

AMBIGUITIES AND CHALLENGES OF THE (JUDICIAL) DECISION OF INTERVENTION WITH MEN WHO COMMITTED VIOLENCE AGAINST WOMEN

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Abstract

The Maria da Penha law, in its original wording, provided for the possibility of creating “education and rehabilitation centers for the aggressors”. However, the implementation of these mechanisms is still far from the registered needs. There is not even a consensus on the importance of investing in the execution of work with men who committed violence. Thus, what is often established is a polarized debate between different segments and social actors. In this paper, we seek to identify the arguments mobilized to justify the implementation of services and those used to hinder such implementation. To achieve this purpose, we started from the analysis of documents and fourteen interviews conducted with female and male collaborators who declared themselves to be feminists or pro-feminists and who participated in activities to formulate and monitor the Maria da Penha law and/or who took part in the implementation of accountability and education services in the country. In the end, we highlight the importance of effectively taking this debate to the public sphere, in order to contribute to the consolidation of a national policy of attention to men who commit domestic violence against women.

Keywords: domestic violence; Maria da Penha law; public policy; accountability and education services.

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1. INTRODUCTION

In Brazil, the law n. 11.340, of August 7, 2006, known as Maria da Penha law, represents a great advance in combating domestic and family violence against women. Considering the multifaceted nature of this problem, the law sought to address it in an integral way, offering a series of instruments that enable the prevention, protection and assistance of women in situation of violence. In addition, the law also makes room for a debate on the accountability of those who practice this type of violence. In its original wording, the law foresaw the possibility of creating “education and rehabilitation centers for the aggressors”. Recently, law n. 13,984/2020 expanded the list of urgent protective measures to include obligatory referral and psychosocial care – individual or in groups – for these subjects⁴.

The implementation of these mechanisms, however, is still not enough, considering the existing needs. There is not even a consensus on the importance of investing in the execution of actions with men who commit violence. And this type of dissension often generates a polarized debate between different segments and social actors.

This paper is the result of a PhD research funded by the Coordination of Improvement of Higher Education Personnel (CAPES) of the Ministry of Education (MEC), in Brazil. In the study, we sought to identify the arguments mobilized to

⁴ Before appearing in art. 45 of the Maria da Penha law, the obligatory referral of men who committed violence to accountability and education services was already provided for in article 152 of the Brazilian Law of Penal Executions. In it, however, the provision refers to cases in which a very specific alternative sentence involving restriction of rights is applied: the weekend jail. This penalty - weekend jail - consists of the determination that the convict must stay at an open prison for 5 hours a day on Saturdays and Sundays. There, he can be submitted to courses, lectures and other educational activities. The new wording given by law n° 13.984/2020, however, brought some changes to the situation. The 2020 law provides that referral, as an urgent protective measure, can be enacted at any time, from the investigative stage to the procedural one.

Translator's note (TN): The term "weekend jail" is used here as a free translation of a type of alternative sentence involving restriction of rights, which in the original term, in Portuguese, is called "*limitação de fim de semana*". Also, when we say the weekend jail should be served in "open prisons", this term is also a translation of the original term, in Portuguese, "*casa de albergado*". At this point, however, the English term we chose is a hypernymy.

justify the implementation of this type of services. To achieve this purpose, 14 semi-directive and semi-structured interviews were carried out. They were conducted with female and male collaborators who declared themselves to be feminists or pro-feminists and who participated in activities to formulate and monitor the Maria da Penha law (group 1) and/or who took part in the implementation of accountability and education services for men who committed violence in the country (group 2). The interviews were conducted between 2016 and 2018.

The women and men interviewed were identified by codes, which start with the letter A - in the case of a participant in group 1 - or with the letter B - in the case of a participant in group 2 -, followed by a serial number, which is established based on when the interview took place. The choice to group the interviewees in these two categories happened so that it would be possible to characterize the place of speech of these subjects. It is important to clarify that this work does not aim to structure the analysis in a comparative way, establishing how these places of speech may (or may not) distance or bring together the interviewees' points of view, even though this may have occurred at some point.

