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The Impact of the Inter-American Human Rights System in the Protection of Women Against Domestic Violence in Brazil

The Case of Maria da Penha – the compliance with the decision and its effects.

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Abstract

This thesis examines the evolution of the protection of women against domestic violence in Brazil, influenced by the performance of the Inter-American Human Rights system in protecting the rights of women in the region.

This examination is done by looking at the Case of Maria da Penha before the Inter-American Human Rights Commission and its repercussions in Brazil.

Historically, domestic violence against women in Brazil was socially perceived as a private matter. This perception has permeated the social relations and the conduct of the State towards women – leading to little or none State intervention in case of violations of women rights within a familiar or domestic environment.

In the last years, the Inter-American Human Rights system has been invested in pressuring State members of the OAS towards combating domestic violence and providing women with the adequate support.

This thesis seeks to answer whether this pressure has resulted in a satisfactory response from the Brazilian State and if such reaction has provided effective results in improving the protection of women against domestic violence in the country.

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1. Introduction

Until recently, domestic violence in Brazil was perceived as a private issue and was treated by the public authorities as such. In 2006, the first law that curbs domestic and familiar violence in Brazil was sanctioned and it was named after Maria da Penha, a victim of domestic violence who petitioned her claim through the Center for Justice and International Law (CEJIL) and the Latin American Committee for the Defense of the Rights of Women (CLADEM) before the Inter-American Commission on Human Rights.

The present thesis will examine the case of Maria da Penha before the Inter-American Commission on Human Rights. In addition, it will analyse whether the appreciation of the case by the IACHR and the advent of the Maria da Penha Law contributed to the improvement of protection of women against domestic violence in Brazil.

This discussion will proceed in four parts. First, it shall introduce the evolution of the protection of the rights of women in the Inter-American system, particularly in its engagement with domestic violence against women – highlighting its transnational dimension and its role in ensuring the protection of vulnerable people's interests.¹ Secondly, it will describe the unfolding of Maria da Penha's case in Brazil along with its proceedings before the Inter-American Commission on Human Rights. Thirdly, it will observe whether Brazil is in compliance with the recommendations issued by the IACHR. Lastly, it will analyse data on the application of the Maria da Penha Law and the numbers on domestic violence against women in Brazil.

Finally, it will conclude whether the appreciation of case by the IACHR has helped to increase public awareness about the tolerance of the Brazilian State with domestic violence against women. In addition it will reflect whether the performance of the IACHR contributed for the creation of better public policies and if those resulted in an effective reduction of the violence against women in Brazil.

2. The Evolution of the Inter-American Human Rights System Regarding Violence Against Women

The protection of the rights of women against violence within the framework of the Inter-American human rights system started and had most of its advancement at the level

¹ Antonio Augusto Cançado Trindade, *International Law for Humankind: Towards a New Jus Gentium* (The Hague Academy of International Law Monographs: Martinus Nijhoff, 2010), page 251.

of the Inter-American Commission.

Among the most relevant landmarks of this progression are the merit decisions rendered by the commission in regard to the problems of violence and discrimination against women, such as in the case of Maria da Penha.

In addition to the merit decisions, the publications of country and thematic reports examining priority themes concerning women in the Americas, as well as the issuance of precautionary measures addressing the rights of women were important mechanisms in the advancement of the cause within the Inter-American system.²

The following discussion will be divided in two parts. First, it will highlight the aspects of the Inter-American human rights system that make it unique in creating a transnational dimension to domestic violence claims that granted the recognition and protection of women interests in the Inter-American level. Second, it will expose the line of decisions and reports that lead to the current state of protection of women against domestic violence by the system.

2.1. The Inter-American Human Rights System

The base of the Inter-American human rights system is the American Convention on Human Rights³, which “search for the consolidation of a system of personal liberty and social justice based on respect for the essential rights of man, which do not derive from being a national of a certain state, but are based upon attributes of the human personality”.⁴

This convention provided for the creation of two authorities with competence to observe the compliance of Member States: the Inter-American Court of Human Rights (hereinafter “IACtHR”, “the Court” or “the Intern-American Court”) and the Inter-American Commission on Human Rights (hereinafter “IACHR”, “Inter-American Commission” or “the Commission”).

The IACHR⁵ is an autonomous judicial institution of the Organization of American

² Rosa M. Celorio, e Rights Of Women In e Inter-American System Of Human Rights: Current Opportunities And Challenges In Standard-setting, 65 U. Miami L. Rev. 819 (2011) Available at: <http://repository.law.miami.edu/umlr/vol65/iss3/5>

³ In the Inter-American Specialized Conference of Human Rights the delegates of the member States of the OAS adopted the American Convention on Human Rights that entered into force in 18th July of 1978.

⁴ Preamble of the American Convention on Human Rights

⁵ The Court is based in the city of San Jose in Costa Rica. In addition, its judges, staff and those who appear before the Court enjoy privileges and immunities resulted from an agreement with the Government of Costa Rica signed in 1981

States (OAS)⁶ with the primary purpose of applying and interpreting the American Convention on Human Rights.⁷

The IACtHR judges individual human rights violations cases that have been previously tried by the IACHR and forwarded to the Court due to its gravity and relevance. The IACHR is a principal and also autonomous organ of the OAS with the mission to promote and protect human rights in the American hemisphere.

Together, the IACHR and the IACtHR created the institutional base of a transnational public sphere for the protection of human rights in the Americas, as it opened an above-States arena to investigate, judge and protect human rights. The protection of women rights is in the scope of this protection.

The IACtHR is recognized as the highest human rights tribunal in the American region and is highly respected by the State members. The initiation of petition proceedings before the Commission itself has the power to trigger political will to remedy a human rights violation amicably through settlement mechanisms offered by the system.⁸

In this context, the concept of the public sphere is understood as a non-state place of deliberation, where collective formation of will, the justification of previously agreed decisions and the forging of new identities are possible.⁹

Accordingly, the expression "transnational" is not limited to designating merely "inter-national" interactions and implies processes in which national barriers are consciously surpassed, overcoming national boundaries.¹⁰

The decisions and recommendations issued from this space can influence State's formal decision-making processes, contributing to more beneficial public policies for vulnerable social groups.

⁶ The signatory countries of the Charter of the Organization of American States to date are: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay and Venezuela.

⁷ Statute of the IACtHR, Adopted by the General Assembly of the OAS at its Ninth Regular Session, held in La Paz Bolivia, October 1979, Resolution No.448, Article 1.

⁸ Patricia Palacios Zuloaga, "The Path to Gender Justice in the Inter-American Court of Human Rights", *University of Texas* (2016): page 6

⁹ Marcia Nina Bernardes, "Aspectos Transnacionais da Luta Contra a Violência Doméstica e Familiar no Brasil", *Revista Direito, Estado e Sociedade*, n. 45 (2014): page 119.

