to 628

1 https://accesoalajusticia.org/wp-content/uploads/2016/07/Informe-sobre-el-desempeño-del-Poder-Judicial-2001-2015_octv3.pdf.

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committed femicides and 636 attempted murders between 2018 and the first semester of 2023, which corresponds to a total of 1,264 cases on which it is indicated to have filed 1,208 accusations and requested 340 arrest warrants. In any case, these figures are only related to the maximum expression of male violence, such as femicide, with no information on the other forms of gender violence typified in the Venezuelan legislation.

13. Therefore, since there is practically no official statistical information on the situation of violence against women in the justice system, the figures of the TSJ sentences are difficult to compare and analyze in relative terms. Still, it seems that very few cases reach this instance.
14. Additionally, we observed in our research that most of the decisions of the TSJ are about formalities, the lack of them, or matters of mere formality (for example, requests for information of a case to a lower court, lack of standing, lack of consignment of copies, abandonment of the process, non-exhaustion of ordinary remedies, among others) so that they do not usually resolve the conflict raised.
15. If we analyze in the SC the years 2021 and 2022, which are the ones that are the subject of this update, we find that similar to the years previously analyzed, in 2021, 62 % of the decisions were of mere formality or were related to compliance with requirements, which implies that a high number of rulings are limited to resolving procedural and not substantive issues regarding violence against women. However, in 2022, this situation worsened by reaching 76% of the rulings on this area, evidencing that the mandate of Section 257 of the Constitution, which states that "The omission of non-essential formalities shall not sacrifice justice," is not complied with. The same can be said of the SCP's decisions on violence against women; since 2021 60% only dealt with procedural aspects or formalities, rising to 62% in 2022.
16. This means that only 19 of the total number of rulings on violence against women analyzed between 2022 and 2023 from both Chambers contain relevant and substantive issues. However, they are not necessarily new ones, since in many cases, they confirm of criteria already established or a legal interpretation already made previously.
17. In addition, in the last two years analyzed, it is worth noting a large number of appeals and filings, which shows the lack of confidence of the SCJ in the lower courts, as well as a large number of conflicts of jurisdiction between courts that the SCJ must resolve as if none of them wanted to deal with these cases.
18. To this concern, some may argue that it is the rule that, of the decisions of a maximum court, only a few imply an innovation or impose a new criterion. Still, we have to say that this is not usually the case, as they could be rulings of reiterated criteria, but they deal with substantive issues. However, what we see is that these are decisions that dismiss requests because powers of attorney or documents do not accompany them, do not comply

with the requirements that the appeal demands, or simply request information to a court on issues unrelated to the essential elements linked to the serious problem of violence against women in Venezuela, where justice is not served due to lack of compliance with formalities.

QUALITATIVE ANALYSIS OF THE RELEVANT DECISIONS OF THE CHAMBERS IN THE 2021-2022 PERIOD

19. The main element in the analysis of sentences related to violence against women is the assumption or not of a gender perspective, and this is something that goes beyond the simple application of the sections of law; it is a matter of interpreting and applying its spirit, purpose and reason, and to achieve this, the operator of justice should assume these principles as his own, understanding that the incorporation of the gender perspective in sentences is not only a matter of women, since what is sought is to ensure their equality and non-discrimination in the cases he hears. In this context, the Judiciary is required to interpret discriminatory norms with a feminist criterion, beyond the need for new laws that address the structural inequality to which women are subjected.
20. Legislative progress on gender issues in Venezuela, which even establishes institutional violence, has been superior to the actions of the Judiciary, indicating the need for greater enforcement and recognition of laws against discrimination and violence against women, as well as a judiciary that goes beyond demonstrations of support for women through its website or social networks.
21. Additionally, it should be noted that there is a contrast between the high demands imposed by the fight against violence against women and the institutional reality involved since the latter shows neither public policies nor concrete facts that express the real willingness to be at the level of the seriousness of such situations, which explains the framework in which sentences are handed down in the country on this issue, whose most outstanding criteria were organized in the report and can be consulted therein, but which at the end of the day denote a tendency to re-victimization of the victim.

