



Acceso a la
Justicia

J299786772



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  **Mulier**

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INTRODUCTION

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*,¹ which analyzed the rulings of the Criminal Cassation Chamber (SCP) of the Supreme Court of Justice (TSJ) corresponding to the period 2015-2020, also including the most significant rulings of the Constitutional Chamber (SC) on the matter, it is necessary to update such information. In this context, this report encompasses the decisions of both Chambers in the period 2021-2022 in order to set up the existence of changes in the judicial criteria related to violence against women, and whether or not the problems that we detected on that occasion persist or not.

We insist on documenting judicial action in the face of violence against women as a way of exposing the reality of their access to justice in the context of a complex humanitarian emergency and generalized violations of human rights.

The differentiated affectation of women and girls should be translated into forceful actions by the Judiciary to guarantee the right of Venezuelan women and inhabitants of the country to a life free of violence, taking into account the existence of the legislative framework with the minimum necessary and the apparent political will expressed by the TSJ in institutional news and videos.² Indeed, in both, the TSJ reports on actions such as the meetings of the National Commission of Gender Justice or the reference to symbolic dates such as the International Women's Day to allude to "the importance of applying the gender perspective in all matters and jurisdictions of the Judiciary, especially in the current context of the judicial revolution in the country."³

Unfortunately, reality seems to be far from this speech. It is not only evident in the number and content of the decisions on violence against women that we will address in this report but also in the complaints of civil society organizations, in the constant claims made by victims and survivors to institutions through social networks for attention to their cases, and in the repeated recommendations made to the Venezuelan State in international scenarios.

The civil society estimated that only in 2022, 282 femicides and 120 attempted murders⁴ occurred. It should mean an urgent commitment to the effective incorporation of the gender perspective in the Venezuelan justice system.

- 1 Acceso a la Justicia (2022). Myths and realities of violence against women in Venezuela: history of another failure of the judiciary. Available at: <https://accesoaljusticia.org/mitos-realidades-violencia-contra-mujer-venezuela-historia-otro-fracaso-poder-judicial-2a-edicion/>.
- 2 TSJ Venezuela on YouTube (October 2, 2023). TSJ held ordinary meeting of the National Commission of Gender Justice of the Judiciary. Available at: <https://www.youtube.com/watch?v=P5aHNNFM9Bo>.
- 3 TSJ (March 10, 2023). President of the TSJ highlighted the importance of the gender perspective in the Judiciary. Available at: http://www.tsj.gob.ve/displaynews/-/asset_publisher/K6rI-V66atYrZ/content/presidenta-del-tsj-destaco-importancia-de-la-perspectiva-de-genero-en-el-poder-judicial/.
- 4 Cepaz (April 6, 2023). Cepaz Digital Femicide Observatory: In 2022 there were 37 femicides of girls in Venezuela. Available at: <https://cepaz.org/noticias/observatorio-digital-de-femicidios-de-cepaz-en-el-2022-hubo-37-femicidios-de-ninas-en-venezuela/>.

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In the above context, this study must illustrate this commitment to equal access to justice, especially for groups in vulnerable situations such as girls and women.

The analysis of the available decisions will be performed in two parts. The first part is quantitative and the second part is qualitative. We will see how the number of SCP and SC decisions on the matter under study has evolved during 2021-2022, the age typology of the victims, the crimes that have been the reason for the judgments and the analysis of the judgments.

We must start from the fact that these samples cannot be considered a representation of the universe of the trials on violence against women that take place in the country, considering that there is no information on those outside the TSJ sentences. In general, on any specific issue of the Judiciary, a regrettable opacity has become the rule, without any way to reverse the situation from the so-called institutionalism. It is contrary to the constitutional mandate of accountability and transparency on the part of the authorities of the Judicial Power, which, however, also occurs in the other public powers of the country, including instances such as the Public Ministry, the Public Defense and the Ombudsman's Office, which especially in this area should generate precise figures so that public policies are in accordance with the diagnosis that could be derived from them.

Thus, although the rulings of the TSJ are a partial view and not representative of the reality of what happens throughout the country, it does provide us with information on the issues that are brought up before that instance and how many important issues are handled or not in accordance with the criteria established by the Law on Violence against Women and the Family and the Organic Law on the Right of Women to a Life Free of Violence (LOSDMVLV), and if both the courts and the chambers of the TSJ that hear the review of their decisions abide by their fundamental principles.

In short, our aim is to specify whether or not the duty to guarantee women's rights, especially the right to a life free of violence, shall be a priority for all courts in the country, and particularly for the TSJ.

That is, whether or not women obtain justice against the violence of which they are victims.

1 METHODOLOGY

This report aims to establish which sentences related to violence against women yield relevant information from 2018 to 2022. We have already published research on 2018 - 2020,⁵ now we extend the period studied to 2022.

In this update of the original research, first of all, a general selection criterion is determined, according to which judgments are identified that have some content related to the matter above. However, the provisions of the Organic Law on the Right of Women to a Life Free of Violence (LOSDMVLV) are not applied, but what prevails is the existence of acts of violence of any nature against a woman, girl or adolescent.

Having established the above, the rulings preselected with this criterion are divided according to their location or according to the following precepts:⁶

- Progressive, i.e., decisions that contain criteria or legal applications favorable to women and the fight against violence against women.
- Rulings that do not take into account the principle of the intersectionality⁷ of the victim, that is the coexistence of contextual elements that concurrently victimize women (poverty, belonging to an indigenous ethnic group, having a disability, power relations, etc.).
- Decisions in which the judge's intervention is perceived as contrary to the interests of women or where prejudices, roles, or stereotypes against women as protected subjects of rights are perceived.
- Serious violations of women's rights are committed in the sentence in such a way that the process is distorted in such a way that it does not serve the purposes established by law (for example, in processes in which there is revictimization, judicial delay, omission of fundamental elements of due process, etc.).

Due to the above, sentences of mere formality or those in which formal or procedural elements that do not have an impact on women as subjects of protection would be excluded from the analysis since what is sought are those that have a positive or negative impact on violence against women, to detect patterns by the Judiciary in this regard.

5 Access to Justice (2022). *Myths and realities of violence against women in Venezuela: history of another failure of the judiciary*. Available at: <https://accesoalajusticia.org/mitos-realidades-violencia-contra-mujer-venezuela-historia-otro-fracaso-poder-judicial-2a-edicion/>.

6 We must remember that these were the criteria of the aforementioned book on access to justice.

7 Access to Justice. Op. cit. p. 8:

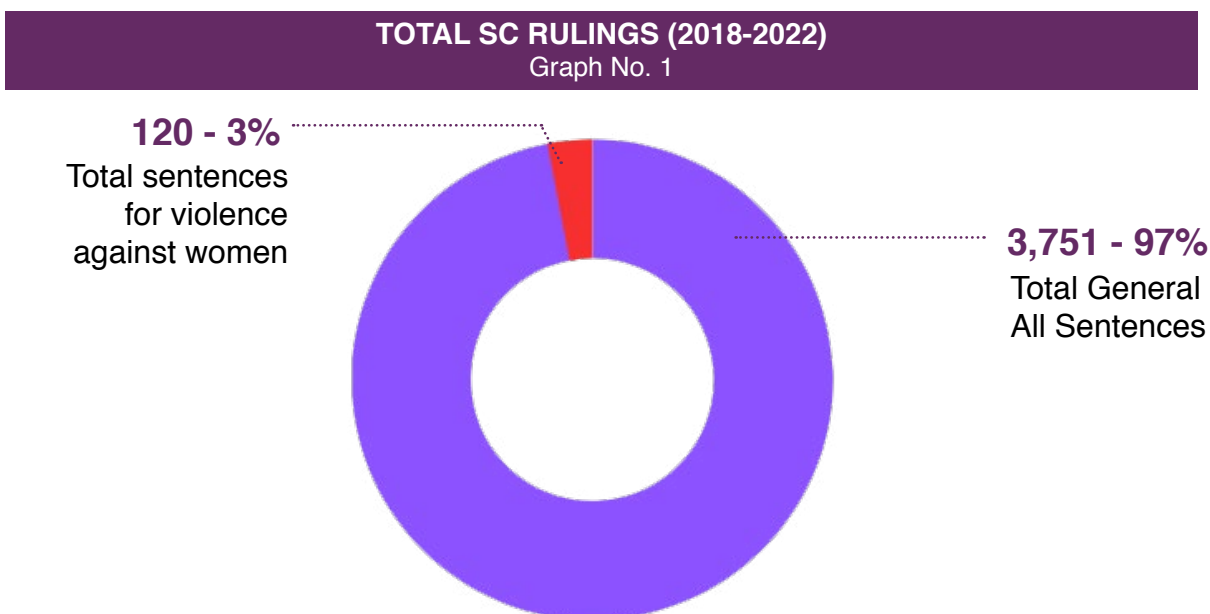
Another important advance in the legal protection of women is the concept of "intersectionality", which highlights the interrelationship between the different variables that simultaneously victimize women, expose them to violence and, at the same time, condition impunity.

2 QUANTITATIVE ANALYSIS OF DECISIONS

2.1. Total number of sentences in general terms during the last 5 years

The judgments of the period 2018-2022, i.e., of the previous five years on violence against women, were analyzed to see possible fluctuations and the general trend of cases on this matter concerning the overall total of decisions of the Criminal Cassation Chamber (SCP) and the Constitutional Chamber (SC).

SC RULINGS ON VIOLENCE AGAINST WOMEN (2018-2022)			
Table 1			
YEARS	GRAND TOTAL OF SENTENCES	TOTAL SENTENCES FOR VIOLENCE AGAINST WOMEN	PERCENTAGE
2018	933	28	3.00%
2019	528	14	2.65%
2020	274	8	2.92%
2021	757	16	2.11%
2022	1,259	54	4.29%
Totals	3,751	120	3.20%



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As can be seen in Table No. 1, in 2020, the Venezuelan Judiciary was practically inactive by COVID-19. It also stands out that fewer judgments were issued in 2019, before the pandemic, than in 2021, although the restrictions this disease imposed on the global society were still maintained in that year. Likewise, there will be a significant increase in the number of decisions from 2021 onwards, exceeding 1,000 in 2022.

The above contrasts with the 1,621 decisions issued by the SC in 2000, a phenomenon already analyzed by Acceso a la Justicia in its performance report on the Judiciary from 2001 to 2015,¹⁰ in which a marked downward trend was observed since 2006, both in the number of cases filed and those decided, which is not in keeping with the conflictive nature of a country that is in a complex humanitarian emergency.

Additionally, it should be noted that not only the quantity is important, but also the quality. Indeed, let us analyze the nature of these rulings. Most of them refer to procedural aspects, such as requirements or procedural acts, occupying the court's time that shall be devoted to substantive decisions and the generation of valuable precedents.

In addition, it should be noted that in relative terms, the number of cases of violence against women remained between 2% and 4% during the period analyzed, with a total of only 120 sentences on this subject during the five years under review, which represents 3% of the total number of sentences for the period (see Graph No. 1).

However, this data cannot be fully contrasted due to the policy of opacity of the State regarding the figures of gender violence. Still, they stand out in the face of recent partial data such as those reported by the Public Ministry (MP), which refer to the number of 628 femicides consummated 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 reported to have filed 1,208 accusations and requested 340 arrest warrants.¹¹ 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.

In the case of the SCP, as can be seen in Table 2, although the 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, which means that the consolidated decisions for the period in the

8 <https://accesoalajusticia.org/la-deficiente-respuesta-del-tsj-frente-a-la-covid-19/>.

9 Thus, for example, the UN High Commissioner noted:

OHCHR received information on additional obstacles in access to justice since the declaration of the "state of alarm" on March 13 due to COVID-19. Lawyers and NGOs providing support to victims reported that the justice system had not established effective mechanisms to process urgent actions. They also reported increasing restrictions on access and communication between lawyers and their clients.

Vid. OHCHR (2020), *Independence of the judicial system and access to justice in the Bolivarian Republic of Venezuela, also with regard to violations of economic and social rights, and the human rights situation in the region of the Orinoco Mining Arc*, A/HRC/44/54, para. 31.

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

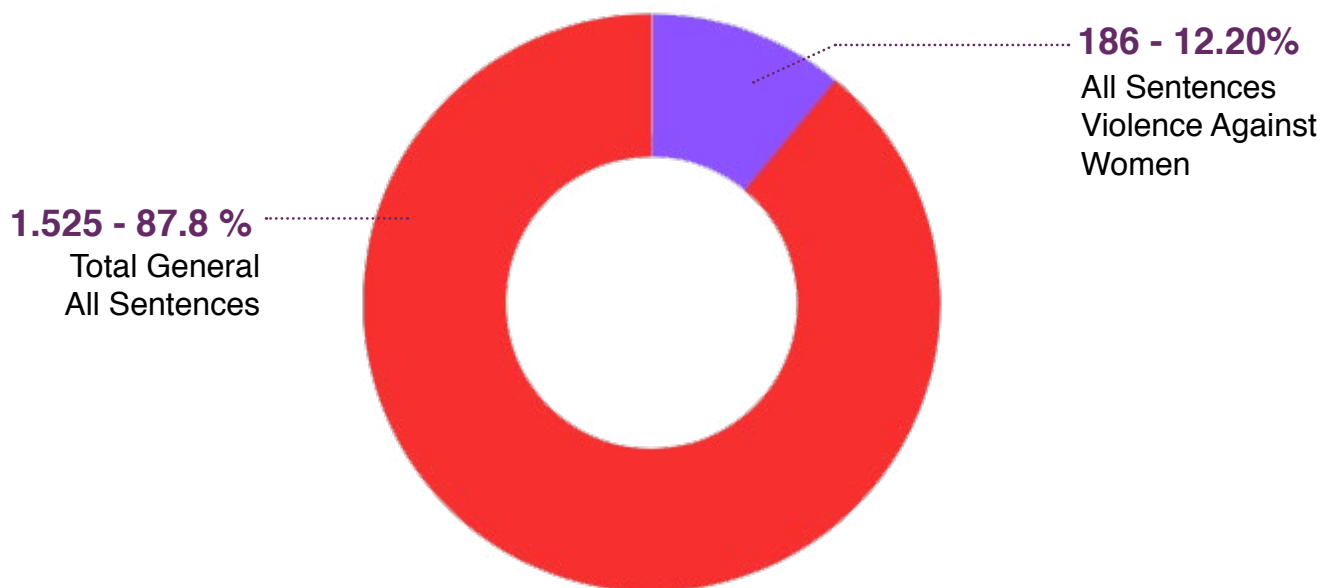
11 Public Prosecutor's Office (July 31, 2023). *Attorney General reported that 12,030 convictions for drug trafficking have been obtained since August 2017*. Available at: : <http://www.mp.gob.ve/index.php/2023/07/31/fiscal-general-informo-que-se-han-conseguido-12-030-sentencias-condenatorias-por-narcotrafico-desde-agosto-de-2017/>.

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study show that rulings on violence against women represent 12.20% of the SCP's decisions, that is, in relative terms, three times as many as in the SC.

SCP RULINGS ON VIOLENCE AGAINST WOMEN (2018-2022)			
Table 2			
TOTAL YEARS	GRAND TOTAL OF SENTENCES	TOTAL SENTENCES FOR VIOLENCE AGAINST WOMEN	PERCENTAGE
2018	396	35	8.84%
2019	293	41	13.99%
2020	169	16	9.47%
2021	224	30	13.39%
2022	443	64	14.45%
Totals	1,525	186	12.20%

TOTAL SCP RULINGS (2018-2022).
 Graph No. 2



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Thus, when both Chamber's total number of rulings is estimated, i.e., 5,276 decisions, we have a total of 306 rulings on violence against women, which represents 5.80%.