¹⁰ Valentine Maghdam. "Transnational Feminist Networks: Collective Action in an Era of Globalization". *International Sociology*. v. 15, n. 1, (2000): pages 5-137

The vulnerability of social groups, however, is not a question of the inherent vulnerability of all people, but of a qualified vulnerability, maximized by concrete circumstances that aggravate their situation, making them especially susceptible to external aggressions.¹¹

The transnational public sphere created by the Inter-American human rights system offered women victims of domestic violence the possibility of staging their claims, often weakened by their invisibility within their own State. Historically, women who suffered with domestic violence were excluded actors within the Inter-American society.

For example, until 2002, the Brazilian Civil Code described men with expressions such as “the chief of the family” and placed the husband above the wife regarding family decisions.¹²

The discriminatory and stigmatized vision of the women’s role in society and within the family in Brazil has also been highly influenced by religion, especially the Catholic Church. Another illustration of the conservatism and discrimination against women is the criminalization of abortion, which is still in force and supported by a major portion of the Brazilian population.

The matter of abortion reveals another face of the discrimination against women in many countries in Latin America - the aggravated consequences of discriminatory public policies in the life of poor women. Poor and black women are among the most affected by the criminalization of abortion in Brazil.¹³

¹¹ Heloisa Helena Barboza and Tania da Silva Pereira “Vulnerabilidade e cuidado: aspectos jurídicos.” *Cuidado e vulnerabilidade*. São Paulo: Atlas, 2009. p.110.

¹² Regarding the role of the family, it must be explained that, even after the advent of the Brazilian Federal Constitution of 1988, this social grouping preserved its basic status of society, deserving of differentiated state protection under the terms of art. 226 of the Constitution. The perception of the family and its purpose, however, has altered sensitively, especially because of the elevation of the human person to the position of centrality in the legal system. In fact, family entities only deserve guardianship if and to the extent that they open space for the development of each of its components in compliance with the principles of equality and freedom in harmony with the solidarity among its members. It is noted, therefore, in the current trends, a growing responsibility in parental relations or, a solidary responsibility, not solidarity as in the rights of the obligations, but based on the principle of family solidarity, qualified unfolding of social solidarity. It is emphasized that the tutelage of the human person, for whom this new conception of family is directed, can only be affected in the interpenetration between the public and private environment. It thus reaches the interior of the home, although in family relationships the house door often presents itself as the greatest obstacle.

¹³ The data from the Institute of Social Medicine of the State University of Rio de Janeiro revealed that the risk of death of a black pregnant woman who aborts is 2.5 times greater than or white pregnant women because they do not have access to the same resources.

In that regard, the Inter-American human rights system brought the matter of violence against women that did not find space in the national political agenda into a transnational public space where they could be thematized and then included in the domestic political agenda in a new configuration of power.¹⁴

The IACHR and the IACtHR condemned the States that tolerate domestic violence against women due to its competence to oversee the responsibility of the States to ensure women rights.

As Professor Hector Ledesma explains: “The purpose of the Inter-American human rights system is, therefore, to oversee the international responsibility of the State to respect and ensure human rights, which may be violated either by action or omission, and its duty to ensure that individuals also respect those rights.”

In this perspective, the State is under the obligation to use all its mechanisms to assure that individuals, State and non-State actors, do not violate women rights. In this sense, Ledesma adds that “ in the event that these measures are inadequate or insufficient that they adopt the measures necessary to prosecute and punish those responsible for the conduct that violated the protected rights.”¹⁵

As a result, if a State fails to comply with its obligation, the Inter-American system is competent to use its own mechanisms to prosecute and condemn the non-compliant State for its violations due to its key prerogative: the competence to oversee the responsibility of the States to ensure women rights.

The independency and immunity of the Court in principle allows its judges to effectively defend the rights of women without the interference of member States and other power interests.

The work of the Inter-American human rights system rests on three main pillars: the individual petition system; monitoring of the human rights situation in the Member States, and the attention devoted to priority thematic areas.¹⁶

Regarding the individual petition system, Professor Augusto Cançado Trindade, former Judge and President of the Inter-American Court of Human Rights highlights that,

¹⁴ Marcia Nina Bernardes, “Aspectos Transnacionais da Luta Contra a Violência Doméstica e Familiar no Brasil”, *Revista Direito, Estado e Sociedade*, n. 45 (2014): page 121.

¹⁵ Hector Faundez Ledesma, *The Inter-American System for the Protection of Human Rights, 3rd edition*, (Inter-American Institute of Human Rights: Inter-American Institute of Human Rights, 2008): page 20

¹⁶ Chapter VII of the American Convention on Human Rights San José, Costa Rica, 22 November 1969.

of all the mechanisms of international protection of human rights, the right to individual petition is “the one which best reflects the specificity of the International Law of Human Rights, in comparison with other solutions proper to Public International Law.”¹⁷

In that sense, the individual petition system has offered a unique model of protection of human rights that rightly adapted to the needs of historically vulnerable women in Latin America and increased their individual access to justice at the international level.

If such mechanism was not in place, the violence committed systematically against women, such as Maria da Penha, would remain in anonymity.

As Cançado Trindade continues: “had it not been for the access to the international instance, justice would never have been done in their concrete cases. Without the right of individual petition, and the consequent access to justice at international level, the rights enshrined into the European and American Conventions would be reduced to a little more than dead letter.”¹⁸

As a result of the right of individual petition the human rights preconized by the inter-American legal instruments become truly effective and attend to the claim of those women who did not have access to justice at national level.

In that sense, the historical rescue of the individual as subject of the International Law of Human Rights with the right to individual petition was essential to give the necessary public visibility and allow for the advancement of women rights in the Inter-American context.¹⁹

With regard to the monitoring of the human rights situations in member States, the Inter-American Commission on Human Rights issues reports on the situation of women rights in different member States. Such reports offer a comprehensive overview of the situation of women rights in that country, together with recommendations to improve the scenario.

The thematic reports on the rights of women are another crucial element of the women rights monitoring cycle. It is a necessary tool to evidence and study data, introduce

¹⁷ Antonio Augusto Cançado Trindade, *International Law for Humankind: Towards a New Jus Gentium* (The Hague Academy of International Law Monographs: Martinus Nijhoff, 2010), page 251.

¹⁸ Antonio Augusto Cançado Trindade, *International Law for Humankind: Towards a New Jus Gentium* (The Hague Academy of International Law Monographs: Martinus Nijhoff, 2010), page 251.

¹⁹ Inter-American Court of Human Rights, Castillo Petruzzi and Others versus Peru case (Preliminary Objections), Judgment of 04.09.1998, Series C, n. 41, Concurring Opinion of Judge A.A. Cançado Trindade, page 62, paragraph 35

facts and discoveries resulted from monitoring activities, assess women rights violations, communicate with authorities, promote beneficial change and recommend remedies.²⁰

2.2. Decisions and Reports on Women Rights

The evolution of the framework for the protection and promotion of the human rights of women by the Inter-American system is a work in progress. The advancements increased particularly after 1994 because of the creation of the Office of the Rapporteur on the Rights of Women (hereinafter “Office” or “the Office”).