In addition, we analyzed a set of seven documents, of public and private nature, collected during the field research. They consist of guidelines and technical parameters built to guide the development of actions with men who committed violence and also to steer the process of mapping the experiences in this area that have already been carried out in the country. Among the documents, the only one of a private nature consists of notes made by a participant in the workshop held by the Secretariat of Policies for Women - Presidency of the Republic (SPM/PR). One of the results of this workshop was the elaboration of the first guidelines proposed by that body⁵. These documents helped us to reflect on the various challenges that

⁵ During the 3rd and 4th of July 2008, the SPM/PR carried out the workshop "Discussing the education and rehabilitation centers for the aggressors". The event took place in the city of Rio de Janeiro and brought together several professionals, academics and representatives of organized civil society. The products of these discussions were summarized in a publication of that body, entitled "General guidelines for the implementation of services of accountability and education of aggressors", published in 2011.

TN: Apparently the guidelines were not translated into English, so the translation performed here is free, based on the Portuguese reference consulted for this work. The original title of the guidelines, in Portuguese, is "*Diretrizes gerais dos serviços de responsabilização e educação do agressor*".

involved and still involve the implementation of accountability services for men author of violence in Brazil.

Alongside problems related to lack of resources, insufficient attention and resistance from political groups, we also identified a dimension related to the construction of meanings on intervention with men. The interviews show that there is ambiguity about the relevance of the service, especially regarding its (in)adequacy in relation to the function of punishment.

In the interview script, we asked the following question to the collaborators: “For you, what are the main arguments that are given – or that could be formulated – in favor of implementing these services?” There was no one who explicitly disagreed with the provision of services. The positive attitude, in turn, was expressed in different levels, which brought to the surface resistances of various natures to this initiative.

2. THE ARGUMENTS IN FAVOR

Arguments in favor of the implementation of services can be grouped into two distinct groups, as they approach or depart from the expectations of criminal law application. Concerning the criminal sphere, the highlights are the diagnosis of failure of the prison system and the ineffectiveness of traditional punitive measures. In the non-criminal sphere, in turn, what is evident is the relational nature of the phenomenon and the ambiguities of feelings involved in domestic and family relationships.

FAILURE OF THE PRISON SYSTEM AND THE INEFFECTIVENESS OF TRADITIONAL PUNITIVE MEASURES

Considering all men and women who took part in the research as collaborators, we identified a point of total convergence in their opinions. This point concerns justifying the provision of accountability and education services to men

who committed violence against women. The argument shared by them is the failure of the prison system and the ineffectiveness of merely punitive measures.

There is an extensive academic literature pointing out how prison has become a failed experience, with inexpressive results in terms of facing crime as a whole. According to Salla and Lourenço (2014), “prisons have been shown to be incapable of operating a moral transformation in individuals, a transformation that was expected to be able to better reinsert them within society” (p. 378)⁶. In the same sense, Baratta (2011) states that “imprisonment institutions produce effects contrary to the re-education and reintegration of the convicts and effects favorable to their stable insertion within the criminal population” (p. 183)⁷. In addition to its stigmatizing effects, the prison environment is a disciplinary field, with a repressive and uniforming tone. Due to these characteristics, it is opposed to the educational ideal, which presupposes feelings of freedom and spontaneity of the human being. In this hostile and degrading environment, people are subjected to a specific process of socialization. Such a process, on the one hand, distances prisoners more and more from the values and behavioral models established for life in freedom. On the other hand, the socialization that takes place in prisons incorporates the patterns fed by the prison subculture, putting in check any resocializing or re-educational ideal.

In a broader sense, some authors characterize what we are experiencing in Brazil as “a deep and serious crisis in the legitimacy of the penal system” (Andrade, 1999, p. 106)⁸. The crisis is theoretically and empirically evidenced by the breach of the most fundamental promises of the penal system: the protection of legal goods of general interest; fighting crime through the purpose of retribution and specific and general deterrence; and the equal application of penalties. This perspective is unanimously shared by our female and male interlocutors and can be exemplified by the expression “the person joins the prison being bad and leaves the prison worse than when he/she entered it”⁹.

⁶ TN: Free translation based on the Portuguese reference consulted in this work.

⁷ TN: Free translation based on the Portuguese reference consulted in this work.

⁸ TN: Free translation based on the Portuguese reference consulted in this work.

⁹ TN: Free translation based on the original expression, in Portuguese, which is: “*entra ruim, sai pior*”.

[...] everyone who enters the prison leaves worse than when they got there. So I don't think prison is a solution. I believe that even on other issues I am against prison. In my opinion, I think there would be no prison. There must be other forms of punishment and effective work. (B2).