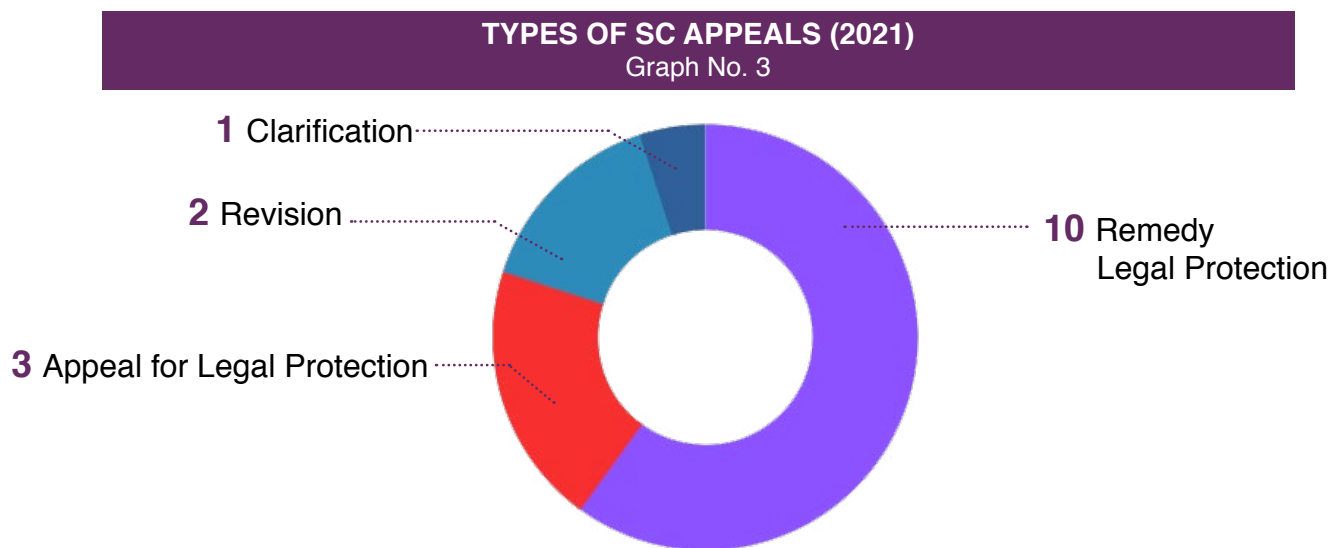
As indicated, since there is no information on the general situation of violence against women in the Judiciary, these figures on the flow of this type of lawsuit in the courts cannot be considered significant. Still, it objectively tells us that very few cases reach the TSJ.

It is also clear that the Judiciary is another space where figures on the situation of violence against women are owed, which is a frontal breach of the provisions of our domestic legislation, international treaties, and direct recommendations issued by the CEDAW Committee¹² to the Venezuelan State.

If we add to the above that most of the decisions deal with procedural issues, procedural acts, and compliance with requirements to act, we find that the number of substantive rulings is meager.

2.2. Cases before the Constitutional Chamber

In 2021, of the 757 sentences handed down by the SC, only 16 were related to violence against women, i.e., only 2.11% of the total.¹³ Of these 16, 10 were on remedy for legal protection, three appeals for legal protection, one request for clarification of a sentence, and two appeals for revision (see Graph No. 3).



¹² Committee on the Elimination of Discrimination against Women (CEDAW), a body of independent experts that monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Vid: <https://www.ohchr.org/es/treaty-bodies/cedaw#:~:text=El%20Comit%C3%A9%20para%20a%20Eliminaci%C3%B3n,de%20discriminaci%C3%B3n%20contra%20a%20mujer>.

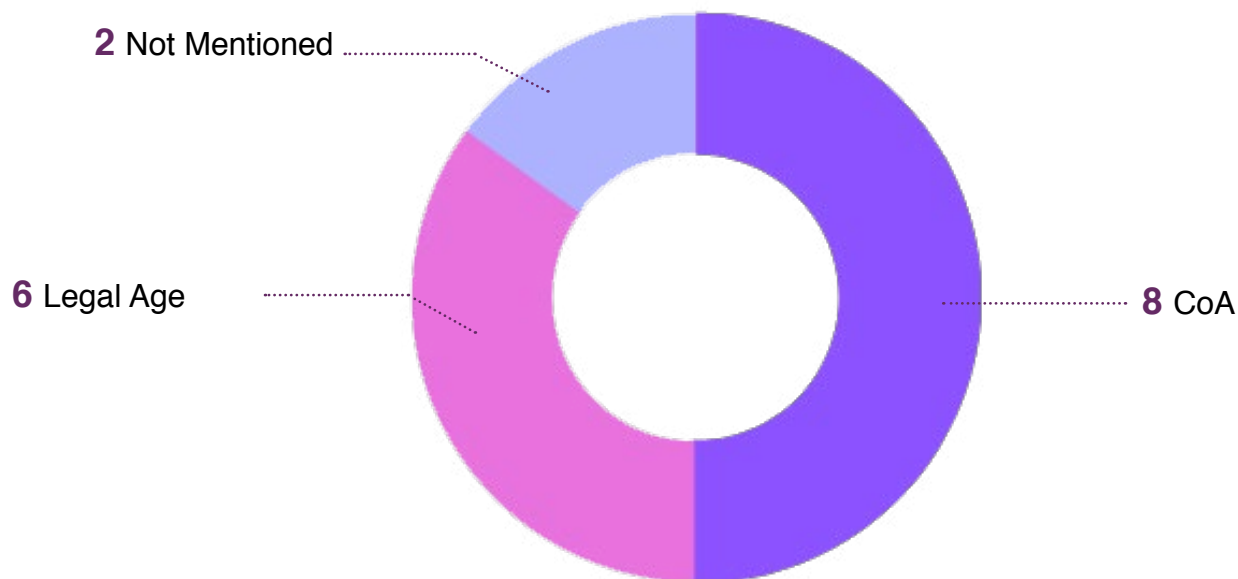
¹³ See Table No. 1.

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In the cases brought to the attention of the SC, we found that in most of them, namely in eight of them, the victims were children or adolescents (CoA), and in six of them, they were of legal age. One element that will be highlighted from now on is that in two decisions, it is not indicated whether the victim is of legal age. We highlight this because the lack of essential information in the sentences is something that we will see from this point on in this report and that violates the maxim according to which a sentence must be sufficient in itself and when it does not contain fundamental elements such as the one indicated, the deficiency of the justice system becomes evident since it does not issue its decisions as it should.

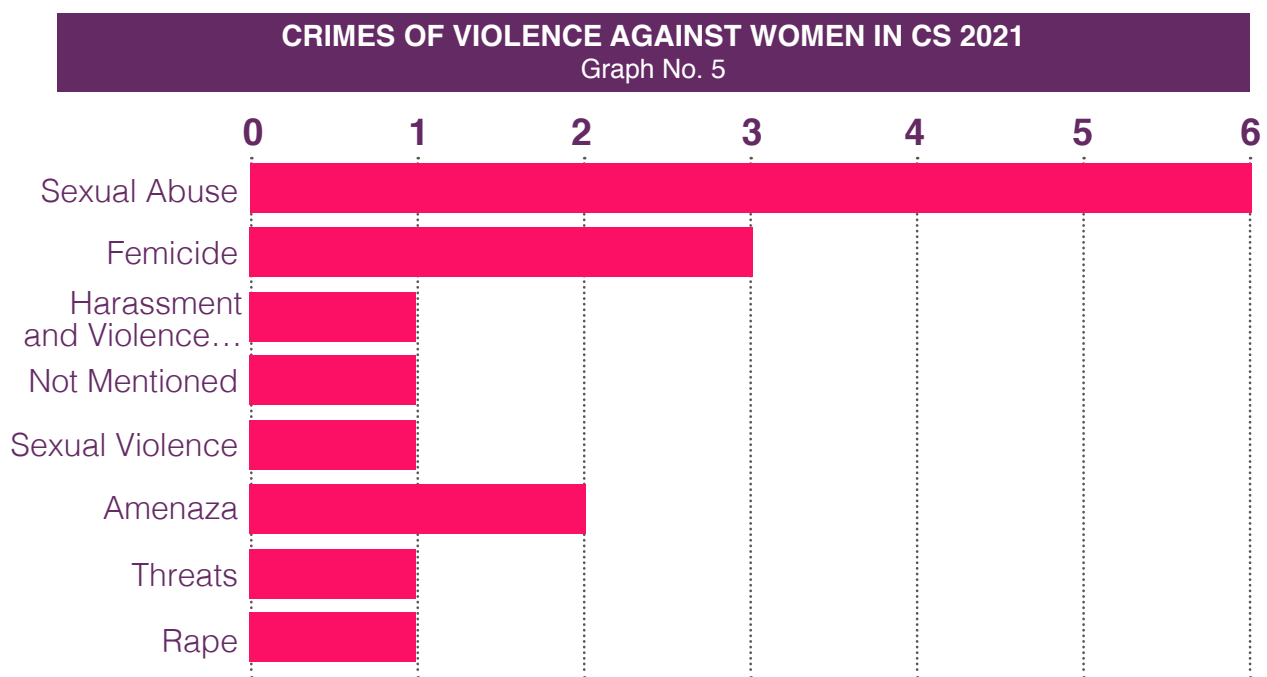
In addition, we must highlight how the presence of CoA will have a significant and outstanding impact on the sentences analyzed, which highlights the need for specialized public policies not only on violence against women, but also concerning CoA.

AGE TYPOLOGY OF THE VICTIMS IN EACH CASE (2021)
 Graph No. 4



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On the other hand, about the crimes that were linked to the specific cases, we have that 6 were of sexual abuse, 3 of femicide, 2 of threat, and one case each of sexual violence, rape, harassment, and physical violence; appearing again a case in which it is not indicated, no less, which was the crime that originated the case.

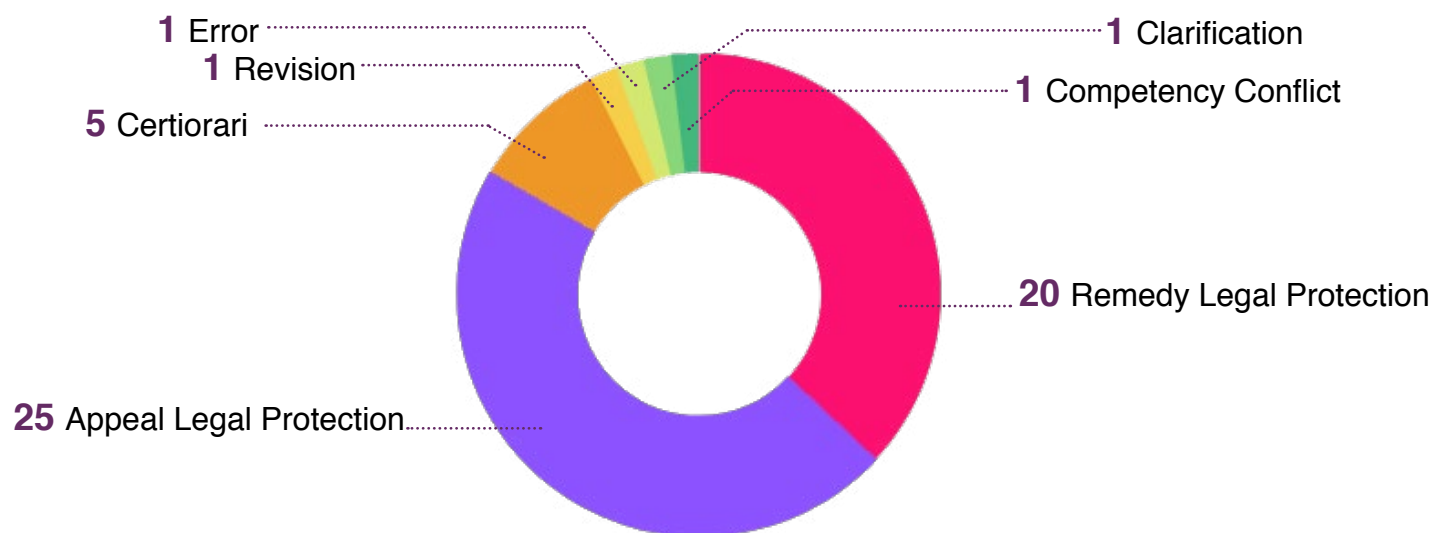


Meanwhile, in 2022, when the number of judgments increased significantly, from 757 the previous year to 1,259, 54 were related to violence against women, or 4.29%,¹⁴ which is slightly more information than the last year. These 54 cases correspond mostly to appeals for remedy for legal protection (25), remedy for legal protection (20), and 5 requests for clarification, leaving one ruling on conflict of jurisdiction, another on a review, an appeal, and an exotic erroneous case in which a cassation appeal was wrongly referred to the SC which, for obvious reasons, did not fall within its jurisdiction, but that of the SCP (see Graph No. 6). The above confirms the trend of the previous year that most of the cases heard by the SC concerning violence against women are due to legal protection remedies.

¹⁴ See Table No. 1.

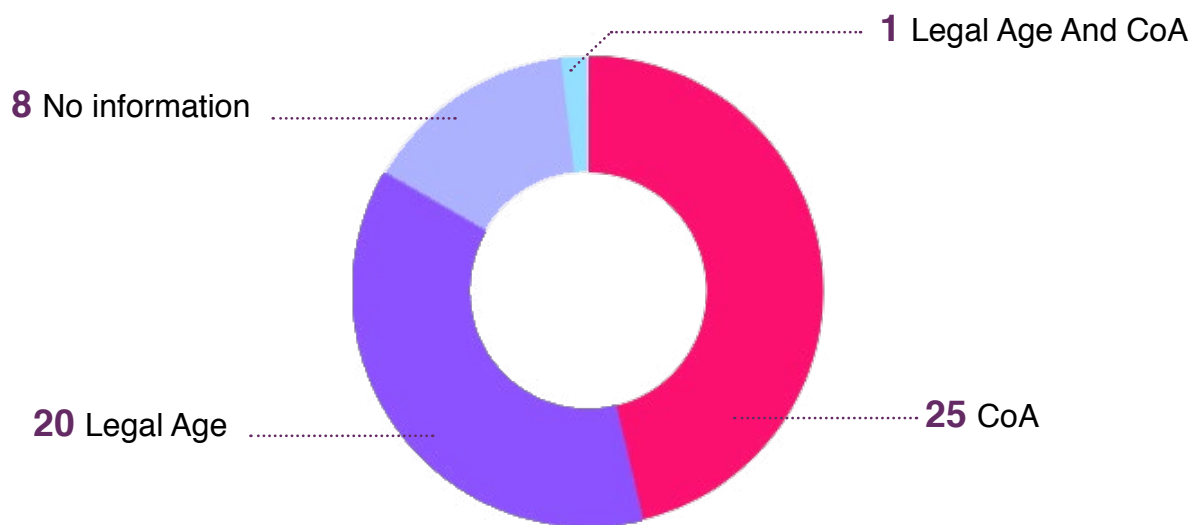
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TYPES OF SC APPEALS (2022)
 Graph No. 6



Likewise, about the age of the victims, we have that the majority corresponds to CoA (25), while twenty rulings are on cases of adults, one on a trial in which there were both adult and CoA victims, and, worryingly, in eight decisions there is no mention of this characteristic of the victims.

AGE TYPOLOGY OF THE VICTIMS IN EACH CASE
 Graph No. 7



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When we look at the crimes to which these fifty four trials corresponded, we find that 35.18% of them, that is, nineteen cases, involved sexual abuse, seven cases of femicide and psychological harassment and violence, four cases of physical violence, three cases of trafficking in persons, two cases of carnal acts with a particularly vulnerable victim (see Graph No. 8).