The Office analyses the extent to which laws and practices involving women’s rights in the OAS Member States comply with the general obligations set forth in regional human rights instruments.²¹

Since its establishment, the Office conducted several studies including reports on access to maternal health, women’s political participation in the Americas, gender equality and violence against women.

Those reports have bolstered new jurisprudence on the thematic of women rights within the individual case system. In addition, it promoted profound understanding of the various issues that affect the rights of women in the Inter-American region.²²

Parallel to the American Convention on Human Rights, the Inter-American human rights system has additional protocols and other conventions to address particular issues related to women rights.

Among them is the Convention of Belém do Pará, also known as, The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

The Convention of Belém do Pará is important in the defence of the rights of women in the Inter-American scenario for many reasons. For instance, it defines violence against women;²³ it presses states to deal with cultural traditions and stereotypes of inferi-

²⁰ United Nations, “Manual on Human Rights Monitoring” (2011): page 3

²¹ In the Inter-American Specialized Conference of Human Rights the delegates of the member States of the OAS adopted the American Convention on Human Rights that entered into force in 18th July of 1978.

²² For more information visit the Office of the Rapporteur on the Rights of Women. Retrieved at: <http://www.oas.org/en/iachr/women/default.asp>

²³ Convention of Belém do Pará, Article 1 establishes that: “For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”

ority²⁴ and enounces the competency of the Inter-American Commission on Human Rights to appreciate women rights related claims.²⁵

Besides that, the convention was ratified by a majority of the States which created a regional consensus in condemning violence against women, once the convention was created with the purpose of protecting and defending the rights of women, as well as combating violence against them.

In addition, its Article 7 establishes the obligation of States Parties to condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence. However, critics can be made to the Convention of Belém do Pará for its vagueness regarding its lack of specific state obligations and effective enforcement mechanisms.²⁶

The case of Maria da Penha was a landmark in the evolution of the protection of women rights by the Inter-American Human Rights system because it marked the first occasion where the Convention of Belém do Pará was applied by the IACHR.

Between 1996 and 2001, other important cases on violence against women were tried by the IACHR, such as Raquel Martin de Mejia v. Peru (1996), Maria Eugenia Morales de Sierra v. Guatemala (2001), Ana, Beatriz, and Celia Gonzalez Perez v. Mexico (2001).

Most of the cases from this period were appreciated solely under the American Convention for presumed acts of discrimination and violence against women committed by different States, and the problem of impunity toward these crimes.²⁷

²⁴ Patricia Palacios Zuloaga, "The Path to Gender Justice in the Inter-American Court of Human Rights", *University of Texas* (2016): page 39

²⁵ Convention of Belém do Pará, Article 1 establishes that: "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions."

²⁶ Patricia Palacios Zuloaga, "The Path to Gender Justice in the Inter-American Court of Human Rights", *University of Texas* (2016): page 39

²⁷ Rosa M. Celorio, e Rights Of Women In e Inter-American System Of Human Rights: Current Opportunities And Challenges In Standard-setting, 65 U. Miami L. Rev. 819 (2011): page 824. Available at: <http://repository.law.miami.edu/umlr/vol65/iss3/5>

However, in the case of *Commission of Ana, Beatriz, and Celia Gonzalez Perez v. Mexico*, the IACHR also appreciated the violation of women rights under the Inter-American Convention to Prevent and Punish Torture.

In considering those cases, the IACHR began to set legal standards regarding the rights of women against violence. The Commission recognized the obligation of States to act with the due diligence necessary and without delay to prevent, investigate, sanction, and offer reparations for acts of violence against women, perpetrated by State or non-State actors.

Also, the IACHR recognized that in the face of violence against women, the State has the obligation to guarantee access to adequate and effective judicial remedies.

Moreover, the IACHR set the obligation of public officials working in all branches of the government to treat the female victims and their family members with respect and dignity throughout the legal process.

Furthermore, it recognized the duty of States to adopt public measures to eradicate all forms of discrimination against women and stereotypical patterns of behavior that promote their unequal treatment in society.

In the subsequent period, from 2007 to 2009, other remarkable cases were appreciated by the Inter-American system on the matter of violence against women.

The case of *Cotton Field and Fernandez Ortega and Rosendo Cantu v. Mexico* were two landmarks of this phase.

Those cases were appreciated after the Commission's on-site visit to Mexico in response to the numerous individual and organization claims that women were being brutally murdered with frequency and without response from public authorities.

The report of this visit was published in 2003 and reflected the concern of the IACHR with the pattern of disappearances and murder of women followed by impunity in the Mexican region.

In the case of *Cotton Field*, the Court considered for the first time the positive obligations of the State to respond to violence against women by private actors.

Also, the court investigated murder in the context of mass violence against women and structural discrimination, as well as determined that gender-based violence constitutes gender discrimination.²⁸

²⁸ González et al. (“Cotton Field”) v. Mexico, Judgment of November 16, 2009. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf

In addition, the Court confirmed for the first time its competence to judge claims under the article 7 of the Convention of Belem do Para, which opened the possibility for other gender-based claims in the future to be appreciated by the Court.

Besides that, the Court versed about the concept of "violence against women" under the Convention of Belem do Para. In addition, the Court explained that not all violations committed against women are necessarily gender-based, but that the context and aspects of the crime will determine it.

In the case of Cotton Field, the Court also concluded that the victims suffered violence against women and that the murders were gender motivated. The factors considered were the existence of a "culture of discrimination" in the context of the crimes, reports of international bodies and organizations denouncing gender-based violence in the region, the socioeconomic condition of the victims and the presence of ill-treatment and sexual abuse before the murders took place.

In the cases of Fernandez Ortega and Rosendo Cantu versus Mexico, the Court followed the precedent of the IACHR and recognized that the rape committed by military personnel against the victims Ines Fernandez Ortega and Valentina Rosendo Cantu was characterized as torture.²⁹

In addition, the Court applied in both cases the Inter-American Convention to Prevent and Punish Torture and recognized that gross human rights violations were committed against the women and their relatives.

Furthermore, the Court emphasized the State obligation to stop applying military justice when investigating and prosecuting members of the army for human rights violations.³⁰

There is a clear connection between the Court's judgments and the previous work done by the Commission.

In those decisions, the Court crystalized the understanding that the Commission has been previously manifesting in their reports and decisions for years – the obligation of the State to respect and guarantee the rights of specially vulnerable groups of women, such as

²⁹ Rosendo Cantu et Al v. Mexico, Judgement of August 31, 2010. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_216_ing.pdf

³⁰ Fernandez Ortega et Al v. Mexico, Judgement of August 30, 2010. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_ing.pdf

young women, indigenous women or women in poverty. In addition, it highlighted the liaison between discrimination and violence against women.