Then I'll go there and arrest you. Then, in prison, the man learns more about the crime. Then I get more pissed off with the system, I go there and beat the woman more and more and I say that the women we were violent with are all crazy, bitches, because they put us in prison. What is the effect of this? This is the direct effect of betting on the penalty, but this penalty ends up having the opposite effect. It fuels a war between the sexes, makes guys pissed off, angrier. And that's why they get more aggressive and with that, more aggressors appear in society. (B3).¹⁰

Male and female researchers, politicians and other social actors constantly cite the high recidivism rates among convicted individuals in order to reaffirm the thesis of failure of the prison system and the ineffectiveness of traditional punitive measures. In the last two decades of the last century and in the first years of the current one, the most cited works on criminal recidivism in Brazil were those produced by Adorno and Bordini (1989; 1991) and Kahn (2001), both on the state of São Paulo; and the work of Julita Lemgruber (1989), on the reality of the state of Rio de Janeiro. In 2008, the Brazilian prison system came on the agenda of a Parliamentary Commission of Inquiry (CPI, initials for the original term, in Portuguese, "*Comissão Parlamentar de Inquérito*") in the Brazilian Chamber of Deputies (2009). The final report produced by this Commission cites data from a management report produced by the National Prison Department (DEPEN, initials for the original term, in Portuguese, "*Departamento Penitenciário Nacional*"), which reported that the recidivism rate in the country was 70%, reaching 80% in some units of the federation. With these data, the report helped to consolidate "a

¹⁰ TN: Free translation based on the interviews in Portuguese consulted in this work.

widespread perception, and largely fostered by public security professionals, that much of the crime that afflicts Brazilian society comes from criminals who reoffend.” (Sapori; Santos & Maas, 2017, p.1)¹¹.

More recently, the research Criminal Recidivism in Brazil (2015)¹², produced by the Institute for Applied Economic Research (IPEA, initials for the original name, in Portuguese, "*Instituto de Pesquisa Econômica Aplicada*"), revealed that 24.4% of people previously convicted reoffend. This means approximately one out of every four cases. The study takes into account only the hypotheses that conform to the concept of legal recidivism provided for in the Brazilian Penal Code, which considers that there is recidivism when the individual is once again convicted within a period of up to five years after serving the previous sentence.

However, this is not the only valid concept of recidivism. Neither is the one that best reflects reality¹³. When these other ways of understanding the phenomenon are used, the percentage observed increases significantly. This is the case of the work developed by Sapori, Santos and Maas (2017), in the state of Minas Gerais, Brazil. The criterion for recidivism used by the researchers is the existence of one or more indictments after the individual has served the sentence or received parole. From this point of view, they found that more than half of the Brazilian prison population go on to commit new offenses after leaving the prison system.

On the other hand, some studies have indicated a minimum level of recidivism in the practice of violence against women among men who are referred to accountability and education services. This situation was expressed by one of the interviewees to present her/his point of view on the provision of these services as an alternative and a more effective mechanism to face the problem.

¹¹ TN: Free translation based on the Portuguese reference consulted in this work.

¹² TN: Free translation based on the Portuguese reference consulted in this work. The original title of the research, which is not officially translated into English, is "*Reincidência Criminal no Brasil*".

¹³ The concept of recidivism can be determined and empirically operationalized in four different ways: a) natural or generic recidivism, when the subject commits a new offense, regardless of a previous conviction; b) social recidivism, in the case of a previous conviction, even if it has not been served in the prison system; c) prison recidivism, characterized when the subject goes through the prison system again; and d) legal recidivism, as defined in the body of the text (Adorno & Bordini, 1989).

Brazil is already the fourth country with the highest number of people under arrest, right? The prison system has an 80% recidivism rate. Of almost all men who are arrested once, 80% are arrested again. But when there are actions and services being done in groups of men, recidivism drops to 5%, according to our research. So, considering the total number of men who attend these groups, only 5% reoffend, commit violence against women again. So, the group effectively manages to break with the problem of violence. (B2).¹⁴

Although there is a certain fragility in recidivism data - such as effectiveness markers, especially when analyzed alone, and the fact that they are often disclosed by those who are directly interested in the performance of services - it is possible to find in, the Brazilian scientific literature, some studies that corroborate this speech. They indicate low rates of recidivism among men who took part in programs and services of this nature (Teixeira & Maia, 2001; Andrade & Barbosa, 2008). In the international literature, Taylor and Barker (2013), analyzing data from services that exist in North America, point to an average recidivism rate of 32% among men who fully participated in men's groups programs. The rate is 46% in cases where the schedule was not completed, as reported by the partners of these men. In the Spanish mapping, the recidivism rate is presented at the level of 22% (Beiras, Nascimento & Incrocci, 2019).