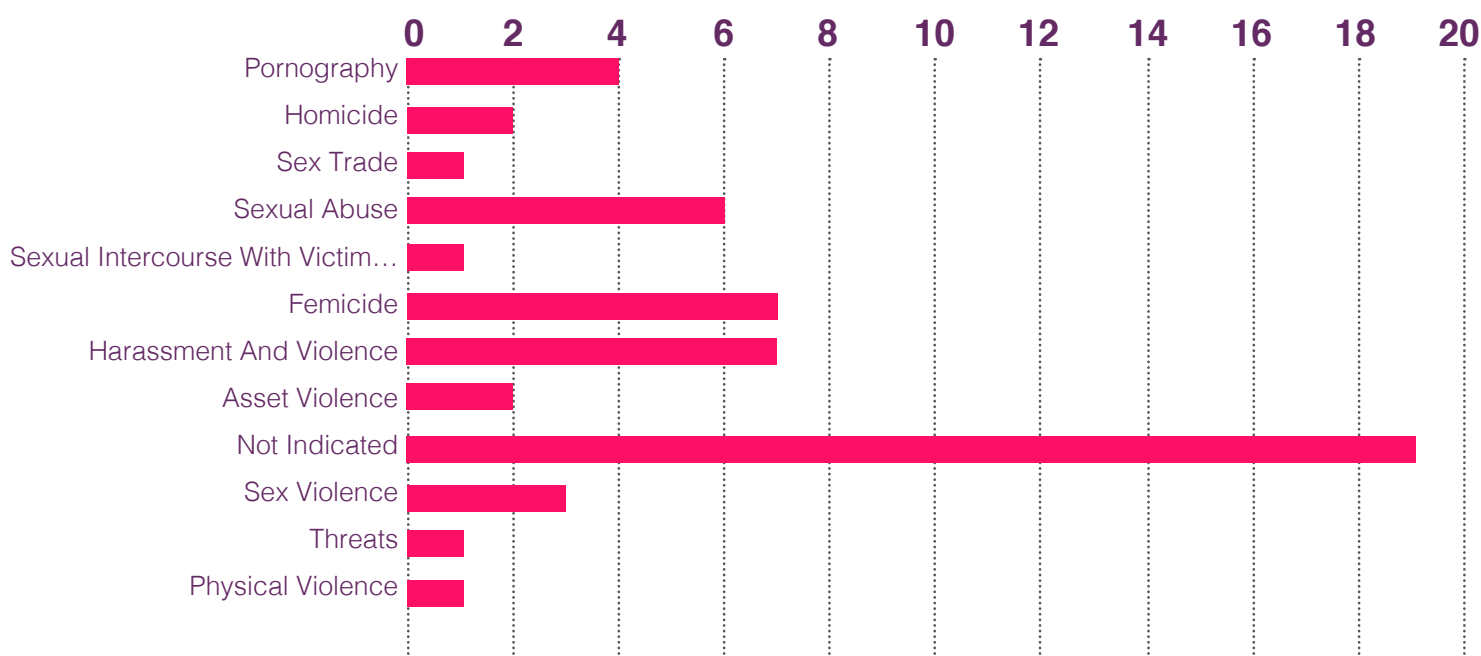
We must clarify that the existence of a case of homicide is explained because it is the type applicable to those acts before to the establishment of femicide as a typical crime in the 2014 reform. Likewise, the presence of this figure is explained because there are cases in which the death of a woman is classified as a homicide because it does not meet the requirements of femicide, which is generally determined in cases of conflict of jurisdiction.

In addition, and as serious as not determining the victim’s age, we find that in six decisions, there is no mention of the crime that originated the corresponding case. Looking at these decisions, we also find that in three of them, the cases were closed, which makes the situation even more severe, since, in such circumstances, the judge, with more significant reason than in a mere procedural decision, must indicate the reason that originated the case that is closed with the Chamber's decision.

This shows a worrisome pattern because when dealing with criminal matters, the omission of the essential element of the process, such as the crime, which gives meaning to the trial, reveals a gross violation of the duties that a court must inexcusably fulfill when handing down a sentence.

CRIMES OF VIOLENCE AGAINST WOMEN IN SC (2022)

Graph No. 8



2.3. Cases in the Criminal Cassation Chamber

Although the total number of SCP decisions is significantly lower than those of the SC, there is a more significant presence of cases of violence against women, as indicated above. Thus, of the 224 rulings in 2021, 16 are linked to the subject matter of this report (7.14 %).¹⁵

Of these 16 rulings, 70% are grouped into two types of appeals, the cassation appeal (40%) and the recourse (30%) (Graph No. 9). The latter is noteworthy insofar as the recourse - a recourse that seeks to have the Chamber remove a case from a lower court's jurisdiction to try it - should be something exceptional, since it is based on the concurrence of three assumptions that should not be very common: when there are no other procedural means capable of restoring the infringed legal situation; in case of procedural severe disorders, or scandalous violations of the legal system that ostensibly harm the image of the Judiciary, public peace or institutionality. The exceptional nature of these cases is evident, but the high number of requests by the Supreme Court of Justice chambers shows that, at least for the appellants, such situations are not so unusual.

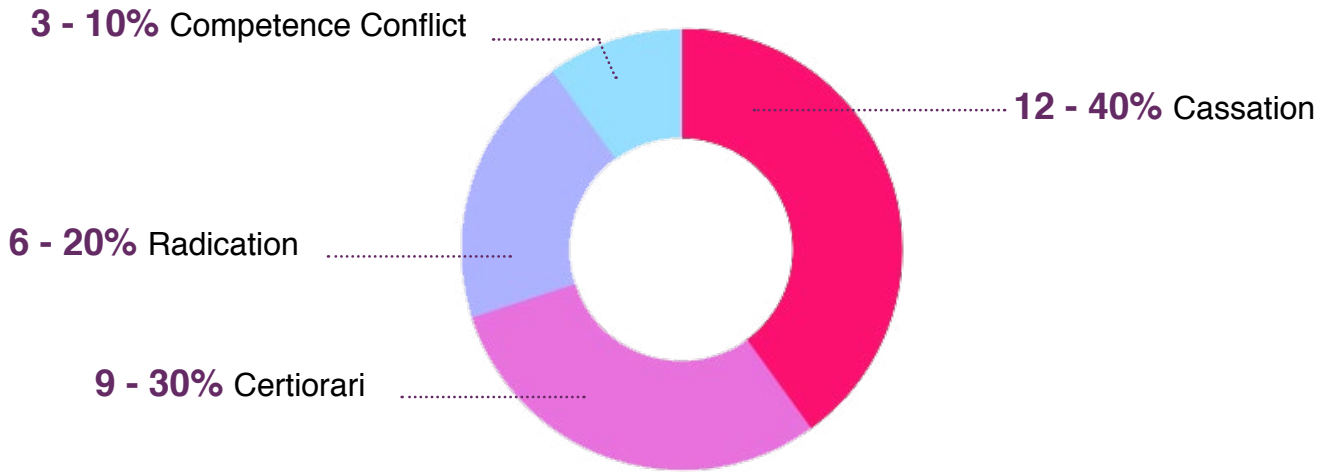
The same can be said of the radication, that is, of the appeal requesting the SCP that the trial that is the object of the appeal be transferred to another court due to the existence of two non-concurrent requirements, namely, that it involves gross crimes, the perpetration of which causes alarm, sensation or public scandal; and, when due to recusal, inhibition or excuse of the incumbent judges and their respective alternates, the process is inactive indefinitely after the indictment is filed by the prosecutor of the Public Prosecutor's Office (MP).

Thus, the fact that both the radication and the assuming of jurisdiction over cases account for 50% of the cases of violence against women at least leaves doubts about the confidence that the appellants have in the courts, which are naturally the ones that initially have the competence to hear them. In addition, due to the chronic delay of our justice system, these appeals imply a further delay in the processes. At the same time, they are being decided, so that their mere occurrence describes another mechanism that overloads the already deficient administration of justice instead of being something exceptional, as it should be.

¹⁵ See Table No. 2.

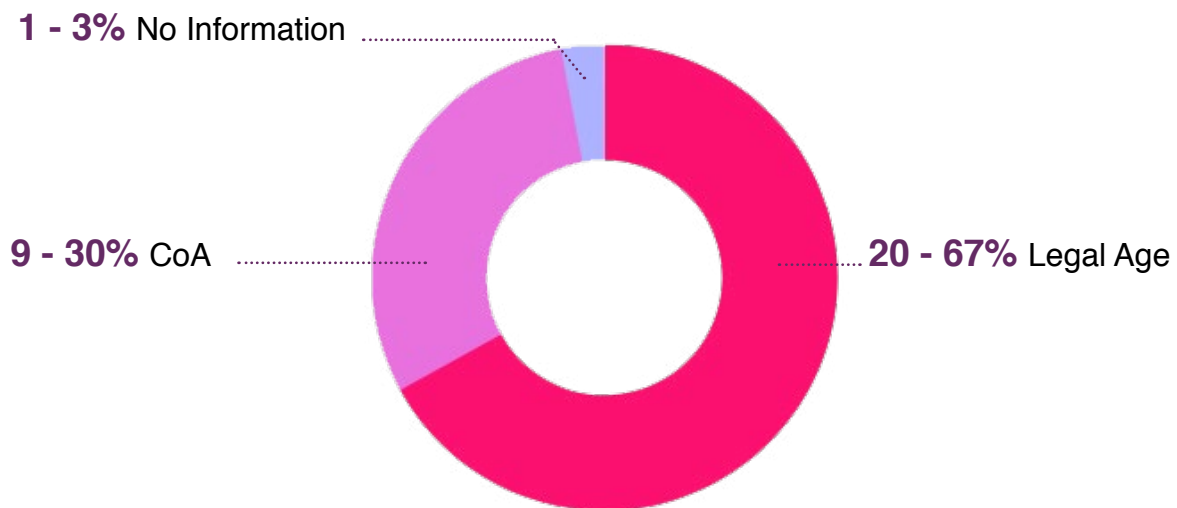
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TYPES OF SCP RESOURCES (2021)
 Graph No. 9



Regarding the age group of the victims, in the year 2021, the number of CoA was 30% of the total, with those of legal age representing 67%. It should be noted that, as on previous occasions, in one case, this critical information was not mentioned in the sentence.

AGE TYPOLOGY OF VICTIMS (SCP, 2021)
 Graph No. 10



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Regarding the crimes, in the SCP, the largest number of decisions were related to harassment and psychological violence (8), 5 decisions on sexual abuse and human trafficking, 4 on femicides and 2 on homicides, with one case where the corresponding crime is not indicated, confirming the pattern already mentioned.



In 2022, as in the case of the SC, the number of rulings increased, almost doubling from 224 in the previous year to 443, with 64 decisions (14.45%) related to violence against women.¹⁶

Of these 64 decisions, 95% are grouped into three appeals: cassation (36 rulings), recourse (13 cases), and conflicts of jurisdiction (12 rulings), with the remaining 3 cases corresponding to appeals for the establishment of jurisdiction. It also implies that 60% of the Chamber's decisions do not put an end to the process but rather are proceedings to decide the hearing of a case by a particular court, which means that most of the Chamber's decisions are one more link in a chain of processes that do not end up resolving the conflicts that have arisen.

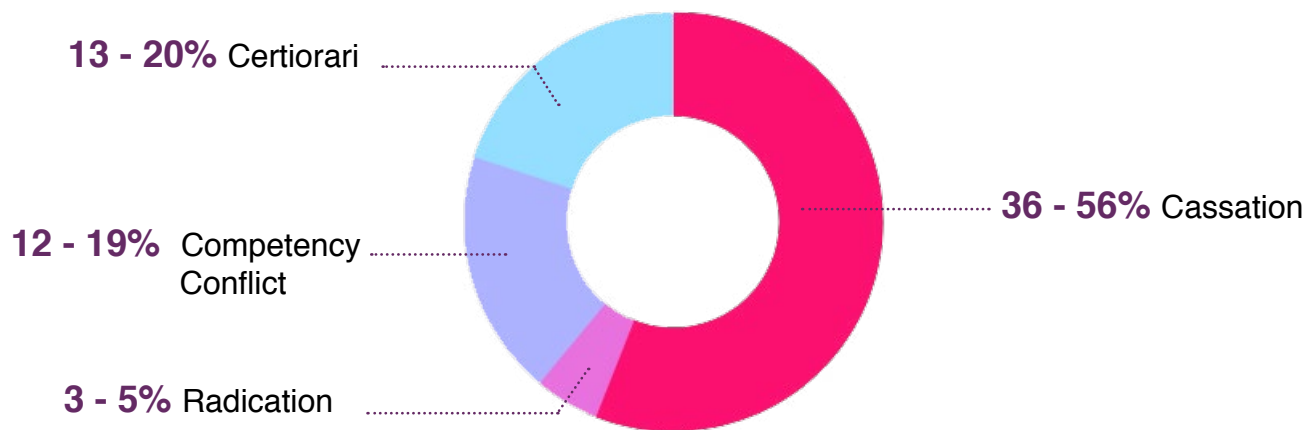
It should be noted that, in the case of cassation, the trial is not always completed, but the case can also be reinstated and the process resumed, which makes the situation even worse than described above.

Regarding certiorari and radication, which account for 25% of the cases, we reiterate what was previously said because, although in relative terms, their number is much lower in 2022 than in the previous year due to the exceptionality that must accompany them, it is not justified that they represent a quarter of the cases related to violence against women, since in both cases the underlying problem is the lack of confidence in the courts of instance, which, according to these numbers, is very large.

¹⁶ See Table No. 2.

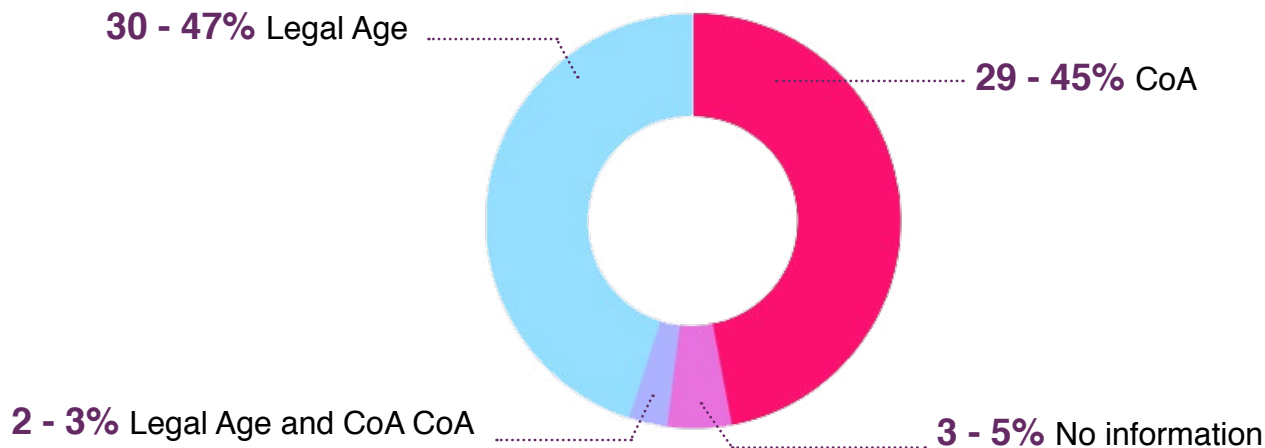
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TYPES OF RESOURCES (SCP, 2022)
 Graph No. 12



In relation to the age of the victims, the data are more balanced than in the previous year, with over-age victims accounting for 47% of the cases. In comparison, non-age victims accounted for 45%, with 2 cases in which there were victims of both categories and three decisions in which this is not reported.

AGE TYPOLOGY OF VICTIMS (SCP, 2022)
 Graph No. 13



MYTHS AND REALITIES OF VIOLENCE AGAINST WOMEN IN VENEZUELA:
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Regarding the crimes that give rise to the corresponding trials, we have that, as occurred with the data previously studied, sexual abuse has a predominant presence with 17 cases, followed by psychological violence (10), homicide (8), femicide (7), sexual violence (6) and carnal intercourse with a particularly vulnerable victim (5). Another element to highlight in this line is that the spectrum of crimes related to violence against women is the broadest of those analyzed in this report, and we must highlight the existence of three cases of patrimonial violence (See Graph 14).

The high incidence of sexual abuse, at least in children and adolescents (NNA), is consistent with the available data, such as those issued by the MP¹⁷ which, during the management of the current prosecutor, from August 2017 to the first half of 2023, records having charged 10,430 people for crimes of sexual abuse of NNA, of which 10,325 have been charged, and 3,721 were convicted. It is worth noting that only in the first semester of 2023, the PM received 2,076 cases for the crime of sexual abuse of children and adolescents.¹⁸ The increasing presence of these crimes has also been denounced by civil society, as shown by the Venezuelan NGO Cecodap, which has documented that in its legal assistance service, it is the most reported crime.¹⁹

Even though this is the broadest catalog of crimes in the years analyzed, the truth is that if one considers that among those described are types that were included because the victim was a woman, they do not fall within the category of crimes related to violence against women and, therefore, many of the 23 types of crimes that the Organic Law on the Right of Women to a Life Free of Violence (LOSDMVLV) encompasses were left out of the review of the chambers, such as sexual slavery, labor violence, computer violence and, above all, political violence, in a country where the structural genesis of national problems lies precisely in the political rant, so that the crimes known in the TSJ are far from reflecting the reality of the country, despite the rules governing the matter.