Despite the progressive protection of women rights against violence by the Inter-American system over the years, critics can be made to the long time it took for the Court to appreciate relevant gender focused cases. In addition, critics can be made to the broadness of the decisions rendered, which will be further explored, in the next chapter.

In sum, the Inter-American Commission on Human Rights has opened the doors to address the thematic of violence against women as a priority within human rights with its merit decisions, on-site visits and reports dedicated to the issue. In addition, the Court has consolidated the understanding put forth by the Commission that the States have the obligation to prevent, investigate, punish and repair acts of violence against women.

3. The Case of Maria da Penha

Maria da Penha Maia Fernandes suffered aggressions throughout most of her marital relationship with Marco Antonio Heredia Viveiros, her then-husband and father of her three daughters, culminating in two assassination attempts.

The first attempt occurred on May 29, 1983, when Viveiros simulated a robbery to the couple's residency and shot against Maria da Penha's back while she was asleep.³¹

As a result of the shots, Maria da Penha became paraplegic at the age of 38. After her return from the hospital, Viveiros attempted once more against her life by electrocuting her while she was in the shower.³²

According to the IACHR's report, days before the attempts, her then-husband tried to force her to sign a life insurance for his benefit and also a document for selling her car.³³

After the second murder attempt, Maria da Penha filed the request for a divorce and reported the occurrences to the police, who then proceeded to investigate the crimes.

During the judicial process, evidence was presented demonstrating that Viveiros intended to kill Maria da Penha, and a shotgun that belonged to him was found in the house, which contradicted his previous statement that he had no guns.

Subsequent analyses indicated that the weapon found in his possession was the same weapon used against Maria da Penha. The investigation gathered evidence against

³¹ Maria da Penha Maia Fernandes v. Brazil. Report No. 54/01 of case 12.051. (2001): Paragraph 8

³² Maria da Penha Maia Fernandes v. Brazil. Report No. 54/01 of case 12.051. (2001): Paragraph 9

³³ Maria da Penha Maia Fernandes v. Brazil. Report No. 54/01 of case 12.051. (2001): Paragraph 10

Marco Antonio Heredia Viveiros who appointed him as the author of the crimes and indicated his premeditated intention to assassinate Maria da Penha.

3.1. The Proceedings Before the Brazilian Justice

On September 28, 1984, the Public Ministry denounced Maria da Penha's ex-husband for homicide. On 4th May 1991, eight years later, the jury issued a sentence condemning Viveiros to 15 years of imprisonment that later was reduced to 10 years due to the lack of previous condemnation.³⁴

However, on the same day of the condemnation, his defence appealed untimely against the decision of the jury and only three years later the court decided on the appeal. In that decision, the court accepted the claim submitted untimely and, based on the defence's argument that there were flaws in the questioning of jurors, annulled the Jury's decision.³⁵

The jury once again condemned Viveiros, now to ten years and six months in prison, on a second trial held two years later. The second jury decision was once again questioned by an untimely appeal that had not been decided at the time the case was submitted to the IACHR.³⁶

Throughout this period, until the case was received by the IACHR, the defendant remained free and living a normal life. At no time did he contribute in any way to the expenses incurred by Maria da Penha with various surgeries and treatments, both physical and psychological resulted from his crimes. Nor did he pay alimony to the three daughters of the couple.³⁷

3.2. The Proceedings Before the IACHR

On August 20, 1998, the Inter-American Commission on Human Rights received a complaint lodged by Maria da Penha Maia Fernandes, through the Centre for Justice and International Law (CEJIL), and the Latin American Committee to Defend Women's Rights (CLADEM) against the State of Brazil for its tolerance with the domestic violence committed against Maria da Penha by Marco Antônio Heredia Viveiros.

³⁴ Maria da Penha Maia Fernandes v. Brazil. Report No. 54/01 of case 12.051. (2001): Paragraph 13

³⁵ Maria da Penha Maia Fernandes v. Brazil. Report No. 54/01 of case 12.051. (2001): Paragraph 15

³⁶ Maria da Penha Maia Fernandes v. Brazil. Report No. 54/01 of case 12.051. (2001): Paragraphs 16 and 17

³⁷ Maria da Penha Maia Fernandes v. Brazil. Report No. 54/01 of case 12.051. (2001): Paragraph 11

The consent for individual petitioning made it possible for Maria da Penha's Case to be appreciated by the IACHR. In addition, the IACHR considered that Maria da Penha had fulfilled the requirements imposed by the Article 44 and 46 of the American Convention on Human Rights in order to attest for the competence of the Commission to appreciate the case.

Moreover, the Article 12 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, also known as the Convention of Belém do Pará, which also conferred competence to the IACHR to judge the case.³⁸

Regarding the substance of the matter denounced, the Commission had three conclusions: (1) that the State of Brazil violated, to the detriment of Maria da Penha, the rights to judicial guarantees and judicial protection guaranteed by Articles 8 and 25 of the American Convention on Human Rights, in accordance with the general obligation to respect and guarantee the rights provided for in Article 1 .1 of the said instrument and Articles II and XVII of the American Declaration, as well as Article 7 of the Convention of Belém do Pará; (2) that the State has taken some measures to reduce the extent of domestic violence and state tolerance of violence, although these measures have not yet managed to considerably reduce the state's tolerance pattern, particularly because of the lack of effectiveness of police and judicial action in Brazil , with respect to violence against women; and (3) that the State violated the rights and the fulfilment of its duties under Article 7 of the Convention of Belém do Pará to the detriment of Ms. Fernandes, as well as in connection with Articles 8 and 25 of the American Convention and its relationship with Article 1.1 of the Convention, for its own ommissive acts and tolerant of the violation inflicted.³⁹

The conclusions of the Commission highlighted that the violation of Maria da Penha's right followed a discriminatory pattern regarding the tolerance of domestic violence against women in Brazil due to the ineffectiveness of the lawsuit.⁴⁰

In virtue of its conclusion, the Inter-American Commission on Human Rights issued five recommendations to the Brazilian State, as following:

1. Complete, rapidly and effectively, criminal proceedings against the person responsible for the assault and attempted murder of Mrs. Maria da Penha Fernandes Maia.

³⁸ Maria da Penha Maia Fernandes v. Brazil. Report No. 54/01 of case 12.051. (2001): Paragraph 28

³⁹ Maria da Penha Maia Fernandes v. Brazil. Report No. 54/01 of case 12.051. (2001): Paragraph 60

⁴⁰ Maria da Penha Maia Fernandes v. Brazil. Report No. 54/01 of case 12.051. (2001): Paragraph 3

2. In addition, conduct a serious, impartial, and exhaustive investigation to determine responsibility for the irregularities or unwarranted delays that prevented rapid and effective prosecution of the perpetrator, and implement the appropriate administrative, legislative, and judicial measures.