The fact that constitutive elements of hegemonic masculinity, such as virility and aggressiveness, stand out among the values shared by the prison population is something that has an unfavorable impact on punitive measures. Thus, "confining men precisely where the language of survival that prevails is based on violent virility is a strategy that expands the devices that consolidate the fusion between masculinity and violence" (Mourão, 1024, p.290)¹⁵. Therefore, restricting the freedom of men who commits violence against women would only promote repression. At best, it would promote the temporary containment of violence. But this strategy is not able to foster a break with patriarchal values. Consequently, it also does not push for the recognition of women as subjects of rights.

¹⁴ TN: Free translation based on the interviews in Portuguese consulted in this work.

¹⁵ TN: Free translation based on the Portuguese reference consulted in this work.

Violent behavior is based on the perceptions we have of ourselves and on the way we perceive the other (Mourão, 2014). Because of this, any control strategy will only have positive results if it takes into account two types of factors: the subjectivity of each one and the communication resources. Both are what guarantee the listening and recognition of the demands of the other with whom one interacts and the recognition that the other is also a subject of rights, without disregarding the subject's own needs. "In the best hypothesis, repression makes it possible to achieve artificial pacifications, in such a way that violence will be temporarily camouflaged and will erupt, in the future, in other areas or relationships" (Mourão, 2014, p. 290)¹⁶.

The penal system, with few exceptions, does not provide an efficient way of protecting women in situation of violence. More than that, the system works to duplicate victimization as it exposes women to a multifaceted institutional violence coming from the system itself (Andrade, 1999). On the other hand, while arguing for the failure of the prison system, the idea of insufficiency of traditional punitive measures is fed, as well as the idea of the importance of reflective work with men who committed violence. In the interviewees' statements:

There is no use in punishment if you don't have an approach that leads the guy to understand the problem, to see it so that he can recognize the problem, rethink it, and rehabilitate it; so that he can reintegrate himself into the family. I think what was thought [the idea of implementing services for authors] is important. You have to work on this ideia, because there is no use in punishing. If you don't work with the guy, he'll go out and do it again. (A1).

[...] simply punishing these perpetrators of violence with a custodial sentence, a traditional justice response, is absolutely insufficient to combat violence against women [...]. If we are dealing with violence against women as a social and structural problem - as gender-based violence -, we will only be able to find a way to overcome the problem if we manage to change the

¹⁶ TN: Free translation based on the Portuguese reference consulted in this work.

relationship structure in society. And in order to change this relationship structure in society we have to focus on measures that involve education for a new gender vision, for a new gender relationship. (B4).¹⁷

These specificities of gender-based violence, mainly due to its cultural component, also elucidate the dissatisfaction of part of the interviewees with the proposals for penal response constructed from the prefix “re”: reeducation, rehabilitation, resocialization, recovery, etc., all of them reproduced in the text of the Maria da Penha law.

I think that any possibility of rehabilitation, resocialization, any “re” is TERRIBLE! Totally TERRIBLE. So, I would not propose anything in that sense. [...] I think in this business any “re” is ridiculous. (A6).¹⁸

When we use these words, we indicate a movement to rescue skills and precepts that existed and that were, at some point and for some reason, abandoned. However, when there is nothing, there is nothing to lose. “Gender inequality appears in all stages of socialization, in primary and secondary. Therefore, it needs to be known, deconstructed and undergo an education process, not a rehabilitation or re-education one” (Andrade, 2014, p. 84). For this reason, Brazilian experiences primarily carry the idea of accountability and education in their titles.

RELATIONAL NATURE OF THE PHENOMENON

Considering the relational nature of domestic and family violence against women and its multicausal character, the interviewees , in order to justify the

¹⁷ TN: Free translation based on the interviews in Portuguese consulted in this work.

¹⁸ TN: Free translation based on the interviews in Portuguese consulted in this work.

provision of services to men who commit violence, presented arguments that break with the traditional and reductionist logic of criminal law.

We already have the theoretical capacity to overcome this short view, so to speak, of not understanding the importance of seeing violence as an issue that is not unilateral. Violence is relational and there is no point in working with one side only. Okay, we're going to offer this woman the possibility of getting out of another relationship, but this guy won't change his behavior. So, if we want to build another kind of sociability relation between men and women, well, then men and women must reflect on their behavior. This is important! (A6).