17 However, there is a lack of precision regarding the data of the accused, since the press release of the Public Prosecutor's Office states textually that the Attorney General of the Republic: revealed that since his arrival at the Public Prosecutor's Office we have charged 10,430 people for crimes of sexual abuse of children and adolescents, 10,325 have been charged, and 3,721 have been convicted,

In other words, the number of accused is higher than the number of defendants, when in any case it should be equal or lower. Public Prosecutor's Office (July 31, 2023). Attorney General reported that 12,030 convictions for drug trafficking have been obtained since August 2017. Available at: <http://www.mp.gob.ve/index.php/2023/07/31/fiscal-general-informo-que-se-han-conseguido-12-030-sentencias-condenatorias-por-narcotrafico-desde-agosto-de-2017/>.

18 MP (July 25, 2023). Attorney General reported that 2,076 cases of sexual abuse of children and adolescents have been filed with the Public Prosecutor's Office. Available at: <http://www.mp.gob.ve/index.php/2023/07/25/fiscal-general-informo-que-han-ingresado-al-ministerio-publico-2-076-casos-por-delitos-de-abuso-sexual-a-ninos-ninas-y-adolescentes/>.

19 Cecodap (April 25, 2023). Somos Noticia 2023 report: bullying, sexual abuse and mistreatment requests increase. Available at: <https://cecodap.org/informe-somos-noticia-2023-aumentan-las-solicitudes-por-acoso-escolar-abuso-sexual-y-maltrato/>.

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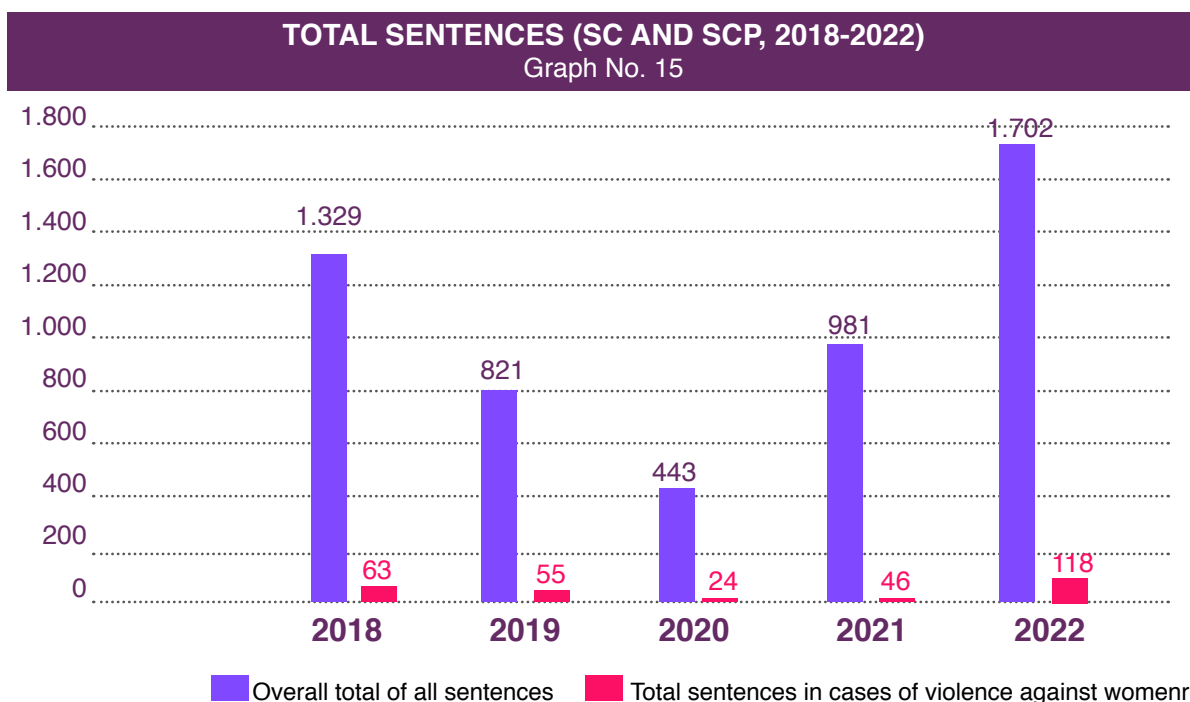
Finally, we should note that, in total, the SC and the SCP issued in the period corresponding to the years 2018 to 2022 5,276 decisions, of which 306 had some link with violence against women, representing just 5,80% of the total (see Table No. 3).

TOTAL SC AND SCP RULINGS ON VIOLENCE AGAINST WOMEN
(2018-2022)
Table No. 3

YEARS	GRAND TOTAL OF SENTENCES	TOTAL SENTENCES FOR VIOLENCE AGAINST WOMEN	PERCENTAGE
2018	1.329	63	4.74%
2019	821	55	6.70%
2020	443	24	5.42%
2021	981	46	4.69%
2022	1,702	118	6.93%
Totales	5,276	306	5.80%

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Likewise, it can be seen that, although the pandemic made a dent in the number of cases that were decided, in an evident sign of the virtual and unconstitutional closure of justice in the country,²⁰ as of 2021, there is an increase in the number of decisions until reaching three digits (108) in 2022, a unique figure in the period under study (see Graph No. 15).



2.4. Data on relevant rulings on violence against women

As indicated, the number of rulings with some relation to violence against women barely exceeds 5% of the total number of SC and SCP decisions in the last five years, but in addition, analyzing those corresponding to the last two years, we find, as in our previous reports, that most of these decisions are linked to issues of mere formality (request for information²¹ of a case to a lower court) or non-compliance with formalities (lack of standing, failure to file copies, abandonment of proceedings, non-exhaustion of ordinary remedies, among others).

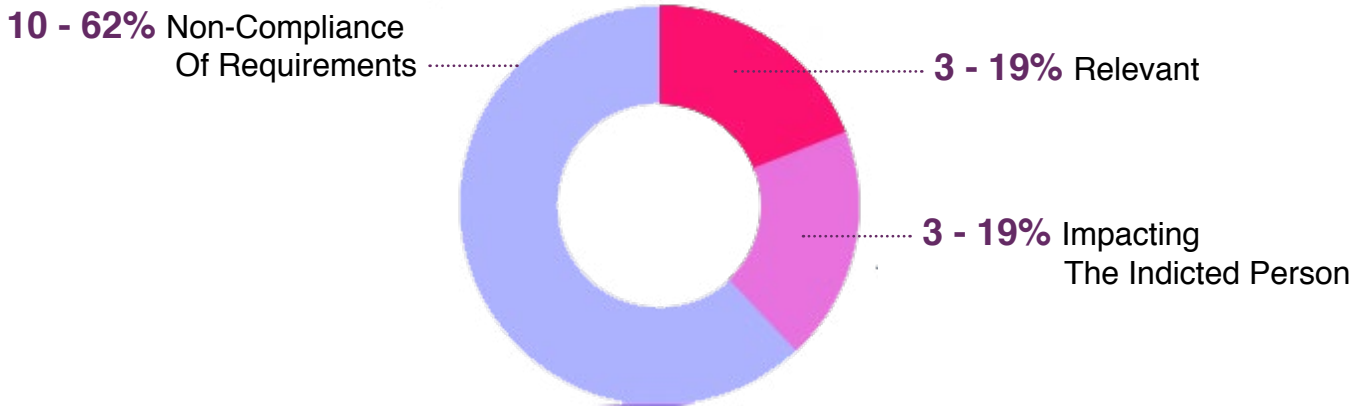
²⁰ Daniels, Ali (2020). Venezuela: coronavirus pandemic and restriction of civil and political rights. Available at: https://dplf.org/sites/default/files/venezuela_ali_daniels.pdf.

²¹ At least in the criminal area, this type of decision of mere formality should be by means of an order, since according to article 157 of the Organic Code of Criminal Procedure, sentences are only to "acquit, convict or dismiss", while it states that "orders will be issued to resolve any incident, such as in the case of requests for information". However, it is not a minor detail that by giving the character of sentences to these decisions, they add to the statistics of sentences of the TSJ, which would be an explanation for this situation.

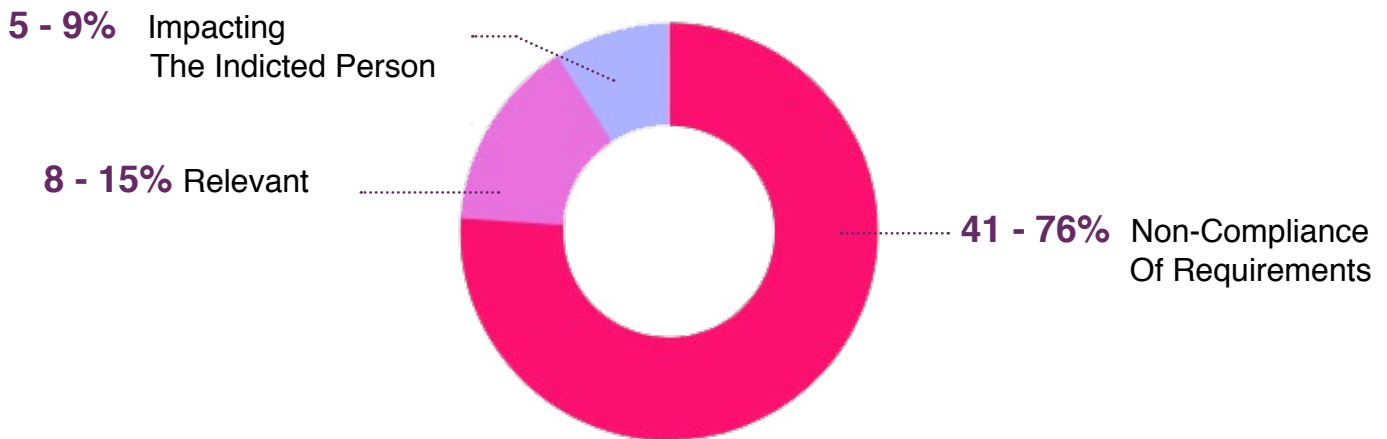
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In the case of the SC, we find that in 2021, 62% of the decisions were merely procedural or related to the fulfillment of requirements (see Graph 16), which implies that a high number of rulings are currently limited to resolving procedural and not substantive issues regarding violence against women. However, in 2022, this situation worsened, with 76% of the rulings reaching this type of decision (see Graph No. 17), demonstrating that the mandate of Article 257 of the Constitution, which states that "the omission of non-essential formalities shall not sacrifice justice," is not being fulfilled.

RELEVANCE OF JUDGMENTS (SC, 2021)
 Graph No. 16



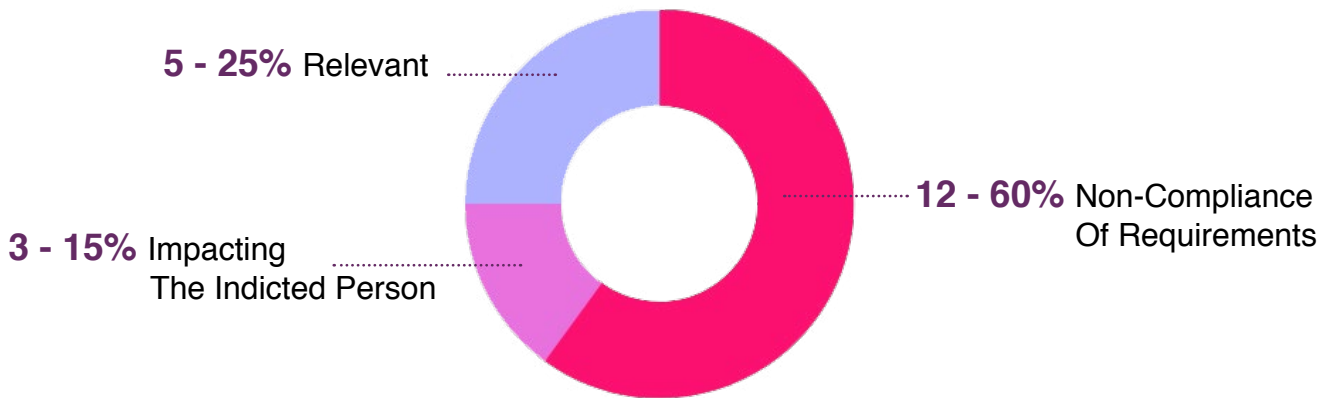
RELEVANCE OF JUDGMENTS (SC, 2022)
 Graph No. 17



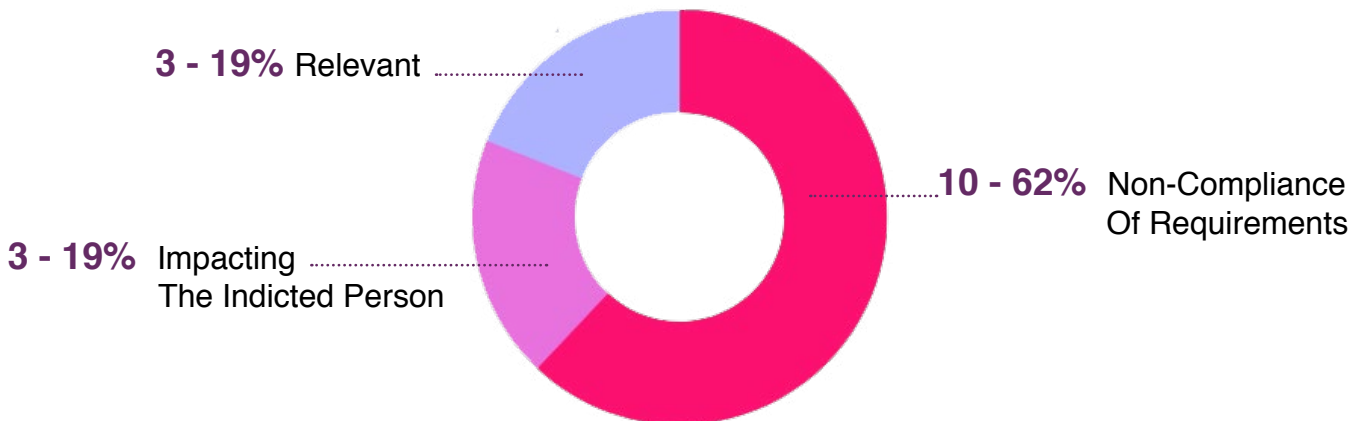
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The same can be said of the SCP's decisions on violence against women, in which we find that in 2021, 60% only dealt with procedural aspects or formalities (see Graph No. 18), rising to 62% in 2022 (see Graph No. 19).

**RELEVANCE OF JUDGMENTS ON VIOLENCE AGAINST WOMEN
 (SCP, 2021)
 Graph No. 18**



**RELEVANCE OF JUDGMENTS ON VIOLENCE AGAINST WOMEN
 (SCP, 2022)
 Graph No. 19**



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As a result, only 19 rulings of the two Chambers contain relevant and substantive issues related to violence against women. However they are not necessarily new ones, since in many cases, they are the confirmation of criteria already established or the confirmation of a legal interpretation already made previously.

To this effect, some may argue that it is the rule that, of the decisions of a maximum court, only a few decisions imply an innovation or impose a new criterion. Still, in response, we have to say that this is not the point since they could be decisions of reiterated criterion, as we have indicated, but that deal with substantive issues, in that case, we would consider them relevant. However, in the case that we emphasize, what we are dealing with are decisions that reject requests because powers of attorney or supporting documents, do not comply with the requirements of the appeal, or simply request information from a court, all of these situations are unrelated to the essential elements linked to the gross problem of violence against women, where justice is not served due to lack of compliance with formalities.

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

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 a specific law; instead, it is a matter of interpreting and applying its spirit, purpose, and reason; to do so, the justice operator shall assume these principles as his own.

Thus, it must be understood that incorporating the gender perspective in sentences is not only a women's issue, since it guarantees equality and non-discrimination in Venezuela.