3. Adopt, without prejudice to possible civil proceedings against the perpetrator, the measures necessary for the State to grant the victim appropriate symbolic and actual compensation for the violence established herein, in particular for its failure to provide rapid and effective remedies, for the impunity that has surrounded the case for more than 15 years, and for making it impossible, as a result of that delay, to institute timely proceedings for redress and compensation in the civil sphere.

4. Continue and expand the reform process that will put an end to the condoning by the State of domestic violence against women in Brazil and discrimination in the handling thereof. In particular, the Commission recommends:

a. Measures to train and raise the awareness of officials of the judiciary and specialized police so that they may understand the importance of not condoning domestic violence.

b. The simplification of criminal judicial proceedings so that the time taken for proceedings can be reduced, without affecting the rights and guarantees related to due process.

c. The establishment of mechanisms that serve as alternatives to judicial mechanisms, which resolve domestic conflict in a prompt and effective manner and create awareness regarding its serious nature and associated criminal consequences.

d. An increase in the number of special police stations to address the rights of women and to provide them with the special resources needed for the effective processing and investigation of all complaints related to domestic violence, as well as resources and assistance from the Office of the Public Prosecutor in preparing their judicial reports.

e. The inclusion in teaching curriculums of units aimed at providing an understanding of the importance of respecting women and their rights recognized in the Convention of Belém do Pará, as well as the handling of domestic conflict.

f. The provision of information to the Inter-American Commission on Human Rights within sixty days of transmission of this report to the State, and of a report on steps

taken to implement these recommendations, for the purposes set forth in Article 51(1) of the American Convention.⁴¹

3.3. Observations About the Recommendations of the Commission

The recommendations proposed by the Commission in the Case of Maria da Penha were, as they usually are, deliberately broad, as the Inter-American organs claim for itself the role of fomenting and moving forward the understanding of human rights in a general basis.

The general recommendations of the Commission are of difficult implementation by the States and of difficult monitoring by the Commission, often because it relies on a radical transformation of the current reality of that country which takes time and joint efforts.

Even if the State decides to make strong efforts to implement the Commission's recommendations, not always the results are the expected, let alone immediate. The violations of human rights are usually a reflection of historical and deeply rooted cultural concepts and practices by State and non-State actors that require a multitude of efforts in different sectors to effectively change.

For example, a State might establish, by recommendation of the Commission, new special police stations to address the rights of women. However, the state-actors running those establishments might not adapt immediately to the new conduct expected of them.

In such cases, the training and awareness of state and non-state actors need intense and continuous efforts both from the State and society and the amount of time necessary to see the results are hard to predict.

In that sense, the recommendations of the Commission are not necessarily a utopia, but are definitely a high expectation of the power and willingness of the State to alter the current reality to comply with international and national laws.

As far as possible, in the Case of Maria da Penha, the recommendations of the Commission were fairly implemented, as the next chapter will expose. There was an effort by the State to alter public policies and move towards the vision of the Commission of putting an end to the condoning by the State of domestic violence against women.

⁴¹ IACHR Annual Report, "Status of compliance with the recommendations of the IACHR Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes v. Brazil" (2008): Paragraph 99

It is worth highlighting that the decisions of the Commission are not binding and enforceable like the decisions rendered by the Court. With that in mind, the State's compliance with the recommendations of the Commission is a moral obligation and the non-compliance represent an onus in the international reputation of the State. Furthermore, the non-compliance with a recommendation of the Commission could lead to a forward of the case to the Court which would then imply binding consequences to the State.

It is also worth noticing that the pace to which the IACHR responded to the claim was slow. Although the IACHR condemns the inefficiency in the procedures of the States to respond to human rights violations effectively, the Commission itself has room for improvement. For instance, the average case can take four years just for a decision on admissibility.

The delays are due to different factors such as the vast number of petitions, the multi function aspect of the Commission admission process that lacks oversight and accountability.⁴²

4. The Compliance of Brazil with the Recommendations of the IACHR in the Case of Maria da Penha

Initially, the State of Brazil, as it did throughout the entire process before the IACHR, continued to ignore the Maria da Penha case and did not promptly implement any of the recommendations formulated in the Commission's report.

4.1. The Initial Reaction of the State of Brazil to the Commissions Recommendations

According with Cecilia Santos, it was only in October 2002, that the then secretary of the newly created Secretariat of State for Women's Rights (Sedim), Solange Bentes, made efforts to have the High Court of Justice appraise the last appeal filed by Viveiro's lawyers in 2000⁴³, allowing him to be arrested in 2002, shortly before the matter was time-

⁴² Ariel Dulitzky, "Too Little, Too Late: The Pace of Adjudication of the Inter-American Commission on Human Rights," *Loyola of Los Angeles International and Comparative Law Review* 35, no. 2 (2013): 146

⁴³ Cecília MacDowell Santos, "Da delegacia da mulher à Lei Maria da Penha: Absorção/tradução de demandas feministas pelo Estado", *Revista Crítica de Ciências Sociais*, 89 (2010): page 158

barred and shortly before the first hearing at the IACHR to monitor the recommendations made in Case 12.051.⁴⁴

In 2003, the women's movement mentioned the Maria da Penha case in the document that it sent to the Committee of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), denouncing, among other things, the failure of the Brazilian State to comply, of the recommendations made by the IACHR in the case of Maria da Penha.⁴⁵

In 2004 the Office of the Special Rapporteur prepared a report on civil and political rights in Brazil, including the questions of independence of the judiciary, administration of justice, impunity and highlighting important aspects of the situation of violence against women in Brazil, mentioning the Commission's recommendations in the case Maria da Penha.⁴⁶

The mobilization of feminists, the international repercussion of the IACHR's decision and the pressure of the CEDAW Committee, created the context that led to the eventual compliance of Brazil with the recommendations of the IACHR. In addition, it ignited the discussion about the need for a special law on domestic violence against women in Brazil, which later led to the enactment of Law 11,340 of 2006 – the Maria da Penha Law.⁴⁷

Until the Maria da Penha case gained national visibility, violence against women was seen as a private matter in Brazil. The international repercussion of the Maria da Penha case attracted the support from important segments of society to pressure the National Congress for the compliance with the IACHR's recommendations, which contributed for the later approval of the Maria da Penha Law.