CONCLUSIONS

22. The context presented throughout this report allows us to conclude that the Venezuelan justice system does not function adequately and the TSJ is excessively formalistic. In this regard, we highlight the following:

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- The failure of the justice system in general and the Judiciary, in particular, to render accounts on the state of the justice system in terms of its fight against violence against women continues, which prevents making assessments on the general status of this fight since only the TSJ's sentences are published. Nor are the annual management reports of the MP and the Judiciary published.
- The fact that in the last five years, the total number of SC and SCP decisions on violence against women reached 5.80% of the total seems to us to be low given the conflict in this area in the country and the context of humanitarian emergency, which affects women in a differentiated manner.
- Similarly, the number of crimes on which the aforementioned chambers of the TSJ have ruled is far from covering all the typical crimes against women that the LOSDMV-LLV enshrines, which implies that for many of these crimes, there is no interpretation by the highest court in the country.
- The fact that certiorari and radication proceedings have a wide presence in the cases held by the Chambers of the TSJ exposes their lack of trust in the work of the lower courts, specifically when those two proceedings shall be exceptional due to their nature.
- The pattern continues that most of the decisions of the SCP and SC deal with matters of mere formality, formalities, or procedural issues with no impact on substantive aspects of women's protection.
- Prejudices continue to be maintained in the lower courts' rulings that are not duly corrected by the chambers, thus generating a matrix in these decisions that will be very difficult to eradicate because of their continuity.
- The lack of application of intersectionality is worrying when considering the victim, who, on the contrary, is made invisible as someone outside the justice processes.
- It can be seen that in many cases the victims' private defense lawyers bear the burden of continuing the long and unending trials, which generates a constant process of re-victimization ignored by the Judiciary.
- It is a matter of concern that there are several cases in which the role of the MP is passive and even contrary to the interests of the victims.
- There is a long procedural delay because of the multiple conflicts of jurisdiction between courts brought before the TSJ and because of lawyers' misuse of judicial resources to delay cases without the courts doing anything about it.
- In general, the decisions expose a Judiciary that ignores the victims, does not take their opinion into account, and does not set reparative measures in their favor.

RECOMMENDATIONS

23. It is necessary to explore the current situation of justice operators and their capacity to judge cases from a gender perspective. In our digital book, entitled *Myths and Realities of Violence against Women in Venezuela: History of Another Failure of the Judiciary*, we point out several good practices implemented in Latin America to achieve progress in this context; among these strategies, we find the experience of the Mexican Supreme Court of Justice of the Nation, with the implementation of simple surveys to judicial system officials that have served to unveil their gender biases and stereotypes, exposing perceptions that may impact the cases under assignment and thus implement proper training guidelines. These are simple measures that can have a significant impact; however, we refer below to some of our specific recommendations contained in our update of this research:
- The Judiciary must be part of the reflection on gender issues for the design and development of laws and public policies since it has a dominant role in the implementation of the provisions of these instruments. It does not mean acting in a biased manner in favor of women or any other vulnerable group automatically, "but rather creating an appropriate scenario so that gender-related discrimination does not hinder or frustrate the effective judicial protection of rights." The expectation is that judges will exercise their capacity for critical and responsible analysis of what underlies the facts of each case and the paradigms that support the norms.
 - It is urgent to train justice operators in gender mainstreaming, and we reiterate the importance of taking advantage of good practices and positive experiences used in similar contexts in Latin America, such as protocols, gender prosecution criteria, analysis matrices, or equality tests. Facilitating access to these tools is vital.
 - It is important to study the proposals that legal feminism has been putting forward for decades with experts such as Bartlett (1989) and Facio (1992) for the mainstreaming of gender in jurisdictional activity, understanding that rethinking the structures that promote gender stereotypes and biases means recognizing their influence on law and the serving of justice.
 - It is recommended that the TSJ have a repository of rulings with a gender perspective or that constitute precedents in terms of guaranteeing women a life free of violence. This can be a valuable pedagogical effort, facilitating access to this information, the construction of referents in the way of reasoning in decisions for the courts of instance, and, in addition, an opportunity to assume with transparency the number of judgments that genuinely comply with the jurisdictional obligation to guarantee equality.
 - Initiatives shall be promoted to encourage the visibility of jurisdictional activity and to take pride in the progress made in serving justice with a gender perspective.

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In this context, we highlight Bolivia's experience with initiatives such as the National Contest of Judgments with a Gender Perspective.

- Women, adolescents and girls living in Venezuela deserve sensitized and quality attention. It requires specialized and sensitized personnel and that courts of the special jurisdiction for violence against women to encompass the entire national territory, taking into account that 15 years have already passed since its creation. Unacceptable provisional solutions, such as the intervention of municipal criminal courts, must be set aside.
- A real commitment to justice and equality requires sufficient investment for the adequate training and education of personnel, the determination of human resource needs, and the service infrastructure necessary for quality attention. The guarantee of the right of Venezuelan women and other women inhabitants of the country to a life free of violence is not possible with precariousness, refurbished assets, provisional judges, and untrained personnel, but with structured, coherent, and stable public policies.