This is not a matter for specialists alone. Still, it should be a commitment of all justice operators since it should be seen

not only in the passing of criminal sentences (specifically in the area of gender violence or violence against women) but also concerning other jurisdictional orders since the gender perspective has a transversal impact on the entire legal field (social, contentious-administrative, civil).²²

In this context, the Judiciary must identify discriminatory interpretations and applications of laws beyond the need for laws that address the structural inequality to which women are subjected.²³

The legislative progress on gender issues in Venezuela, which even establishes institutional violence,²⁴ is superior to the demonstrations of the Judiciary in this regard. Beyond the creation of the National Commission of Gender Justice (2010), the advances have been left on the shoulders of individuals allegedly sensitized on the matter²⁵ or assigned temporarily to perform the task without proper specialized training.²⁶

The ninth review of Venezuela before the CEDAW Committee left some data issued by the Venezuelan State and representatives of the Judiciary that shed light on its actions. For example, it was indicated that "at the national level, in the Courts attached to the National Commission of Gender Justice of the Judiciary, between 2020 and the first semester of 2022, the Convention has been invoked in 2,466 judicial decisions."²⁷ Following the practice of the Supreme Court of Justice (TSJ) of generating certain numerical impact without making a breakdown by categories, it is important to note that

22 Rubido de la Torre, Belén (2022). *The gender perspective in judicial sentences. Paper presented at the I Regional Congress of Forensic Services addressed gender violence, genetic database and forensic intervention in environmental crimes.* https://www.sica.int/agenda/sala-1-la-perspectiva-de-genero-en-las-sentencias-judiciales_1_130012_1682.html.

23 Scientific Culture and Innovation Unit (UCC+i) of the University of Cordoba (October 9, 2020). Legal feminism raises its voice. Available at: <https://www.uco.es/servicios/actualidad/ciencia/item/139007-el-feminismo-juridico-alza-la-voz>.

24 Article 19, paragraph 16 of the Organic Law on the Right of Women to a Life Free of Violence (LOSDMVLV).

25 However, the former judge of the Constitutional Chamber (SC) of the TSJ, Carmen Zuleta de Merchán, who was coordinator of the National Commission of Gender Justice of the Judiciary, wrote on Twitter (October 23, 2023) that "the woman victim of violence against women should know that the public use of social networks with sexual content may support the application of mitigating factors for the conviction of the perpetrator." Available at: <https://twitter.com/zuletamerchan/status/1716529591001440536>.

26 This is the case of SC magistrate Lourdes Benicia Suárez Anderson, current coordinator of the National Commission of Gender Justice of the Judiciary. Her curriculum vitae is available at: <http://www.tsj.gob.ve/-/lourdes-benicia-suarez-anderson>.

27 *Responses of the Bolivarian Republic of Venezuela to the list of issues and questions regarding its ninth periodic report** [Date received: October 19, 2022] [Date received: October 19, 2022] [Date received: October 19, 2022] [Date received: October 19, 2022] [Date received: October 19, 2022] https://digitallibrary.un.org/record/4011774/files/CEDAW_C_VEN_RQ_9-ES.pdf.

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the resolutions on awards to women²⁸ have a heading that mentions the CEDAW, so it would be significant to determine how many of those 2,466 decisions make use of this treaty in a relevant way as a concrete fact of the fight against violence.

On the other hand, reiterating what it stated during the III Universal Periodic Review (UPR) of Human Rights (January 2022), more than a year later (May 2023), the State pointed out that Venezuela has specialized gender courts in only 75% of the territory and that the remaining 25% have municipal courts that assume this exceptional competence in crimes of violence against women and that, therefore, are not adequately specialized.²⁹ This results in a gross violation of the rights of women victims of violence in these districts, given that these courts are not qualified or trained to apply a gender perspective or the necessary human rights standards and cause these cases to be analyzed as any other crime without understanding their particular nature.³⁰

Also, during the review sessions of Venezuela before the CEDAW Committee, the magistrate of the Constitutional Chamber (SC) and coordinator of the National Commission of Gender Justice, Lourdes Suárez Anderson, maintained³¹ that all personnel of the Judiciary received training in different topics related to gender (education with a gender perspective, training in the use of gender language, elimination of gender stereotypes) at the National School of the Magistracy (ENM, Escuela Nacional de la Magistratura). It is important to note that on the ENM's website its academic offerings only have available a diploma course in gender updating (120 hours), which does not appear to be currently active or to have a recent enrollment date. In addition, a survey of the School's training offers,³² only a few forums, conferences and forum chats that appear as gender-related training in recent years. Still, none of these exceeded three academic hours.

The above serves as a context to understand the contrast between the high demands imposed by the fight against violence against women and an institutional reality that exposes neither policies nor concrete facts that express the willingness to be at the level of the rigorosity of such principles, which explains the framework in which the judgments are handed down in the country on this matter, whose most outstanding criteria we will analyze below.

28 It should be clarified that a resolution, although administrative in nature, is a decision and therefore subject to be included in the statistics of the use of the name of the Convention. Vid. Supreme Court of Justice. Resolution 2021-0018, of November 3, 2021. Available at: http://historico.tsj.gob.ve/informacion/resoluciones/sp/resolucionSP_0003818.html.

29 Access to Justice and Cepaz (2022). *Myths and realities of violence against women in Venezuela. Historia de otro fracaso del Poder Judicial (Myths and realities of violence against women in Venezuela)*. Available at: <https://accesoalajusticia.org/wp-content/uploads/2022/02/Mitos-y-realidades-de-la-violencia-contra-la-mujer-en-Venezuela.-Libro.pdf>.

30 Access to Justice and Cepaz (2022). *Myths and realities of violence against women in Venezuela. Historia de otro fracaso del Poder Judicial (Myths and realities of violence against women in Venezuela)*. Available at: <https://accesoalajusticia.org/wp-content/uploads/2022/02/Mitos-y-realidades-de-la-violencia-contra-la-mujer-en-Venezuela.-Libro.pdf>.

31 1985 session, 85th session, Committee on the Elimination of Discrimination against Women (CEDAW). *Review of Venezuela* (May 18, 2023). Available at: <https://media.un.org/es/asset/k1x/k1xvk8xf54?kalturaStartTime=6552>.

32 Casal Hernández, Jesús María, and Berríos Ortigoza, Juan Alberto (2023). *Bases de un plan nacional de formación de jueces para Venezuela: Propuestas desde la academia*. Caracas: Rule of Law Program for Latin America of the Konrad Adenauer Foundation, UCAB.

3.1. Decisions with criteria that guarantee the right of women, girls, and adolescents to a life free from violence

3.1.1. In cases of crimes of gender violence and atrocities, the dismissal of the prosecutor's accusation and the admission of the private accusation implies a trial regardless of the Public Prosecutor's Office.³³

This ruling deals with a case in which the supervisory judge dismissed the prosecutor's accusation for not complying with the procedural requirements of the law but partially admitted the private accusation made by the victim's representatives for sexual crimes against a minor.

The defendant's defense appeals by omission, considering that the a quo violated constitutional rights by not granting complete freedom to his defendant, being the effect of the dismissal of the authority by *res judicata*.

However, the Court of Appeals considered that the failure to comply with the procedural requirements of the prosecutor's accusation is an erroneous argument of the defense since the Control Court admitted the private accusation itself, which did comply with the requirements of Article 308 of the Organic Code of Criminal Procedure, which made it legal to maintain the measure of judicial deprivation against the accused, a reasoning shared by the SC.

When the case came before the Supreme Court through through a remedy for a legal protection submitted by the defense of the accused, it made a jurisprudential review that defends the right to procedural equality of the parties as an expression of the right to defense, which in turn coexists with the right to adequate judicial protection; it is up to the Chamber to interpret the procedural institutions in a broad manner, trying to ensure that the process is a guarantee for both, as indicated in the following words:

Thus then, following the criterion established in the indicated sentences, per the provisions of Sections 26 and 30 of the Constitution of the Bolivarian Republic of Venezuela and Section 23 of the Organic Code of Criminal Procedure, it is extended to all judges of the Republic, with ordinary criminal jurisdiction as well as in special jurisdiction of gender violence, the possibility of admitting the victim's private accusation, in the absence of accusation exercised by the Public Ministry, and convene the preliminary hearing, without running the risk of being dismissed for this reason (*vid.*, judgment number 902 of December 14, 2018, case: Jesús Gabriel Lombardi Boscán).

33 <https://accesoalajusticia.org/en-casos-de-delitos-de-violencia-de-genero-y-atroces-el-sobreseimiento-de-acusacion-del-fiscal-y-la-admision-de-la-acusacion-particular-propia-implica-pase-a-juicio-con-prescendencia-del-mp/>.

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Next, the Chamber subsumed its criterion to the procedural facts of the trial in the following terms:

Under what has been stated above, it is established that in the present constitutional protection action, there was no omission on the part of the Control Court, (...), since the referred Court issued its pronouncement concerning the accusation of the (...) Public Prosecutor's Office and the private accusation presented by the victim's representative, additionally, the arrest warrant (...), was a consequence of the admission of the accusation for the alleged commission of the atrocious crime as the victim's representative.) Public Prosecutor's Office and the private accusation presented by the representation of the victim, additionally the arrest warrant (...), was a consequence of the admission of the accusation for the alleged commission of the heinous crime of sexual abuse of a child with continuous penetration.

Therefore, there is no violation of the personal liberty of the aforementioned citizen, contrary to what is alleged by the plaintiff, so this Constitutional Chamber considers that the present appeal for constitutional protection filed against the decision issued on August 9, 2019, by the Court of Appeals (...), which declared inadmissible the "action of constitutional protection (...) in the modality of habeas corpus" filed against the decision issued on May 10, 2019, by the referred Court of Control, (...) with Competence in Matters of Crimes of Violence against Women (...), must be declared without merit, and consequently confirms the appealed judgment. It is so decided.

Despite the positive aspect of the ratification of the importance and independence of the private accusation, we must highlight two elements that call our attention to this decision: firstly, we find something that is quite common in cases of violence against women and that is none other than the private accusation, which in this particular case, according to the story telling of the decision itself, is the one that achieved the subsequent conviction of the accused, and secondly, that by the date of the Chamber's sentence, it indicates that the trial was already in the execution phase because the accused had been sentenced for 20 years.

The first element is significant because we have seen it in several decisions analyzed. It allows us to appreciate how the victims have to assume the defense of their case, and in some situations, even replace the Public Prosecutor's Office (MP).

33 <https://accesoalajusticia.org/en-casos-de-delitos-de-violencia-de-genero-y-atroces-el-sobreseimiento-de-acusacion-del-fiscal-y-la-admision-de-la-acusacion-particular-propia-implica-pase-a-juicio-con-prescendencia-del-mp/>.

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This is especially relevant if we review the action record of the MP, which in its 2016 report, recorded impunity in cases of violence against women reaching 99%.³⁴ In addition, it went from having a directorate for the defense of women to the inclusion of this data in the management of the Directorate for the Protection of the Family and Women, in a clear regression of the obligation set in international treaties and recommendations of the CEDAW to have separate instances for the attention of cases referring to women.

On the other hand, since 2017, comprehensible figures on the matter have ceased to be published, abandoning the formula of public management reports with annual and disaggregated data on cases filed or complaints, conclusive acts, indictments, and trials, which anyone on the website of the national prosecutorial agency could consult.

As we have already mentioned, the Attorney General of the Republic reported femicide figures in communications to the press or through the social networks of the agency. The publication of these data without following a periodicity criterion makes it challenging to follow up and leaves the situation of this expression of violence undetermined. As Cepaz has pointed out, "these figures provided by the Public Prosecutor's Office are not sufficient to be considered indicators of the State's response to the violence suffered by Venezuelan women."³⁵

In other words, by grouping the figures over a several years, it is impossible to discern whether there have been improvements from one year to the next, and therefore such data do not provide information on whether the justice system is fulfilling its obligations.

Given this scenario, in the cases in which the private accusation is the one that bears the burden of the trial, once a conviction has been obtained, mechanisms of disciplinary responsibility should be implemented in the Public Prosecutor's Office since it should have been the one that got the conviction and not the victim. We have not found any reference to this possibility of determining responsibilities in the Prosecutor's Office. The connivance of the Chamber with the non-compliance of the Public Prosecutor's Office is highly worrisome, because it implies an additional cost to the victim and imposes demands that do not correspond to him/her in principle since it can subject him/her to situations of re-victimization that should not occur, not to mention the economic cost involved and that is not within the reach of most of the victims.

Additionally, regarding the fact that by the time the decision was issued, the conviction of the accused had already occurred, it exposes how the remedy for legal protection, which should be a process of urgent and rapid decision, in the Venezuelan justice system is a resource subject to procedural delay, which is structural to it, and which is evident in this decision occurred long after the time limits provided in the Organic Law of Amparo on Constitutional Rights and Guarantees, which establishes very short time limits but which in reality are only exceptionally complied with.

34 Avesa, Asociación Civil Mujeres en Línea, Cepaz and Freya (2018). *Mujeres al límite 2017 - El peso de la emergencia humanitaria: vulneración de derechos humanos de las mujeres en Venezuela*. Page 42. Available at: <https://avesa.blog/informes-sobre-derechos-humanos-de-las-mujeres/mujeres-al-limite-2017/>.

35 Cepaz (August 1, 2023). *Observatorio Digital de Femicidios de Cepaz se pronuncia ante las cifras de femicidios publicadas por el Ministerio Público*. Available at: <https://cepaz.org/noticias/observatorio-digital-de-femicidios-de-cepaz-se-pronuncia-ante-las-cifras-de-femicidios-publicadas-por-el-ministerio-publico/>.

3.1.2. The criterion is ratified that the anticipated test carried out on children and adolescents may be carried out telematically.³⁶

It is another amparo case that came to the attention of the SC, in a trial in which relatives of the aggressor denounced him for allegedly committing sexual abuse against two girls, raping them continuously for years, and who, at the time of the trial were in different states from the court.

Due to this, the Public Prosecutor's Office requested the Control Court to carry out the anticipated tests by telematic means since the victims reside outside the State and the judge *a quo* fixed them without notifying the victims, which is an unjustifiable irregularity; the reason for which it was deferred on several occasions and several months passed without informing them, situation that is used by the judge to deny the realization of the anticipated tests (even though they could not be adduced due to the responsibility of the court itself) and fixed the act of the preliminary hearing. The Public Prosecutor appealed this decision.

The Court of Appeals dismissed the appeal, but just before the dismissal, the representative of one of the victims filed a constitutional appeal for the procedural delay of the Court of Appeals in deciding the case. It is evident that since there is already a decision, the remedy for legal protection is not admissible for that reason; however, the SC, in the exercise of its power of review, entered to hear the case *ex officio*, observing that the lower courts ignored the binding judgment No. 1049/13, case Kendry Robert Soto Gonzalez, which allows the aforementioned anticipated evidence.

In this context, the Chamber ruled that the courts that heard the case did not observe the binding decisions of the SC, which allows the use of advance evidence upon request of the Public Prosecutor or any of the parties to safeguard the testimony of children and adolescents, either as victims or as witnesses, on the knowledge they have of the facts; This in order not to re-victimize them, as they are considered especially vulnerable subjects, in addition to the fact that the crime for which the offender is accused has been described by the SC itself as a heinous crime.

Thus, acting *ex officio*, the Chamber ratified a criterion protecting female violence victims. Still, at the same time we cannot fail to appreciate that even though the Chamber expressly indicated that the lower courts disregarded a binding judgment of the same, it did not order the action of any disciplinary mechanism to the judicial bodies involved whose actions left the victims defenseless.

³⁶ <https://accesoaljusticia.org/ratificado-el-criterio-de-que-la-prueba-anticipada-que-se-efectua-a-ninos-ninas-y-adolescentes-puede-realizarse-de-forma-telematica/>.

3.2. Decisions in which the judge's intervention is perceived as contrary to women's interests or in which prejudices, roles, or stereotypes against women as protected subjects are perceived.