You have to see everything that is involved - that's where the holistic view comes in, isn't it? It is necessary to have a public policy that manages to capture all the phases of the same phenomenon, after all, all phenomena are multifactorial. They are the result of different factors. So there is no use in focusing on a single factor because then you'll never be able to eliminate the cause. (A3).¹⁹

People who were part of the second group of interviewees (those who are linked to the implementation process of the services) express concern about the suffering of men and the need to care for them, in recognition of the evils that are inflicted on men due to the exercise of hegemonic masculinity. Thus, unlike what happens with punitive measures, through which the “victim gains what the aggressor loses”, the service of referral to reflexive groups would offer the possibility of operating through a win-win logic, in which all parties win.

When they manage to realize that they practice violence, they suffer. Some men become sad. They come out of anger and get into fear [...] Generally,

¹⁹ TN: Free translation based on the interviews in Portuguese consulted in this work.

men don't talk about it. What they say is: 'let's go out and get a lot of women' - or they say in a very pejorative way: 'let's go out and get a bunch of pussy' or 'let's get drunk'. That's what happens when the guy just broke up with someone, he's in pain, he's sad... He needs to talk about sadness, about suffering, or at least having someone's company to be there by his side, respecting his pain. (B7).

[...] we can think that he is being taken care of. He is. And it's great for him to be taken care of so he can take better care of himself too. So, these services play a role in the quality of life of the man who committed violence. Because by improving his relationships, by realizing the possibilities of cultivating relationships in a way that is not so based on hegemonic masculinity, the guy wins. Because he will be able to deal with the other using more feelings and using them better. Here he has the possibility to cry, to deal with affection, to deal with paternity. (B1).²⁰

There are two assumptions that can be seen from those statements: a) if the socialization process presents levels of toxicity that also affect men, it is believed that in these groups they can share their sufferings and anxieties. This is the thread that can lead them to abandon patriarchal values and to transform their relationships, with themselves and with others. Such relationships can, thus, become healthier; and b) this transformation is possible because the label of “aggressor” is not seen as something that shapes one's identity, but as a transposable state. It is not a coincidence that the interventions that have been carried out in Brazil have primarily used the expression “men who commit violence”.

As scholars on the subject defend, no one remains in the place of “aggressor” uninterruptedly. “We have to recognize that aggression is triggered by various stimuli and most of them do not determine a person's identity” (Andrade, 2014, p. 182). In addition, the notion of aggressiveness is understood as a biopsychological

²⁰ TN: Free translation based on the interviews in Portuguese consulted in this work.

force, generally used to satisfy vital needs and not to exercise control over others. When using the word “aggressor”, we would be linking the violent behavior of men simply to the biopsychological and intrapsychic field, placing it as a tendency or predisposition (Acosta, Andrade Filho & Bronz, 2004).

AMBIGUITIES ABOUT THE FIGURE OF THE FAMILY MAN WHO IS ALSO AN AGGRESSOR

Since “aggressor” is a temporary state of the subject, situations of domestic and family violence refer to a scenario marked by ambiguity of feelings. And this leads to the third set of arguments in favor of the provision of services and which is distant from the model of punishment offered by criminal law. These arguments are shared by almost all the interviewees, regardless of the group to which they belong: exclusively punitive measures are not the response expected by most women.

Several studies show that many women end up withdrawing the complaint or deciding not to proceed with the criminal case. In many situations, because they don't want the guys to be punished, they don't want to see them arrested like that, right? Criminalize. They just want them to be scolded, they just want them not being violent again. (A 1).

I would say women who are in situation of violence, I think most of them do not want their husbands to be arrested, the parents of their children to be arrested. Many of them verbalize this. Several studies show us this in a very significant dimension of the issue. (A3).²¹

²¹ TN: Free translation based on the interviews in Portuguese consulted in this work.

In Brazil, a research carried out by the Ministry of Justice and Public Security (2015) indicates that only 20% of women who access the Courts of Domestic and Family Violence Against Women express the desire for their aggressors, with whom they maintain or have maintained affectionate relationships, to be sentenced to a custodial sentence. The vast majority (80%) indicate the desire for their aggressors to be sentenced to alternatives to imprisonment, such as referrals to reflexive groups, psychosocial care or the provision of services to the community.