4.2. The Public Repercussion of the Maria da Penha Case

The fight for public recognition of domestic violence against women in Brazil developed in three important phases, always directly driven by the feminist and women's

⁴⁴Marcia Nina Bernardes, "Aspectos Transnacionais da Luta Contra a Violência Doméstica e Familiar no Brasil", *Revta Direito, Estado e Sociedade*, n. 45 (2014): page 126

⁴⁵Cecília MacDowell Santos, "Da delegacia da mulher à Lei Maria da Penha: Absorção/tradução de demandas feministas pelo Estado", *Revista Crítica de Ciências Sociais*, 89 (2010): page 156-160

⁴⁶Rosane Lavigne M. Reis. "Lei Maria da Penha – Comentada em Uma Perspectiva Jurídico-Feminista - Caso Fonaje: o ativismo de juízes integrantes do Fórum Nacional dos Juizados Especiais – Fonaje no processo de elaboração da Lei Maria da Penha". *Lumen Juris* (2011): 76

⁴⁷Marcia Nina Bernardes, "Aspectos Transnacionais da Luta Contra a Violência Doméstica e Familiar no Brasil", *Revta Direito, Estado e Sociedade*, n. 45 (2014): page 127

movement⁴⁸: (1) the creation of the Women's Police Stations in the mid-1980s, (2) the implementation of the Special Criminal Courts in the 1990s and (3) the promulgation of the Maria da Penha Law in 2006, with the subsequent implementation of the Special Judiciary on Domestic and Family Violence against Women.⁴⁹

In that sense, the advent of the Maria da Penha Law was not a mere reflection of the appreciation of the case by the Inter-American Commission on Human Rights, it was the result of years of work on the cause. However, without the repercussion of the case, the law wouldn't be a reality when and how it was.

4.3. The Monitoring of Compliance

In 2008, the IACHR issued a report regarding the status of compliance of the Brazilian State with its recommendations on the case of Maria da Penha.

The Brazilian State reported that, as advised by the IACHR, the perpetrator of the crime against Ms. Fernandes, Mr. Marco Antônio Heredia Viveiros had been convicted and served the penalty imposed.

Therefore, the recommendation to complete the criminal proceedings against the person responsible for the assault and attempted murder of Mrs. Maria da Penha Fernandes Maia was considered fully implemented by the Commission. However, not long later, before the fulfillment of its sentence, the perpetrator was set free and remains free to this day.

In regard to the second recommendation, to “conduct a serious, impartial, and exhaustive investigation to determine responsibility for the irregularities or unwarranted delays that prevented rapid and effective prosecution of the perpetrator, and implement the appropriate administrative, legislative, and judicial measures.” according with the same report:

“The State indicated that the Special Secretariat for Human Rights submitted the matter to the National Judicial Council – the organ entrusted with administrative and financial control of the judicial branch – which requested information of the state Supreme

⁴⁸ Marcia Nina Bernardes, “Aspectos Transnacionais da Luta Contra a Violência Doméstica e Familiar no Brasil”, *Revta Direito, Estado e Sociedade*, n. 45 (2014): page 127

⁴⁹ Tavares, Márcia Santana; Sardenberg, Cecília M. B.; Gomes, Márcia Queiroz de C. “Feminismo, Estado e Políticas de Enfrentamento à Violência contra mulheres: monitorando a Lei Maria da Penha”. *Labrys Estudos Feministas*. Florianópolis (2011)

Court of Ceará. That information was already provided, and the proceeding has been pending a decision as of October 3, 2008. In addition, the State highlighted that reforms were made to the Code of Criminal Procedure, so as to expedite the procedure with regard to the cases under the authority of the Jury Tribunal.”⁵⁰

In that regard, the Commission considered the recommendation fulfilled although in reality due to the vagueness of the recommendation it was hard to assess if the proper measures were taken to determine responsibility for the ineffective judicial procedures.

In response to the third recommendation for the State to adopt the measures necessary to grant the victim appropriate symbolic and actual compensation for the violence suffered and the State’s failure to provide rapid and effective remedies, and for making it impossible, as a result of that delay, to institute timely proceedings for redress and compensation in the civil sphere, the State claimed the payment of R\$ 60,000 (sixty thousand *reais*) was made to the victim as material reparation, on July 7, 2008, during the ceremony paying tribute to the victim for her struggle on behalf of women victims of domestic violence.

Furthermore, the State claimed that, in the occasion of the publication of the Maria da Penha Law, symbolic reparation was made to the victim through a tribute hosted by the President of the Republic.⁵¹

Although payment was made to the victim for material reparation, it is hard to assess whether it was an appropriate amount, however it was enough for the Commission to consider this recommendation to be fulfilled once the IACHR did not stipulate any specific values.

As regard to the various points of the fourth recommendation, the State emphasized, “the Special Secretariat for Women’s Policies has implemented a series of measures in this respect. The State reported that in 2003, the National Policy for Confronting Violence against Women was implemented, including several measures with respect to fighting domestic violence.”⁵²

⁵⁰ IACHR Annual Report, “Status of compliance with the recommendations of the IACHR Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes v. Brazil” (2008): Paragraph 102

⁵¹ IACHR Annual Report, “Status of compliance with the recommendations of the IACHR Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes v. Brazil” (2008): Paragraph 103

⁵² IACHR Annual Report, “Status of compliance with the recommendations of the IACHR Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes v. Brazil” (2008): Paragraph 104

The Inter-American Commission on Human Rights recognized that the Maria da Penha Law provided for the creation of mechanisms for curbing domestic and family violence against women.

Following that understanding, the State claimed that the Law fully addressed the recommendations of the Committee on the Elimination of All Forms of Discrimination against Women, created by the treaty of the same name, and effectively implemented the Convention of Belém do Pará.

In addition, the State pointed out that the Maria da Penha Law increased significantly the protection of women by criminalizing domestic and family violence against women in their various forms of expression; by creating Courts specialized on Domestic and Family Violence, among other measures.⁵³

Besides that, the State highlighted that the promulgation of the law has mobilized society around the question of violence against women, getting the attention of the national media on the issue.

In addition, the State claimed that another consequence of the Maria da Penha Law is the significantly improved reaction of the police with respect to allegations of violence against women. Also, the Law creates the obligation to initiate a police inquiry in cases of domestic violence.

In numbers, the State indicated that 15 specialized courts have been established and 32 courts have been adapted in order to provide the assistance needed by women victims of violence. In addition, from October 2006 to May 2007, the Special Police Stations initiated 32,360 police inquiries on violence against women.

Moreover, in the same period the police required 16,121 measures of protection for the victims to the Courts. During that period, the Courts of Domestic and Family Violence filed 10,450 criminal actions against domestic violence, and granted 5,247 measures of protection for the victims.

Besides that, the State claimed that the tribunals issued 864 arrest warrants in the act, and 77 orders for pre-trial detention on cases of domestic violence against women.