3.2.1. Omission of the Criminal Cassation Chamber of evident gender prejudice and stereotypes against victims that affected the application of the special legislation against violence³⁷

It is a case in which a 15-year-old girl reported that her father beat her with a belt buckle for having prepared breakfast for her alone and not for her 19-year-old male siblings, to which were added shouts with disqualifying epithets. To this concern, we consider it necessary to listen to the victim's voice as reflected in the sentence:

I am here to report that my father (...) when I arrived at the apartment at about nine in the morning, he asked me if I had had breakfast. And I told him that I had made breakfast for myself, because of my brothers (...) AGED 19 YEARS OLD, both of whom are in my apartment.) 19 YEARS OLD, both dark-haired, suddenly my father FIDEAS began in a violent and aggressive way to attack me with words that I WAS AN SELFISH, LAZY, THAT I NEVER DID ANYTHING IN THE HOUSE, suddenly began to name my family, my mom, saying that I had learned that from her, that my mom was a WHORE, that she abandoned us and that she was doing whatever she wanted around there, where I replied that he should respect my mom, that he didn't have to get her into our problem, there: IN A VIOLENT AND AGGRESSIVE WAY he lunges at me, I was lying on my bed (...) and with a lot of AGGRESSIVITY HE ATTEMPTED TO COVER MY MOUTH, in an attempt to get him off me I managed to push him with the palms of my hands, since I have long nails and the least I wanted to do was to scratch him, at that moment my father FIDEAS began AGAIN WITH THE INSULTS WHILE TAKING OFF HIS BELT, WHICH WITHOUT MEANING WORDS AND IN A BRUTAL AND SAVAGE WAY BEGAN SLASH ME HEELS WITH THE BELT BUCKLE, at that moment ONE OF MY BROTHERS TRIES TO GET IN (...) WHO, GIVEN THE WAY I WANTED HIM TO BE HURT(...) WHO GIVEN THE BRUTAL STRENGTH OF MY FATHER, MY FATHER REALIZING THAT MY BROTHER HAD HELD THE BELT, PUSHED HIM AGAINST THE CLOSET, MY BROTHER REBOUND AGAINST THE CLOSET after the beating he told me YOU ARE LEAVING HOME TODAY.... (sic).

³⁷ <https://accesoaljusticia.org/para-determinar-la-competencia-deben-analizarse-los-hechos-sin-limitarse-a-la-simple-verificacion-del-genero-de-la-victima/>.

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The Public Prosecutor's Office accused in accordance with the crime of cruel treatment set in the Organic Law for the Protection of Children and Adolescents (LOPNNA), which has a less severe penalty – because the victim was a minor -. For that reason the Criminal Cassation Chamber (SCP) , after explaining that in order to determine the competence in this case and other similar cases, the judges must analyze the context in which the facts occurred, without limiting themselves to the simple verification of the gender of the victim, concludes that the ordinary court has the competence.

Likewise, the SCP points out that the commission of the crime of cruel treatment essentially involves an excess of whoever exercises parenting or supervision over the child or adolescent but does not necessarily involve violence due to a gender condition.

While it is true that the premises indicated by the SCP are valid in principle, since the context of the facts must be analyzed in order to decide jurisdiction, it did not do so in this case since it can be deduced from the facts that the abuse was not a simple excess of the father, but that he abused the minor because of her gender and because she did not respond to the stereotype that establishes the submission of women to their male brothers, so that these facts should be subsumed under the crime of physical and/or psychological violence of the special law on the matter.

At this point, it should also be noted that the violence experienced included insults against the victim's mother and remarks about her actions, demonstrating the relevance of this fact in the aggression, bringing it closer to the concept of vicarious violence, which constitutes a "form of gender violence by which the children of women victims of gender violence are instrumentalized as objects to mistreat and cause pain to their mothers."³⁸

This form of violence is so evidently present in our society that it has already been recognized in several countries and runs in the 2021 reform of the Organic Law on the Right of Women to a Life Free of Violence (LOSDMVLV), which establishes it as family violence in its Section 19 numeral 5.

It is the responsibility of justice operators not to simplify complex expressions of violence that have as victims populations in situations of vulnerability, such as women and girls, in addition to avoiding the invisibility of prejudices against women that have been denounced by various human rights organizations and even by the United Nations High Commissioner for Human Rights, who has indicated that:

In addition, OHCHR received reports of **undue gender stereotyping in the legal system, as well as incidents of gender-based violence by public and judicial officials, including threats, mistreatment, and verbal violence.**³⁹
(Emphasis added)

³⁸ Amnesty International Spain (29 November 2022) What is vicarious violence? Available at: <https://www.es.amnesty.org/en-que-estamos/blog/historia/articulo/que-es-la-violencia-vicaria/>.

³⁹ OHCHR (2020), Independence of the judicial system and access to justice in the Bolivarian Republic of Venezuela, also with regard to violations of economic and social rights, and the human rights situation in the Orinoco Mining Arc region, A/HRC/44/54, para. 30.

This decision is the most severe because it shows how the SCP overlooks essential aspects of violence against women, such as gender stereotypes and prejudices, which is why it is considered a regressive one, as it goes against decisions of the same Chamber, such as no. 0043 of May 13, 2021, in which it decides that when indicted with any of the crimes that fall under the jurisdiction of the specialized judges for violence against women, even if it is concurrent with the charge of the specialized judges for violence against women. No. 0043 of May 13, 2021, in which it decides that in the event of an accusation of any of the crimes whose competence corresponds to the specialized judges in matters of violence against women, even if it coincides with the accusation of crimes whose competence corresponds to the ordinary criminal judges, the competence of the case will correspond exclusively and exclusively to the courts with competence in matters of gender violence.

3.2.2. Omission of the existence of clear gender-based elements that result in the non-application of the special law against violence against women. Invisibilization of the victim.⁴⁰

In order to analyze this case, we consider it necessary to cite the judgment, referring to the facts that originated the court case:

On April 8, 2022, the Bolivarian National Police Corps recorded the following:

"... we received a citizen who identified herself as DANYELIS in the company of her sister ROXIBEL (...) the same indicating to us that at approximately seven (7:00) in the evening of April 6th of this year, she was at her mother's house (...).) indicated that she was sitting on the furniture in her mother's house doing some homework and her sister was playing in the living room with some dolls when she observed that her stepfather, HÉCTOR, came in her room naked, masturbating, and ejaculating on her body at the level of her breasts, She then indicates that she pushed him and took him out of the house telling him to leave and he began to assault her threatening to kill her verbally, she then expressed that when this happened her mother was not in the house because she was working (...)"

For Acceso a la Justicia, the gross of the facts presented is of particular relevance insofar as the decision deviates from all the precepts of the SCP on gender issues, minimizes the actions of the aggressor, and confirms the maintenance of stereotypes and prejudices on the part of judicial operators, as previously indicated.

⁴⁰ <https://accesoaljusticia.org/sala-penal-se-aparta-del-criterio-de-perspectiva-de-genero-y-fija-la-competencia-del-tribunal-con-base-al-quantum-de-la-pena/>.

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Once the judicial process starts, a conflict of jurisdiction arises between courts due to the prosecutor's accusation of the crime of indecent assault, established in the Penal Code, that is to say, in the ordinary law and not in the special law, which generates the conflict of jurisdiction in three courts, namely: one with jurisdiction over crimes of violence against women, and two courts with jurisdiction over common crimes.

The surprising thing about this whole conflict of jurisdiction is that no court, not even the Chamber, considered the facts as a possible criminal type framed within the framework of gender violence, limiting themselves to basing their declinations on the *quantum* of the penalty.

In this regard, the SCP ordered that the ordinary municipal court would have to hear the case since it is a less serious crime, ignoring decisions such as that of the SC, which established in judgment No. 091/16, among other things, the qualification of atrocious crimes and pointed out that in the LOSDMVLV there is no categorization of crimes of greater or lesser gravity as established in the Organic Code of Criminal Procedure.

On the other hand, although, indeed, the crime charged is not of the special law, the facts are subsumed in Article 59 *eiusdem* that sets sexual abuse without penetration; when using threats, the active agent constrains the woman to an unwanted sexual contact, so it is worrying that in the case under analysis the judges do not consider it in this way and insist on the crime charged of the Penal Code.

In addition, from the brief facts, it is also determined that there were death threats, a crime provided for in article 55 *eiusdem*. The crime of psychological violence, punished in article 53 of the same law is also configured, reason enough to generate the special law attracting jurisdiction. In other words, there was not one but several reasons for the competent courts to be the specialized courts.

Tragically, none of the courts considered the facts as violence against women; since these are crimes that ordinarily happen within the family environment, their mere denunciation can lead to possible and future damage to both the woman victim of domestic violence or machista, which requires the application of the mechanisms established in the special law and that do not exist in the Penal Code. As can be seen, it is not only a matter of punishment but of everything that violence against women implies.

Additionally, the ruling *in question* deviates from its own decisions, such as the one published in ruling No. 0043 of May 13, 2021, analyzed by Acceso a la Justicia, in which the same Chamber noted with concern the increase in proceedings of conflicts of not knowing about the existence of crimes against women.

3.2.3. Requiring victims to engage in conduct that is outside the scope of the typical criminal offense in accordance with gender stereotypes⁴¹

The case involves a complaint of sexual violence against an individual who, at the time of the events, was the chief supervisor of the Bolivarian National Police. According to the victim's testimony, the sexual violence occurred after the accused "took out a pistol he was carrying in the waistband of his pants, pointed it at her head," and ordered her to perform a sexual activity against her will. The Public Prosecutor's Office accused the crimes of sexual violence and improper use of an organic firearm.

In order to dismiss the charge of improper use of an organic firearm, the control judge based her decision, among other reasons, on the following:

There was no evidence of violence on the victim's body, such as ecchymosis, scratches on the face, wrists, arms, or the face, around the mouth, or nose, if the defendant hit her in the head with the firearm.

Adding the following:

It was not proven that the accused citizen Charles Anthony Gómez Hernández, had used the firearm to coerce and constrain the victim (...), to have oral sex with him; it was not proven that he had used his superiority to subject the victim to have oral sex; on the contrary, the forensic medical report made on July 6, 2019 (...) showed that the victim was in perfect condition and that she had no bruises or hematomas or any sign of violence. (Emphasis added).

As is evident, there is no relation between the testimony of the victim and the reasoning of the control judge since at no time does what the victim said to imply the use of physical violence but rather the threat of the use of a firearm, thus using the old prejudice according to which there is no victim of violence against women unless she proves that she made physical opposition, even at the risk of her life, against the aggressor, when in situations such as the one described, the threat of the use of a firearm, together with the fact that the person carrying it was a police officer and, therefore, familiar with its use, is sufficiently severe to constrain any opposition.

It should be noted that the Chamber says nothing about this prejudice and only limits itself to annulling the control judge's decision insofar as she rejected the accusation of improper use of an organic firearm,

⁴¹ <https://accesoaljusticia.org/el-juez-al-realizar-el-control-material-de-la-acusacion-no-puede-extralimitarse-valorando-pruebas/>.

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exceeded the limits of the material control of the indictment, since such control deals exclusively with the inference with the possibility of truth about the authorship and participation of the accused in the punishable conduct based on the factual and legal grounds of the indictment, without it being admissible to exceed such functional framework.

All of this was because the judge found that the aforementioned crime had not been committed, which was beyond her powers at that stage of the trial.

Thus, although the ruling annuls what was decided by the supervisory judge, the fact is that not pronouncing on the evident prejudice that animated such decision, may give rise to the same argument being used again despite its manifest contradiction with the facts denounced.

It is pertinent at this point to highlight that of the 282 femicides registered by Cepaz⁴² in 2022, eight cases involved the participation of State security forces, and in seven of them, a firearm was used to commit the crime. In this context, contrary to what was established in the sentence under study, it is not unreasonable to consider, within the margins of the system of rational assessment or sound criticism, that a woman would feel at risk and under coercion in the face of a violent event involving the use of a firearm by a member of State security forces.

The gender perspective in sentencing includes recognizing violence against women and its most common expressions as a social fact that should lead to the generation of strategies for its attention and prevention. Justice operators must be as straightforward as possible about the position of authority that police officers, national guardsmen, and other officials of State security forces hold and transcend the ideas of "the good victim" who must resist or react defensively to violence or the threat of violence since these prejudices have been dismantled by scientific research with a gender perspective that extended the study of these physical reactions in the experiences of soldiers in war to the experience of women in the face of sexual violence.⁴³

This case demonstrates how officials have prejudices about what should be the behavior of a victim in the face of an act of violence, which goes beyond the legal scope since the rule does not require them. Still, in the end, as can be seen, they impose themselves on the literalness of the law without the SCP doing anything to correct the use of these prejudices.

It is, therefore, essential to highlight that "stereotyped arguments are not consistent with the principles of equality and judicial impartiality" since "stereotyped representations are part of cultural injustice, rooted in social patterns, and "in processes and practices that systematically place some groups of people at a disadvantage compared to others."⁴⁴

42 Cepaz (2023). *Monitoring of femicides in Venezuela - Year 2022*. Available at: <https://cepaz.org/wp-content/uploads/2023/04/MONITOREO-FEMICIDIOS-2022-1.pdf>.

43 *The New York Times Magazine* (September 4, 2023). "Fight or flight are not the only responses to rape". Available at: <https://www.nytimes.com/es/2023/09/04/magazine/violacion-trauma-in-movilidad.html>.

44 Villanueva Flores, Rocío (2021). "Impartiality, gender stereotypes and judicial corruption". In *Derecho PUCP - Revista de la Facultad de Derecho*. N.º 86. January-June 2021. Available at: http://www.scielo.org.pe/scielo.php?script=sci_arttext&pid=S0251-34202021000100363.

Thus, this case demonstrates that having a law with clear criminal definitions is not even remotely sufficient if those who must apply them have prejudices that distort or make invisible the purposes of the law to the detriment of the protection of women.

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

3.3.1. Re-victimization through endless trials and placing the burden of prosecution on the accused.⁴⁵

If one case represents the absolute omission of the context surrounding the victim, it is this one.

It is a request for the SCP to be summoned, in which the victim reported psychological violence, harassment, and threats by her former spouse. The facts of the case are somber that we prefer to quote what the victim's representation says because of the graphic nature of its exposition:

In this regard, since the VICTIM filed complaints in 2010 (MARKED T) against her former spouse, VITO DANIELE SUTERA CAVALCANTE, holder of Identity Card V-9.259.975 during TWELVE (12) LONG YEARS of duration of the present process, FIVE (05) ORAL AND PUBLIC TRIALS have been held in FIVE (05) OPPORTUNITIES.

That is to say, in FIVE (05) OPPORTUNITIES, the Venezuelan State has activated the judicial machinery so that there would be justice, resulting in the accused VITO DANIELE SUTERA CAVALCANTE, holder of Identity Card V-9.259.975, was CONVICTED in THREE (03) OCCASIONS, highlighting that in the remaining TWO (02) OCCASIONS, the Oral and Public Trial was INTERRUPTED already almost being completed, due to evil maneuvers of the defense and the accused.

After recounting the difficult process of the successive trials, the following section describes what happened on the fifth occasion on which the case was brought before a judicial body:

5.- And the fifth opportunity in the YEAR 2016, specifically on date 03-10-16 (Pages 27 et seq. Eighth Part) (MARKED L), the Oral Trial is initiated resulting NEWLY CONVICTED THE DEFENDANT on date 09-12-16 (Pages 155 et seq. Eighth Part), being that the defense appealed of the said decision, being declared INADMISSIBLE by EXTEMPORARY the Appeal of Final Judgment on date 11-11-19 (Pages 43 et seq. Separate Notebook) by the Court of Appeals in Matters of Crimes of Violence against Women of the Central Western Region

⁴⁵ <https://accesoalajusticia.org/retardo-procesal-excesivo-en-juicio-por-violencia-contra-la-mujer-victima-invisibilizada-por-formalismos/>.

with headquarters in Barquisimeto, we repeat as EXTEMPORARY (MARKED M), remitting the file decided to the Court of origin (Trial) (MARKED N).

Subsequently, the Trial Court (MARKED O) declared DEFINITELY FIRM the Sentencing Judgment on January 21, 2010, and therefore, ordered it to be sent to the Sentence Execution Court on the same date (MARKED P) and sent a CERTIFIED COPY of the Sentencing Judgment to the Ministry of the People's Power for Internal Relations, Justice and Peace (MARKED Q).

Despite this, the defense of the already convicted person, incredibly, filed before the Court of Execution an "appeal," which, even more remarkably, was admitted by the aforementioned Court, which ordered the referral of the case to the Court of Appeals, which invented (we cannot find another word) a "reinstatement order" and annulled a previous decision, which had declared the appeal extemporaneous, and summoned an oral hearing.

All of the previous led the victim's representatives to request the SCP's removal from office given the continuous succession of increasingly serious irregularities, to which the Chamber responded, adding another element against the victim, that such a removal request was not appropriate since:

The petitioner did not provide the information that would allow this Criminal Cassation Chamber to verify that all the appropriate procedural avenues were exhausted to resolve the legal situation alleged to have been infringed, such as the constitutional avenues.