More recently, research developed by the Brazilian Forum on Public Security (FBSP, initials for the original name, in Portuguese, "*Fórum Brasileiro de Segurança Pública*") and the Datafolha Institute (2019) reveals that most women in situation of violence (52%) did nothing in the face of occurrences. Of those who took action, only 22.2% said they had sought an official body, and 18.3% said they had reported the situation to a police station (specialized or not). It is important to keep in mind that reporting is the first step in pursuing criminal liability. Another 29.6% said they had sought help from family, friends or church.

There are several variables that we must consider when interpreting these numbers: lack of knowledge about the dynamics of the criminal justice system; the slowness of the system and the disbelief in its effective performance in order to guarantee fundamental rights; or even the desire not to see their partners or ex-partners submitted to prison. In the latter case, not only because of the condition of vulnerability to state violence to which they will be exposed, but above all because of the economic and emotional consequences that would arise from this way of dealing with the issue. The latter are the main justifications presented by the interviewees:

[...] women, talking about men who commit violence, say: 'he is a great father; sometimes he is a great lover; at other times he is a great partner. There are moments when he loses control and becomes violent. (B5).

The domestic issue is a little different. The guy is the father of the children. She married the guy. And she doesn't want him to be punished - because he's going to be arrested, and that's not cool, if this happens there won't be

any income. Look: what will it be like for the family? Prison will harm the family, but at the same time she doesn't want him to remain aggressive. So, if he undergoes the treatment, this is something that somewhat meets the women's demands. (A1).²²

From there, an important distinction is made between the other “clients” of the prison system and those who arrive there due to the practice of behaviors that constitute domestic and family violence against women. Although this differentiation does not necessarily mobilize the family man/vagabond binomial, as can be seen in the following excerpt, it is always marked in terms of opposition to the “ordinary” offender, who is someone the victim does not know.

So, if you work the whole day long, bring money home, put food on the table, then you are seen as a good father, as a family man, even if you are a woman's aggressor. So women use this concept, they have this concept in mind and then they end up, I don't know if they forgive the guys, but they end up not wanting this guy, who is a family man, to go to the same place the bums go, which is the prison. (A1).²³

The women's lack of interest in pursuing a criminal case involving their aggressors is a situation popularly known by the expression “withdrawal of the complaint”²⁴ (Jong, Sadala & Tanaka, 2008; Souza, 2017). Studies on this issue show that financial dependence, affection and desire to maintain the family unit are reasons that would also be behind speeches of rejection of custodial sentences. In this context, it is important to question and discuss the aspirations expressed by these women and to reflect on the fundamental process of female empowerment. However, on our part, simply taking a stand against the implementation of care services for men who commit violence would mean not listening to the demands

²² TN: Free translation based on the interviews in Portuguese consulted in this work.

²³ TN: Free translation based on the interviews in Portuguese consulted in this work.

²⁴ TN: The original expression, well known in Portuguese, is “*desistência da queixa*”.

of those who have a key interest on the matter. And those people - women in situation of violence - do not demand the punishment of the men who attack them, but rather the end of violence in their lives through other actions and responses.

3. THE ARGUMENTS THAT RAISE OBSTACLES

In the interview, the statements that raised difficulties or obstacles to the implementation of services were many. The objections placed by the interviewees fall into two main axes. The first is of a political-financial nature and involves the political will of governments to implement or not public policies on gender equality, which is accompanied by a tense dispute over the use of the few available resources. The second has a methodological character and gathers arguments criticizing the effectiveness of the services.

We also identified a third axis, less central, but which also works as an obstacle to interventions with men authors of violence in the country. This axis is “epistemological” and directly concerns the difficulties of innovation in the field of criminal law.

POLITICAL WILL AND SHORTAGE OF RESOURCES

The Maria da Penha law not only provided for legal norms regulating the performance of the justice and public security system in cases of domestic and family violence against women. The law also challenged the Brazilian State to promote an integrated policy with a multidisciplinary approach. Such a policy, striving for a plurality of actions, should be able to offer an adequate response to face this serious type of human rights violation. Therefore, the full implementation of the Maria da Penha law is a responsibility of the Brazilian State and must involve actions of the various levels of government, which are responsible for managing resources and deciding how much and in which sectors to invest.

We live in an extremely patriarchal state structure. In it, those who control most of the necessary resources for the implementation of the women's agenda

regarding fundamental rights (Connell, 2016) are groups of men, notably men identified by the signs of hegemonic masculinity and belonging to the wealthier social classes. Although the debate on the role of men in society has emerged more incisively in international debates since the 1990s²⁵, the practical feasibility of these points remains a great challenge.