⁵³ IACHR Annual Report, “Status of compliance with the recommendations of the IACHR Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes v. Brazil” (2008): Paragraph 1

According to the State, the Law instated a phone service that operates 24 hours a day, and offers legal advice to victims of domestic violence, as well as guidance with respect to the network of assistance.⁵⁴

The State added that the Secretariat for Reform of the Judicial Branch (SRJ) has allocated R\$ 11,000,000 (eleven million *reais*) for creating measures to implement the Maria da Penha Law.⁵⁵

In 2007, the “National Partnership for Confronting Violence against Women”, a governmental action with a view to preventing and combating all forms of violence against women from an integral approach, ensured, from 2008 to 2011, investments of R\$ 1,000,000,000 (one billion *reais*) for actions to address violence against women through a concerted action by different ministries and secretariats, under the coordination of the Special Secretariat for Policies for Women.⁵⁶

4.4. Considerations on the Recommendations of the Commission

After considering the statements provided by the State of Brazil regarding the compliance with the recommendations of the Commission, the IACHR concluded that the Brazilian State has significantly carried out the recommendations given by the Commission on its report of the Case Maria da Penha.

In addition, the commission urged the Brazilian State to continue to implement public policies so as to prevent, punish, and eradicate violence against women, in particular by effectively implementing the Maria da Penha Law.⁵⁷

The existence of the case, its repercussion and visibility impacted the reality of the manner the Brazilian State positions itself in regard to domestic violence against women. The pace of this progression has intensified and the State has definitely shown engagement in creating public policies in this regard.

⁵⁴ IACHR Annual Report, “Status of compliance with the recommendations of the IACHR Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes v. Brazil” (2008): Paragraph 106

⁵⁵ IACHR Annual Report, “Status of compliance with the recommendations of the IACHR Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes v. Brazil” (2008): Paragraph 107

⁵⁶ IACHR Annual Report, “Status of compliance with the recommendations of the IACHR Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes v. Brazil” (2008): Paragraph 108 and 109

⁵⁷ IACHR Annual Report, “Status of compliance with the recommendations of the IACHR Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes v. Brazil” (2008): Paragraph 110

After 10 years, the Case of Maria da Penha is still part of the current agenda of the country and the matter of domestic violence against women remains an acclaimed topic in the socio-political arena.

5. Analysis of the Implementation of the Maria da Penha Law

5.1. Data on Application of the Maria da Penha Law

In accordance with the latest data about the implementation of the Maria da Penha Law issued by the National Council of Justice, in a decade, between the promulgation of the Law of Maria da Penha in 2006, until December 2016, the number of courts and exclusive courts in domestic and family violence increased from 5 to 111, a growth of 2,120%⁵⁸

In 2016, 1,199,116 cases were processed related to domestic and family violence, which corresponds to an average of 11 cases per thousand Brazilian women.

In the same year, 334,088 new criminal cases involving domestic violence against women were filed in the country's regional courts.

There were 290,423 new police inquiries into domestic and family violence against women in the Regional Tribunals of the country in 2016.⁵⁹

Pending cases represent 2.5 times the amount of new cases on the subject. The Court of Justice of Sao Paulo (TJSP) is the court with the largest volume of pending cases, with the third largest volume of new cases. The Court of Justice of Minas Gerais (TJMG) is the third in volume of pending cases, and the first in volume of new cases. Besides that, 195,038 protective measures were issued in 2016.

In 2016, 194,304 State sentences of domestic violence against women were handed down in the State Court and 368,763 criminal knowledge processes in domestic violence against women have been downloaded. This data allow us to verify that the State Court of the country was able to decide a number of cases superior to the demand of new cases in

⁵⁸ O Poder Judiciário na Aplicação da Lei Maria da Penha, Conselho Nacional de Justiça (2017). Retrieved from: <http://www.cnj.jus.br/files/conteudo/arquivo/2017/10/ba9a59b474f22bbdbf7cd4f7e3829aa6.pdf> : pages 26 -28

⁵⁹ O Poder Judiciário na Aplicação da Lei Maria da Penha, Conselho Nacional de Justiça (2017). Retrieved from: <http://www.cnj.jus.br/files/conteudo/arquivo/2017/10/ba9a59b474f22bbdbf7cd4f7e3829aa6.pdf> : pages 24 -39

this matter, showing the judiciary's capacity to respond to legal action in cases of domestic violence against women.⁶⁰

According to the National Justice Council, a total of 13,446 cases of criminal execution in domestic violence against women were initiated in the State Court in 2016; 16,133 of which were sentenced in criminal proceedings; 15,746 cases of criminal executions in domestic violence against women were pending; 6,921 cases were dropped.

Due to the lack of information from some courts, and because of underreporting from others, these indicators should be read with caution, since they might be underestimated.⁶¹

In conclusion, in the past decade, after the promulgation of the Maria da Penha law, the judiciary has successfully and increasingly applied the law.

Since 2009, DataSenado has asked women if they have ever heard of the Maria da Penha Law. In 2011, 98% said they knew the law; in 2013, 99%. In 2015, practically 100% of the women interviewed said they knew about the Law. This data shows that the knowledge about the Law has effectively reached civil society.

5.2. Data on The Increasing Violence Against Women

In contrast, one in five women said they had already suffered some type of violence from which 26% still live with the aggressor⁶², which demonstrates that the knowledge of the law alone has not eradicated the violence.

On the contrary, between 2003 and 2013, the number of women victims of homicide increased from 3,937 to 4,762. Weighted by the growth of the female population in this period, there was an 8.8% increase in the rate of homicides of women. Between 1980 and 2013 the Mortality Information System registered a total of 106,093 female homicides.⁶³

⁶⁰ O Poder Judiciário na Aplicação da Lei Maria da Penha, Conselho Nacional de Justiça (2017). Retrieved from: <http://www.cnj.jus.br/files/conteudo/arquivo/2017/10/ba9a59b474f22bbdbf7cd4f7e3829aa6.pdf> : page 39

⁶¹ O Poder Judiciário na Aplicação da Lei Maria da Penha, Conselho Nacional de Justiça (2017). Retrieved from: <http://www.cnj.jus.br/files/conteudo/arquivo/2017/10/ba9a59b474f22bbdbf7cd4f7e3829aa6.pdf> : page 40

⁶² Pesquisa Violência Doméstica e Familiar contra a Mulher, DataSenado, (2015)

⁶³ O Mapa da Violência no Brasil. “Homicídio de Mulheres”, (2015). Retrieved from: https://apublica.org/wp-content/uploads/2016/03/MapaViolencia_2015_mulheres.pdf

Among the 4,762 murders of women registered in 2013 in Brazil, 50.3% were committed by relatives, and in 33.2% of these cases, the crime was committed by a partner or an ex partner. These nearly 5,000 deaths represented 13 female homicides daily in 2013, from which a family member committed 7 out of the 13 daily homicides.