After everything related to the victim's representation, such arguments are nothing more than another process of re-victimization since all the irregularities committed were not enough for the Chamber. Still, it also failed to perceive elements of public order, which obviously exist in admitting an appeal against a final decision, among other reasons. Still, the Chamber preferred, again, to leave the victim alone before courts that for more than 12 years have violated her right to adequate judicial protection.

The monitoring of sentences with stereotyped arguments has made it possible in other Latin American countries to point out the relationship between judicial corruption and unreasonableness because the fact that impunity for the aggressor ends up being the result sought as a consequence of "the open unreasonableness, the cynicism of the arguments, which can be seen in several judicial decisions in cases of gender violence."⁴⁶

The fact that a victim alleges that she has had five legal proceedings and more than 12 years of struggle in court and that the SCP's response is a formality, ignoring violations of public order, not only makes her invisible but also adds another aggravation by omitting the obvious power relations against her, which the SCP preferred to ignore.

⁴⁶ Villanueva Flores, Rocio (2021). "Impartiality, gender stereotypes and judicial corruption". In *Derecho PUCP - Revista de la Facultad de Derecho*. N.º 86. January-June 2021. Available at: http://www.scielo.org/pe/scielo.php?script=sci_arttext&pid=S0251-34202021000100363.

As if the above were not enough, we must emphasize that in this case, it is not apparent from what is stated in the sentence that the Public Prosecutor intervened more, who, according to the allegations of the representation of the victim, "was conspicuous by his absence as guarantor of DUE PROCESS," having therefore, the burden of not one but five processes without seeing an end to it until the time of the sentence of the SCP.

3.3.2. Failure of the Public Prosecutor's Office to enforce its obligation to protect the victims and act with due diligence. Invisibilization of the victim.⁴⁷

Just as in other cases, we have seen how the MP leaves the responsibility of the trials to the private prosecution of the victims, disregarding its legal obligations; in this situation, we are about to address the negligence of those responsible for the Prosecutor's Office has extreme characteristics even for what is the Venezuelan justice system.

Thus, in a case where a citizen and her grandchildren in 2016 were threatened with death by telephone so that she would desist from some lawsuits against a citizen, a complaint was filed and family protection measures were requested before the Superior Prosecutor's Office of the MP of the Judicial District of Miranda State, which in turn forwarded the proceedings to the 38th Prosecutor's Office of the MP at the national level. This Prosecutor's Office obtained the telephone recording, containing the reported threat in compact disc format.

Subsequently, the investigation was referred to the 60th Prosecutor's Office of the MP at the national level, where there was no progress in the investigation. Then, the proceedings were passed to the 45th Prosecutor's Office of the MP at the national level, with complete competence, being relieved by the 48th Prosecutor's Office of the MP at the national level, which in turn referred the proceedings to the Directorate for the Defense of Women of the MP, by considering, surprisingly, that it was a matter of violence against women, a fact that none of the previous Prosecutor's Offices took into account.

In turn, said Directorate referred the proceedings to the General Directorate for the Protection of the Family and Women, which finally considered that the facts constituting the death threat were time-barred.

In other words, the case went through seven instances within the Public Prosecutor's Office, in a veritable "ping-pong",⁴⁸ apparently omitting the fact that the complaint was about a death threat and without any record that the request for family protection measures was attended to.

⁴⁷ <https://accesoaljusticia.org/amparo-contralos-directores-del-ministerio-publico/>.

⁴⁸ According to the DRAE: pelotear. From pelota1 and -ear. 1. tr. To review and point out the items of an account, and to check them against their respective supporting documents. 2. tr. colloq. Bol. and Cuba. To make someone go from one place to another to carry out procedures or formalities. (Emphasis added)

Faced with this terrible situation, the complainant filed a remedy for legal protection (amparo in Spanish) and accused the head of the Public Prosecutor's Office of wrongdoing, considering that the declaration that the crimes were time-barred was the responsibility of a court of law.

In its decision, the SCP declares that it lacks jurisdiction because the facts described do not reveal any action by the Attorney General but instead by one of his subordinates, the Director of the General Directorate for the Protection of the Family and Women of the MP, and refers the case to a lower court for the continuation of the legal protection remedy proceedings.

The concise manner in which the Chamber pronounces on the matter reveals a death threat does not generate a sense of urgency for the Chamber, and it limits itself to referring the case file to another court for a decision.

The above, of course, does not exempt the responsibility of some prosecutors who spent the case as if it were a simple set of papers without any consideration to the aggrieved party, and on the contrary, if the statute of limitations of the crimes denounced is confirmed, generating damage of challenging repair, beyond what it means to be from office to office without her case being duly attended.

This kind of action in which the system rejects complaints and requests for action was the reason for the condemnation of the Venezuelan State by the Inter-American Court of Human Rights (IACHR) in the case of Linda Loaiza López et al. This judgment states that the State authorities "did not adopt the measures that could reasonably be expected, and therefore did not comply with due diligence to prevent and interrupt the course of causality of the events" and that this behavior "demonstrated a tolerant attitude towards situations that by their nature constitute a risk of violence against women."⁴⁹

In addition, after the case of Linda Loaiza López, the IACHR Court warned with concern about the significant weaknesses that prevail in the country regarding violence against women,⁵⁰ and five years after the publication of this decision, they are still present and have even intensified due to the omission of the State, as confirmed by the analyzed case.

3.3.4. A case of trafficking with invisibility of victims⁵¹

The facts date back to 2013, and by the date of the decision analyzed, it was still not closed nine years later. A girl just seven months old was kidnapped and allegedly given up for adoption and abducted from her country. According to the sentence, some public officials from the Protection

49 IACHR Court. Case of López Soto et al. v. Venezuela. Judgment of September 26, 2018 (Merits, Reparations and Costs). Para. 169. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_362_esp.pdf.

50 Access to Justice (November 29, 2018). *Linda Loaiza secured first conviction for gender violence against Venezuela*. Available at: <https://accesoaljusticia.org/linda-loaiza-consiguio-prime-ra-condena-por-violencia-de-genero-contra-venezuela/>.

51 <https://accesoaljusticia.org/jueces-y-fiscales-permitieron-admision-de-los-hechos-en-fase-no-legal-ademas-de-producirse-cambio-de-calificacion-de-delito-para-favorecer-imputados/>.

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Council and the Public Prosecutor's Office were involved in the case and were initially sentenced to the maximum penalty for trafficking in persons, corruption, suppression or alteration of civil status, and other crimes. However, the Court of Appeals annulled the conviction, and after that began a long journey of interrupted trials, judges and prosecutors challenged and changed.

The Chamber found that in one of the trials, it was evident that a distortion was committed in the procedure for admission of the facts applied in this case since the Public Prosecutor incorrectly changed the legal qualification that most of the defendants took advantage of.

This change of legal qualification, which in practice reduced the sentences, led to a complete procedural deformation since the opportunity to do so had been precluded (this is given either at the preliminary hearing or at the moment of the opening of the trial before the reception of evidence), thus granting a new opportunity to the defendants to avail themselves of this process, omitting questionably the criminal rules on the trial procedure, undermining essential principles such as the constitutional norm of due process and compromising the validity of the proceedings.

All this distortion led to the imposition of minimal and derisory sentences on those who admitted to the facts without any appeal, which led to impunity in relation to the crimes initially charged.

The irregularities do not stop there since the SCP points out that it is on record that a judge requested in writing to the presiding judge and other organs of the courts an opinion on the evidence in this case, as well as meetings with the prosecutorial representative, which in the opinion of the Chamber compromised the autonomy, independence, and impartiality of the judge when making her decision. To this effect, the SCP points out:

The legal professional expressed that during the criminal proceedings against her client, there has been a "judicial mafia," as it was noted the existence of an official letter addressed to the Coordinator of the Courts with competence in Crimes of Violence against Women of the Criminal Judicial Circuit of the State of Bolivar, signed by Judge Eighty Five Accidental First Instance in Trial Functions of the same Criminal Judicial Circuit, which questions her autonomy and independence, signed by the Eighty-fifth Accidental Judge of First Instance in Trial Functions of the same Criminal Judicial Circuit, which calls into question her autonomy and independence, by formulating a consultation requesting her opinion regarding the evidentiary means that could be eventually excluded for the purposes of the trial.

We must emphasize that, although in this case, the SCP acted correctly in detecting this irregularity and ordering the referral of the records to the Inspectorate of Courts, it is no less accurate that human rights protection bodies and instances have already documented this practice. Thus, for example, the Independent International Fact-Finding Mission (IFM) in Venezuela has pointed out:

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31. Judicial and prosecutorial actors at all levels informed the mission that they had experienced or witnessed external interference and/or had received instructions on how to decide certain cases that were not in line with the facts of the case. These instructions came from political actors as well as from within the judicial or prosecutorial hierarchy, often acting in a coordinated manner.⁵²

Thus, what is made to appear as something exceptional in reality describes an unfortunate practice that not only affects cases of political persecution but, as in the case studied here, is also present in the ordinary justice system.

Despite everything, we did not reach the worst of the decision, because as we indicated, everything started with a complaint about the kidnapping of a baby girl of months. In the decision, it is stated that during the investigations of that case, another one is detected in which documents are forged so that another girl is considered the daughter of some Chilean citizens and taken to the Republic of Chile. The alleged father was one of the beneficiaries of the change of qualification. Therefore, his freedom and the passport delivery were ordered without requiring the child's return. To this concern, the SCP makes the following statement:

In addition to this, it appears in one of the questioned minutes, annexed in the recusal piece, that the prosecutor in the case issued the following opinion: "This prosecutor's office considers that the girls are well, they are well treated, the girls are kept in good conditions, and no person has claimed the girls to date; this prosecutor's office will not oppose under Section 272 of the Criminal Code...". If such a statement is true, the representative of the Public Prosecutor's Office would be acting contrary to her constitutional and legal competencies since she was aware of the abduction of two girls from their country of origin. Consequently, she should have ordered all the investigation proceedings to record its commission, with all the circumstances that may influence the qualification and responsibility of the authors or perpetrators and other participants related to its perpetration being evident in her inaction. Likewise, this inaction was reflected when the prosecutor in question did not take the necessary steps to locate the biological parents, nor did she promote the mechanisms enshrined in national legislation and international treaties to achieve due international restitution. Given the seriousness of the situation, it is mandatory for the Criminal Cassation Chamber to send a certified copy of this decision to the Attorney General of the Republic, who is in charge of the criminal action, so that he may determine, if applicable, the disciplinary responsibility of the prosecutor and order another representative of the Public Prosecutor's Office to investigate the facts indicated herein. (Emphasis added.).

52 Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela. A/HRC/48/69. Available at: <https://www.ohchr.org/es/hr-bodies/hrc/ffmv/index>.

That is to say since supposedly no one claimed the girls, one of the condemned could keep them in a deplorable action, as if they were chattels and not human beings who have the right to know their biological parents and the social environment in which they were born, by those who should have taken all measures to have the girls repatriated.

Thus, the case not only resulted in the virtual impunity of those responsible, but also, in at least one case, they were beneficiaries of the activity for which they were convicted, in a clear action contrary to justice, and above all, in open rejection of the purposes of child protection that are supposed to be a priority for the MP in cases as sensitive as the one described above.

Finally, the request for a writ of certiorari, which is what one of the defendants requested, was granted, but the justice in the case remains unrecognized.

3.4. The sentence commits serious violations of the woman's rights in such a way that it denatures the process and that it does not serve the purposes imposed by law (re-victimization, judicial delay, omission of fundamental elements of the process, etc.).

3.4.1. Suspension of proceedings due to inhibition, recusal, and excuse of judges for violation of the right to adequate judicial protection.⁵³

It is a case in which it can be seen how a series of actions can prevent a case from being heard by a Court of Appeals, leaving the case in limbo to the detriment of the victim who does not see the justice system acting to protect him.

It is a trial for the alleged commission of the crime of omission in the crime of aggravated and continuous sexual abuse of a girl, allegedly by the mother's partner, and in which, according to the MP, both the victim's mother and her grandmother have criminal responsibility "exposing her to her aggressor, an abominable act since in the eyes of society the mother is the one who cares for and protects her children" and because "it is inconceivable that a mother and a maternal grandmother would omit the call for help made" by the victim.

In this case, the principle of intersectionality must be applied to the extent that the victim's affectation derives from several intersecting elements: sexual violence together with the alleged complicity of the mother and grandmother in acts that are considered continuous, in addition to their refusal to assist her when she told them the facts and they failed to do anything about it, and it was the parent who had to file the complaint.

The facts were denounced in 2018, and the indictment against the mother and the grandmother for the aforementioned crime was made in February 2019. A custodial measure was ordered against them, and after several proceedings, on July 26, 2021, the indictent act was declared null and void,

⁵³ <https://accesoaljusticia.org/error-en-la-calificacion-juridica-sin-que-se-percate-ningun-juez/>.

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and a new one was ordered. This decision was appealed before the Court of Appeals, but the Court did not process the appeal, which led the prosecution to request the SCP file the case so the trial could continue in another district.

According to the Prosecutor's Office, this lack of continuation of the process is due to the following causes:

As for the second assumption, the indefinite paralyzation of the process after the prosecutor's accusation has been filed due to recusal, inhibition, or excuse of the tenured and alternate judges, which is evidenced after the inhibition, and recusations that have paralyzed the process indefinitely.

The Chamber confirms this in the following terms:

In this regard, it can be verified from the records that make up the present case file that certainly, on September 16, 2021, the Judge in charge of the process, GABRIELA CAMPOS, inhibited herself, entering to direct the process Judge Flavietta Di Pedi, who later on September 30, 2021, subscribes a written excuse to hear the case for personal reasons, as a consequence on October 13, 2021, Alternate Judge Jestter Quintana enters to listen to the case. Therefore, there has undoubtedly been a delay and a period has elapsed in which the process was paralyzed due to the absence of the director of the process.

This led the SCP to declare the request admissible and ordered the file to be sent to the judicial district of Caracas.

This case, apparently a case of strict procedural law, has great significance from a substantive point of view. We must remember that the victim is a child (4 years old at the time of the complaint) whose family nucleus is in question, and without the courts providing her with a closure adjusted to the norms of protection so that the resolution of the case was left in a limbo in which it is not known what will be the restructuring of the family environment necessary to assist, protect and accompany the victim after the somber events she had to suffer.

In addition, we must emphasize that from the facts narrated by the Public Prosecutor, the legal qualification imputed is that of commission by omission in the crime of sexual abuse, provided for and punished in the LOPNNA, establishes in Article 531 that this law is exclusively applicable when the perpetrator of the crime is an adolescent, in the case analyzed. However, the victim is a girl; in the case analyzed, although the victim is a girl, the perpetrators of the crime are adults. Hence, the law to be applied is the LOSDMVLV, and the crime is that of necessary accomplices in the sexual violence of a girl, continued and aggravated, without any judge noticing this irregularity, which indicates a lack of knowledge of judges and prosecutors on gender issues, including the SCP that also did not fix anything about it.

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In this regard, it is imperative to refer, once again, to the case of Linda Loaiza Lopez, who in 2001 reported on the practice of implementing the judges' inhibitions, which occurred no less than 59 times in her case,⁵⁴ to cause undue delays, thus increasing the economic and emotional cost of sustaining the judicial process in her search for justice.

Thus, the violation of adequate judicial protection is not only applicable to the victims under investigation but also to the victim herself, aggravated by the kinship of the former and what this may mean for the latter as it affects her emotional and psychological development. In these cases, more than in any other, prompt and timely justice is necessary to provide the victim with a definitive environment that allows her to be duly protected. As we see, this had not yet occurred three years after the facts were denounced.

3.4.2. Omission of a court's responsibility in the dismissal of a case in which the court did not provide essential evidence⁵⁵

On February 2, 2017, the mother of two girls reported abuse by their father. To this effect, investigations were initiated under the crime of sexual abuse without penetration.

The Control Court, at the request of the victim's representative, ordered psychiatric examinations of the girls and granted the extension requested by the Public Prosecutor's Office to conclude the investigation and issue its conclusive act; however, the Court did not grant the extension.