In general, the interviewees believe that there is no interest on the part of governments, especially when they are controlled by men, in implementing public policies for the promotion of gender equality. These policies include mechanisms to combat domestic and family violence against women, such as the services for men.

I think there is no interest. Gender issues do not interest governments. They think they won't get any votes with this kind of policy, you know? It is not a field you can easily manipulate. [...] Gender policies don't matter. And they don't matter because, at first, it's still a woman's business. In fact, the implementation of gender policies will take men, will take us out of our comfort zone. They could mean the end of our privileges. Why am I going to do this? Do men want to give up their privileges? Today, I want to give up my privileges because now I can understand that they are not privileges, but straitjackets. I don't want to be miserable emotionally, symbolically. And that's what machismo and sexism do, you know? You get dull and rude, you know? But men think what that means is being good. (B7).²⁶

Many men are unwilling to give up their privileges or even to acknowledge the scale of the problem. However, “if we look separately at each of the gender substructures, we find a pattern of advantages that reaches men, but also a linked

²⁵ Raewyn Connell (2016) cites the Fourth World Conference on Women (Beijing/1995) as an example, which, in paragraph 25 of its declaration, indicates that governments commit themselves to “encourage men to participate fully in all actions towards equality”. She also cites the Political Declaration of the 23rd Special Session of the General Assembly of the United Nations – UN, of 2000, which says: “We the Governments participating in the special session of the General Assembly (...) emphasize that men must involve themselves and take joint responsibility with women for the promotion of gender equality”.

²⁶ TN: Free translation based on the interviews in Portuguese consulted in this work.

pattern of disadvantages or toxicity that reaches them as well” (Connell, 2016, p. 98). If gender socialization has a perverse side for men, especially for those who do not fit the standards of cisheteronormativity, it is at this point that there may be a reason for a paradigm shift and for the men's full commitment to gender equality. That's when the possibility of “avoiding the toxic effects of the gender order on them” (Connell, 2016, p. 105)²⁷ appears. The author also highlights other arguments for investing in men's engagement in gender equality. They are: a) since men are social subjects, their quality of life is directly related to the quality of the relationships they establish with other men, but with women as well. Thus, it is possible to speak of “men's relational interests in gender equality”; b) as the importance of collective well-being emerges, changes in gender roles can be supported, for example in terms of security; and c) the fact that these reforms stem from political and ethical principles, based on the concept of human rights, which are widely recognized and legitimized (Connell, 2016).

However, while the engagement of men with the eradication of their privileges, the reformulation of masculinities and the construction of gender equality is still an ongoing project, women continue to be the protagonists of this struggle. What remains clear is that the participation of women and feminist movements in management and administrative spheres is a condition without which public gender policies cannot be implemented, including services for men who commit violence. According to the interviewees, the participation of feminist women in government spheres is a crucial point for the feasibility of the Brazilian main experiences in this field.

If you set up a management team that includes feminist women or the women's movement, this team will be somehow linked to the women's movement, it will listen to the women's movement. And then you end up creating policies that go in that direction. Now, if the team responsible for management doesn't have women on them, if the team doesn't listen to

²⁷ TN: Free translation based on the Portuguese reference consulted in this work.

the gender issues, if it doesn't have proximity to the issues of violence against women, then the team doesn't know anything. (B2).²⁸

There is a strong tendency to attribute advances in this area to governments identified with the left wing on the political field. In theory, they would be more concerned with defending the interests of the most vulnerable social groups and promoting equality.

In Brazil, today, the greatest actions are found in the region of the *ABC Paulista*. And why in the *ABC Paulista*? Because in that big belt, over there in São Paulo, you have the governments of the Workers Party (PT)²⁹. And then somehow the women, the feminists within these governments, had a voice and were able to say what was important. We needed women so that we could have jobs in the *ABC* region, jobs that have continuity. (B7).

First, you have to have a political will within the scope of public policies. First, what happened in Pará? Why Pará? Why in the state of Acre? Because in Acre there was a governor, who was from the Workers' Party, what's his name? Chico something, I don't really remember, but he was a very handsome guy, by the way, that's right, from a family of *. And there was a woman who was interested, who was acting on the part of the State when the State agreed with the Secretariat to combat violence. And then a large part of organizations, centers, police stations, etc. were created. (A4).³⁰

In Brazil, there is a historical tendency of lack of interest in public policies on gender. Even in governments where the issue had a better status, the resources for its implementation were never enough. When analyzing the so-called Womens

²⁸ TN: Free translation based on the interviews in Portuguese consulted in this work.