According to the Women's Assistance Centre ("Call 180"), 749,024 consultations were carried out in 2015. From the total number of visits: 41.09% corresponded to the provision of information; 9.56%, referrals to specialized services for women; 38.54%, to referrals to other tele-services (Military Police, Civil Police and Dial 100); compared to 2014, there was an increase of: 44.74% in the number of reports of violence; 325% of private prison (average of 11.8 / day); 129% of sexual violence (mean of 9.53 / day); 151% trafficking of people (average of 29 / month). Still, the Central says that 77% of women who report living in situations of violence suffer aggression on weekly or daily basis.⁶⁴

In Brazil, 56% of men admit that they have already committed some of these forms of aggression against a woman: they swore, shoved, assaulted with words, slapped, punched, prevented from leaving or forced to have sex.⁶⁵

In addition, 503 women were physically assaulted every hour in 2016 (4.4 million a year and 29% of Brazilian women report having suffered some type of violence in the last 12 months, respectively: 22% (12 million) suffered verbal offense; 10% (5 million) were threatened with physical violence; 8% (3.9 million) suffered sexual offenses; 4% (1.9 million) were threatened with a knife or a firearm; 3% (1.4 million) suffered beatings or attempted strangulation; and 1% (257,000) were shot.⁶⁶

From the women who suffer violence: 61% of perpetrators are known, 19% are partners and 16% are former partners. From the women who suffer violence, 43% of the most serious aggressions occurred at home and 39% on the street.

Besides that, from the women who suffer violence, 11% seek the women's police station, 13% seek help from the family and 52% do nothing.

⁶⁴ Ligue 180 – Central de Atendimento à Mulher, Secretaria de Políticas para as Mulheres da Presidência da República (SPM-PR), 2015.

⁶⁵ Percepções do Homem sobre a Violência Contra a Mulher, Data Popular/Instituto Avon, 2013.

⁶⁶ Visível e Invisível: a Vitimização de Mulheres no Brasil, Datafolha/Fórum Brasileiro de Segurança Pública (FBSP), março de 2017.

Besides that, with a rate of 4.8 homicides per 100,000 women, Brazil, in a group of 83 countries with homogeneous data, provided by the World Health Organization, occupies the 5th position, showing that local indices far exceed those found in most countries of the world.

In fact, only El Salvador, Colombia, Guatemala and the Russian Federation show higher rates than Brazil, as the country presents 48 times more female homicides than the United Kingdom; 24 times more female homicides than Ireland or Denmark; 16 times more female homicides than Japan or Scotland.

5.3. Considerations on the Data of Violence Against Women in Brazil

The data show that since the advent of the Maria da Penha Law, the report and prosecution of cases of domestic violence against women became more efficient. However, the data also show that not only the numbers of violence against women in Brazil are staggering and increasing, but also underestimated, as many of the women who suffer do not report the crimes to authorities and many states in Brazil still do not persecute properly the complaints.

Besides that, the data demonstrates that although the debate around domestic violence has reached 99% of the population, the engagement of the victims of domestic violence with public authorities is still unsatisfactory, as over half of the women who suffer from domestic violence do not report it to public authorities.

The notion that women avoid resorting to justice, even when brutalized by their partner has been long encountered in the Brazilian society for cultural reasons such as the historical women's duty to maintain the appearance of a well-structured household and the fear to face discrimination from conservative family, friends and state actors.

In fact, it is understandable that terrorized women remain cautious to rely in a State who until not long ago considered domestic violence a sphere of the private life, as well as rape by the husband as a way to demand the fulfilment of the marital debt.⁶⁷

The women's police stations, a improved public support system, a specific law to curb domestic violence and an improved legal structure were all a victory for the women's movements, however numbers show that they are still palliative in providing solution to the epidemic of violence against women in the country.

⁶⁷ Iredé Cardoso and José Eduardo Martins. "O direito da mulher na nova Constituição." *São Paulo: Global Editora* (1986): page 74.

The data demonstrates that women who suffer from domestic violence in Brazil still need much more attention from society and engagement from authorities.

6. Conclusion

“We've been taught that silence would save us, but it won't.”⁶⁸

In conclusion, the transnational public sphere created by the Inter-American system, its mechanisms and the priority given to the thematic of violence against women opened the stage to represent the struggle of domestic violence against many unheard women in Brazil.

The IACHR and the IACtHR listened and replied to the clamour of those women who repeatedly suffer from institutional discrimination and violence both by State and non-State actors.

However, this performance has room for improvement in regards to time efficiency, clarity of imposed obligations to the State and enforcement of decisions. In addition, those organs can strive to include more and more “gender aware lawmakers, Commissioners, Judges and litigants”⁶⁹ in order to increase the pace of advancement on women rights protection in the Americas.

In Brazil, the appreciation of the case of Maria da Penha by the IACHR, together with the pressure of feminist movements and other sectors of the Brazilian society for the compliance with the Commission’s decision on the case has shed a light into the problem of domestic violence against women.

This light removed the debate around the issue from the private into the public sphere and allowed for the creation of the Maria da Penha Law. The Law awakened the Brazilian civil society to the cause of domestic violence against women and offered better mechanisms to the report and prosecute of violations.

However, the newly gained consciousness of the rights of women against domestic violence in Brazil has not yet been successful in reducing the actual violence which continuous to grow. In addition, it has not yet encouraged a major part of the women who suffer from domestic violence to bring the matter into public custody.

⁶⁸ Audre Lorde, Caribbean-American writer and activist

⁶⁹ Patricia Palacios Zuloaga, “The Path to Gender Justice in the Inter-American Court of Human Rights”, *University of Texas* (2016): page 90 and 91

In order to more effectively prosecute the perpetrators of violence against women and improve the States compliance with Inter-American decisions, a different legal culture and a stronger and independent judiciary in the national level is required.⁷⁰

Furthermore, legal mobilization alone is not sufficient to promote social change.⁷¹ The shift needed to effectively prevent and reduce the acts of violence against women from happening requires engagement from all actors in society.

The patriarchal concepts must be substituted by empowerment of women at all levels. Also, women must feel safe and be properly treated by the State when denouncing violence in order to encourage more and more public intervention in matters of domestic violence.

For example the State must increase its investment in educating public servants, as well as citizens about the rights of women. This knowledge must be so loudly repeated and unmistakably clear in the Brazilian public sphere that every actor of society will be equipped to promote and take responsibility over the cause.

In addition, the measures already in place, such as the tele-services, shelters and specialized police station must be improved and extended.

In conclusion, the efforts made to condemn domestic violence against women so far have resulted in a better support system to women in Brazil. However, effectively reducing the occurrence of gender-based violence in a country with deep sexist roots will require continuous national and transnational efforts over time.

⁷⁰ Cecilia M. Bailliet, "Measuring Compliance with the Inter-American Court of Human Rights: The Ongoing Challenge of Judicial Independence in Latin America", *Nordic Journal of Human Rights* 31:4 (2013): page 494 and 495

⁷¹ Cecilia Macdowell Santos, "Transnational Legal Activism and the State: Reflections on Cases against Brazil in the Inter-American Commission on Human Rights," *Sur - International Journal on Human Rights* 7 (2007): 29-60

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