Said investigation was not concluded since said psychiatric expertise was not carried out in the investigation conducted by the Public Prosecutor's Office despite the court order, before it sent the request for dismissal on the grounds that "...the event that is the object of the process was not carried out or cannot be attributed to the accused..."

As a result, on December 14, 2018.

The Fifth Itinerant Court in Functions of Control, Hearing, and Measures with Jurisdiction in Matters of Crimes of Violence Against Women of the Metropolitan Area of Caracas published the decree of Dismissal of the case followed "... against ÁLVARO JOSÉ PÉREZ CAPIELLO... for the alleged commission of the crime of CRUEL TREATMENT AND SEXUAL ABUSE OF A CHILD, foreseen and sanctioned in sections 254, 259 of the Organic Law for the Protection of Children and Adolescents."

54 Inter-American Commission on Human Rights. Report 154/10. Admissibility. Petition 1462-07. Linda Loaiza Lopez Soto and family members. Venezuela. November 1, 2010. Para. 21. Available at : <http://www.cidh.oas.org/annualrep/2010sp/73.VEAD1462-07ES.doc>.

55 <https://accesoalajusticia.org/silencio-de-pruebas-y-omision-de-violaciones-al-debido-proceso-por-parte-de-jueces/>.

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After several subsequent incidents, the case reached the SCP through a cassation appeal filed by representing the victims' mother.

Among the irregularities detected by the SCP are the following:

Not being evidenced in the procedural records any effective action of said prosecutorial representation to conclude the investigation and to gather psychiatric expertise, after being informed by the Division of Investigations and Protection in Child, Adolescent, Woman and Family Matters of the Scientific, Criminal, and Criminalistic Investigations Corps, announced through official letter number 9700-105-01571 of the same date, regarding the communication "...number 0936 dated 06/20/2018...", that said office did not have the specialized personnel "...to perform Psychiatric Evaluation...", and in order to comply with what was ordered by way of judicial control "...they shall refer him to Senamecf...". (Page 209 of parts 1-2 of the docket).

In other words, the prosecution did not take the necessary steps to obtain the expert evidence ordered by the court, which the Chamber objects to in the following terms:

Therefore, said prosecutor's office not only failed to comply with the court order issued on May 30, 2018, by the Fifth Court of First Instance in Functions of Control, Hearing and Measures of the Judicial Circuit with Competence in Matters of Crimes of Violence against Women of the Metropolitan Area of Caracas, by way of judicial control of the investigation of the Public Ministry, but without having performed the Psychiatric Expertise to the girls (identity omitted in attention to the prohibition established in the second paragraph of section 65 of the Organic Law for the Protection of Children and Adolescents) and therefore without having completed the investigation, requested the dismissal in favor of the accused, violating the right to due process and the right of the victim's defense by being unable to conclude the investigation, Therefore, without having concluded the investigation, it requested the dismissal of the case in favor of the accused, **violating the right to due process and the right to defense of the victim, since it was impossible for her to gather, during the investigation phase, the necessary evidence to prove the facts contained in her complaint, despite the fact that she had been ordered to gather them by the judicial control of the investigation.** (Emphasis added)

Such a conclusion causes the SCP to annul the decision by which the case was dismissed and also orders that:

Due to the negligence of the representation of the Public Prosecutor's Office that carried out an incomplete investigation, when it did not execute in its

totality what was ordered by jurisdictional means, the provisions of Section 23 of the Organic Code of Criminal Procedure were also transgressed, for which reason a copy of the present decision must be sent to the Attorney General of the Bolivarian Republic of Venezuela, to specify the corresponding responsibilities of the representative of the One Hundred and Fourth (104th) Prosecutor's Office of the Public Ministry of the Judicial District of the Metropolitan Area of Caracas with Jurisdiction in Ordinary Criminal Law, Victims, Children and Adolescents, for alleged violations of the victim's human rights. (Emphasis added).

The sentence concludes by ordering the reinstatement of the case so that the experts omitted by the Prosecutor's Office can be carried out, and the process can be reinitiated four years after the complaint was filed.

Once again, we find ourselves with a prosecutorial representation, no longer alien to its duty to protect the victims of violence but contrary to them, but we cannot leave aside something that the SCP omits since, in its decision, it focuses on the responsibility of the Prosecutor's Office for its negligence in obtaining essential evidence for the investigation, without mentioning; this at least makes it co-responsible what happened, since in the records there was an order for the experts. Even an extension was granted to the prosecution to obtain them, and despite of this, the court ordered the dismissal, but for the Chamber the responsibility is limited to the prosecution.

This case highlights the multiple and varied ways in which impunity for crimes of violence against women is imposed.

3.4.3. Nine years for a woman's death to go to trial⁵⁶

Given that the victim's death occurred in 2013, that is, before the reform of the LOSDMVLLV that incorporated the crime of femicide, the Prosecutor's Office qualified the facts as a crime of aggravated homicide.

However, it was not until 2022 that the case was transferred to an oral and public trial, with the ordinary trial court declining jurisdiction to a Court of Gender Violence by the passive subject (the deceased was a woman). Thus, a conflict of competence arose when the specialized trial court declined jurisdiction, basing its decision on the fact that at the time the crime occurred, the special law did not typify the crime of femicide.

In this regard, it is noteworthy that the conflict was raised because, in the transitory provisions of the referred special law, it was established that the facts that occurred before the date of entry into force

56 <https://accesoaljusticia.org/el-delito-de-homicidio-cometido-contra-una-mujer-antes-de-la-tipificacion-del-femicidio-lo-sigue-conociendo-justicia-penal-ordinaria/>.

of this law concerning the crimes of homicide would continue to be heard by the ordinary courts and this is what applies to the case under analysis, which is why the Criminal Chamber declares the ordinary criminal court to be competent.

Given the clarity of the rules, it is unusual that the case took nine years to determine the competent court, with what this means in favor of impunity in a crime against a person's life. It highlights how conflicts of jurisdiction can become a means for impunity through procedural delay.

3.4.4. Procedural disorder in favor of impunity⁵⁷

In 2009, a complaint was filed for carnal intercourse with a particularly vulnerable victim involving a 13-year-old girl who was 12 years old when the acts were committed.

At the request of the Prosecutor's Office, an ordinary court ordered the arrest of the alleged perpetrator, but apparently, the arrest did not occur until 2022. From that point on, a negative conflict of jurisdiction arose between an ordinary court and a court specializing in violence against women.

However, the SCP detected that the declination of competencies was not done as it should have, and to that effect, it states:

This Criminal Cassation Chamber cannot ignore the procedures carried out and **calls attention to the Sixth Judge of First Instance in Control, Hearing, and Measures of the Criminal Judicial Circuit with Jurisdiction over Crimes of Violence against Women of the Metropolitan Area of Caracas, as well as to the Thirty-second Judge of First Instance in Control of the aforementioned Criminal Judicial Circuit, as well as the judges of Chamber Five of the Court of Appeals of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas, who omitted the rules and procedure established in the Constitution of the Bolivarian Republic of Venezuela and the Organic Code of Criminal Procedure, for the resolution of conflicts of competence, causing a severe procedural disorder that affects adequate judicial protection and due process" (emphasis added).**

The decision refers the case to a court specialized in violence against women, but what strikes us is that although the Chamber expressly concludes that a court violated the right to adequate judicial protection and due process, it only limits itself to making "a call for attention" which, in practice, has no significant consequences.

⁵⁷ <https://accesoalajusticia.org/causa-de-violencia-contra-la-mujer-con-22-anos-de-retardo-procesal-sin-que-tribunal-aceptara-la-competencia/>.

In this way, it is confirmed once again how procedural distortions derived from conflicts of competence end in violation of rights, without the highest court of the country taking measures proportional to the damage caused by the violation of human rights, normalizing and trivializing what should be considered as gross violations of the duties of a judge and, therefore, generating disciplinary responsibility.

3.4.5. No place for a filing because the links are not sufficient.⁵⁸

In a case of femicide that occurred in 2020, the Prosecutor's Office requested the filing of the case and to support the same "and demonstrate the seriousness of the crimes, as well as the situation of alarm, sensation and public scandal" points out a long list of electronic media that review the crime and to that effect refers fourteen Twitter links, eight Facebook, seven Instagram, one Youtube and twelve journalist reviews from different media, as well as links to nine web portals that also referred to the event.

The Chamber rejects the request, but it is striking is that, among other reasons, it does so under the following argument:

Likewise, this Criminal Cassation Chamber deems it necessary to point out that with respect to the allegation of the petitioner referred to the fact that "(...) *In order to support our request and demonstrate the severity of the crimes, as well as the situation of alarm, sensation and public scandal, we offer as evidence [such as] (Social Networks: Twitter, Facebook, Instagram, Youtube; Journalistic Reviews and Web Portal) (...)*", **the content of the cited references cannot be appreciated to determine their origin, since their due support did not accompany them, since the petitioner only limited herself to mention them, without providing further details that elucidate their occurrence, added to the fact that from the same could only be evidenced the normal coverage of the media destined to inform promptly about an event of local nature with criminal character, not being able to prove from the same a communicational phenomenon capable of altering the good development of the trial or that glimpse some circumstance that affects the correct administration of justice.**

It is understood that the SCP says that one thing is media coverage and another that the fact generates scandal, but to conclude that it was enough to click on the corresponding links, since we understand that when it is stated that the news pointed out by the Prosecutor's Office did not have corresponding support, reference is made to the fact that such news was not printed, which in

58 <https://accesoaljusticia.org/scp-ignora-hechos-gravisimos-e-irregularidades-en-tribunales-planteadas-por-mp-y-desestiman-radicacion-en-caso-de-femicidio/>.

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the present time seems to us to be an excess, especially when in several decisions of the Supreme Court reference is made to news links without reproducing the totality of what was said there, precisely because having the link where the information is enough so that anyone interested can read the complete news.

Thus, dismissing of this argument of the Prosecutor's Office was made under a formalism totally out of time and without considering the current reality, in which virtuality can be a significant help for justice. Still, it seems to be the case that such help is not required despite the enormous deficiencies of the Venezuelan justice system.

CONCLUSIONS

The context presented throughout this report allows us to understand the research findings on the small number of judgments on the subject and their low quality. In this regard, we highlight the following:

- The Judiciary continues to fail to report on the state of justice, which prevents an assessment of the general state of the fight against violence against women.
- The fact that in the last five years, the total number of decisions of the Constitutional Chamber (SC) and the Criminal Cassation Chamber (SCP) on violence against women reaches 5.80% of the total seems to us to be very low given the conflictive nature of the country and the context of humanitarian emergency.
- Likewise, the number of crimes that the aforementioned chambers have heard is far from covering all the typical crimes against women established by law, which implies that for many of these crimes there is no interpretation supported by the Supreme Court of Justice (TSJ).
- The fact that both the certiorari and the filing of cases have a wide presence in the cases brought before the Chambers, appeals that should be exceptional by their nature, shows the scarce confidence of the TSJ in the lower courts.
- The pattern continues that most of the decisions of the chambers deal with matters of mere formality, formalities, or procedural issues with no impact on substantive aspects of women's protection.
- The pattern is sustained, there are very few decisions of the TSJ chambers deal with fundamental aspects of protection. Unfortunately, most of those obtained reveal aspects that are contrary to the principles in favor of women.
- 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 given 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 revictimization ignored by the Judiciary.
- It is a matter of concern that there are several cases in which the role of the Public Prosecutor's Office (MP) is passive and even contrary to the interests of the victims.

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- Significant procedural delays continue to occur both because of conflicts of jurisdiction and lawyers' misuse of judicial appeals to delay cases without the courts doing anything about it.
- In general, the decisions expose a Judiciary that ignores the victims, does not consider their opinion, and does not establish reparatory measures in their favor.

RECOMMENDATIONS

- 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 *Mitos y realidades de la violencia contra la mujer en Venezuela: historia de otro fracaso del Poder Judicial*,⁵⁹ we point out several good practices implemented in Latin America to achieve progress in this regard; among these strategies, we find the experience of the Mexican Supreme Court of Justice,⁶⁰ with the implementation of simple surveys to judicial system officials that serve to unveil their gender biases and stereotypes, exposing the perceptions that may affect their procedure in the cases they know and thus guiding the training needs.
- The Judiciary must be an integral part of the reflection on gender issues for the design and development of laws or public policies since it has a predominant role in concreting of what is established in 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."⁶¹ Judges are expected to exercise their capacity for critical and responsible analysis of what underlies the facts and the paradigms that sustain the norms.⁶²
- 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, recognizing that

the need for a "consciousness-raising effort" to systematize of a methodology that reaches non-androcentric answers, engages with positioned points of view, and excludes the false neutrality of its vocabulary."⁶³
- It is essential to study the proposals that legal feminism has been putting forward for decades with exponents such as Bartlett (1989)⁶⁴ and Facio (1992),⁶⁵ for the mainstreaming of gender in jurisdictional activity, understanding that rethinking the structures that promote stereotypes and biases means recognizing their influence on law and the administration of justice.

59 Access to Justice (2022). *Myths and realities of violence against women in Venezuela: history of another failure of the judiciary*. Available at: <https://accesoalajusticia.org/mitos-realidades-violencia-contra-mujer-venezuela-historia-otro-fracaso-poder-judicial-2a-edicion/>.

60 Hernández Chong Cuy, María Amparo (2021). "Jurisprudencia y perspectiva de género". In *Cuestiones Constitucionales*. No. 25 (July-December 2021). Available at: https://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1405-91932011000200012.

61 Supreme Court of Justice of Colombia. Labor Cassation Chamber. Decongestion Chamber No. 2. SL2936-2022. Radicación n.º 89210. Acta 26 (July 25, 2022). Available at: https://cortesuprema.gov.co/corte/index.php/2023/01/12/dl_sl2936-2022/.

62 Hernández Chong Cuy, María Amparo (2021). "Jurisprudencia y perspectiva de género". In *Cuestiones Constitucionales*. No. 25 (July-December 2021). Available at: https://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1405-91932011000200012.

63 Cardoso Ferreira, Leticia, and Mendes Braga, Ana Gabriela (2023). "Decolonizing feminist legal methods in an investigation about the phenomenon of narco-criminalization of women". In *Derecho PUCP - Revista de la Facultad de Derecho*. N.º 90. Available at: <https://www.redalyc.org/journal/5336/533675420006/html/>.

64 Bartlett, Katharine T. (1989). "Feminist Legal Methods." *Harvard Law Review* 103. Pp. 829-888.

65 Facio, Alda (1992). Cuando el género suena cambios trae (*Una metodología para el análisis de género del fenómeno legal*). Available at: https://catedraunescodh.unam.mx/catedra/CONA-CYT/16_DiplomadoMujeres/lecturas/modulo2/1_Alda%20facio_Cuando_el_gen_suena_cambios_trae.pdf.

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- There should be 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 transparently assume the number of sentences that genuinely comply with the jurisdictional obligation to guarantee equality.
- Initiatives shall be promoted to encourage the jurisdictional activity to be visible and to take pride in the progress made in the administration of justice from a gender perspective. In this regard, we highlight Bolivia's experience with initiatives such as the National Contest of Judgments with a Gender Perspective.⁶⁶
- Venezuelan women and girls deserve sensitized and quality attention. It requires specialized and sensitized personnel, and that the courts of the special jurisdiction for violence against women cover the entire national territory, taking into account that 15 years have already passed since the mandate of its creation. Unacceptable provisional solutions, such as the use of municipal courts, must be set aside.
- A real commitment to justice and equality requires sufficient investment for adequate training and education of personnel, the determination of human resource needs, and the service infrastructure necessary for quality care. The guarantee of Venezuelan women's right to a life free of violence is not possible with precariousness and repowered assets⁶⁷ but with structured and coherent public policies.

⁶⁶ United Nations Office on Drugs and Crimes. *Judicial sentences that apply a gender perspective are awarded*. Available at: <https://www.unodc.org/bolivia/es/sentencias-judiciales-que-aplican-la-perspectiva-de-genero-son-premiadas.html>.

⁶⁷ Supreme Court of Justice (April 12, 2023). *TSJ delivered computer server to the National Commission of Gender Justice of the Judiciary*. Available at: <http://www.tsj.gob.ve/-/tsj-entrego-servidor-informatico-a-la-comision-nacional-de-justicia-de-genero-del-poder-judicial>.