²⁹ TN: PT is the initials for the Brazilian Workers Party. In the original name, in Portuguese, "*Partido dos Trabalhadores*".

³⁰ TN: Free translation based on the interviews in Portuguese consulted in this work.

Budget ("*Orçamento Mulher*", in the original name, in Portuguese)³¹, Souza and Vera (2010) observed that the amounts effectively transferred to actions pro women's rights made it impossible for them to be fully implemented. "Policies that are not a priority or that are not guaranteed by constitutional and infra-legal norms are not necessarily implemented, even if they have been foreseen" (Souza & Vera, 2010, p. 352).

From the moment of its provision in the law, these budgetary constraints have always been at the heart of the discussion on the implementation of accountability and education services. The participation of men who commit violence in educational activities was a suggestion that came from state public hearings held during the discussion of the project that led to the enactment of the Maria da Penha law.

Many women claimed that the aggressors should be able to attend reflection groups while serving their alternative sentence involving restriction of rights, or even that they should have the possibility to provide services to social organizations that work with male aggressors. (Cortês & Matos, 2009, p. 48).³²

On the other hand, feminist groups said that the provision of "education and rehabilitation centers", alternative penalties or therapeutic justice would lead to a scarcity of resources originally intended for policies aimed at women in situations of violence (Calasans & Cortes, 2011).

From the very beginning, there was a prejudice against using resources that were originally intended to carry out actions with women. The

³¹ The Womens Budget is an instrument developed by the Feminist Center for Studies and Advisory Services (CFEMEA, the initials for the original term, in Portuguese, "*Centro Feminista de Estudos e Assessoria*"). It is an initiative that enables the monitoring of all expenses that directly or indirectly meet the specific needs of women, impacting on gender and race relations. The Womens Budget must be provided for in the Annual Budget Law. On the subject, see, for example, Vieira, Cabral and Oliveira (2014).

³² TN: Free translation based on the Portuguese reference consulted in this work.

understanding was that carrying out actions aimed at men means giving them just a slap on the wrist, lessening the gravity of what they did. Working on actions for men when in reality this resource should be used for women, that was the thought. Then that old fight between men and women comes up once again. (B3).

And in the public hearings, I think this was, at least according to what I learned from this process, a topic that boosted the debates precisely because there was this problematization... which states that by incorporating the Maria da Penha law you would somehow link the services for men to the policies aimed to combat violence against women. Consequently, you would bind the Secretariat of Policies for Women to the responsibility of maintaining and funding these services. So, the interpretation of this situation was that the strategy that was being created was to distribute resources that were already scarce. Instead of investing for women, for women's protection and assistance, etc., you would invest for men; the way to promote this accountability of men would be creating a new burden for women. So it is not enough for women to be the group who have to worry about everything else, they will still have to worry and to make sure that this service for men exists, that it is maintained! And women will still have to give money for the thing to exist. (B4).³³

Programs for men were incorporated into the text of the Maria da Penha law, but the discussion around financial resources persisted, albeit latent. This was evident in the experience of the Education Service and Accountability for Men Authors of Gender Violence (SERH, initials for the original term, in Portuguese, "*Serviço de Educação e Responsabilização para Homens Autores de Violência*"), inaugurated in 2008 in the city of Nova Iguaçu, in the state of Rio de Janeiro.

According to Oliveira (2012), the service represented the greatest effort ever undertaken in Brazil regarding assisting men who committed violence against

³³ TN: Free translation based on the interviews in Portuguese consulted in this work.

women, including in terms of the amount of resources: R\$ 1,112,283.66. Of this total, 90% came from the Ministry of Justice and Public Security, through the National Secretariat of Public Security (SENASP, initials for the original name, in Portuguese, "*Secretaria Nacional de Segurança Pública*"). However, such an initiative would not have been possible without the articulation promoted by the Secretariat of Policies for Women - Presidency of the Republic (SPM/PR). This body took care of defining an agenda to make the creation of the services viable. The idea was that the SERH could work as a reference for future programs in the country. The service, however, ended its activities in November 2009 because of a lack of new resources and "political will". Furthermore, according to interlocutors of that research, the debates for the renewal of resources were marked by tensions between segments of feminist movements that questioned the role of the SPM/PR in the execution of the service.

Wings of feminist movements advocated that assistance initiatives for women in situation of violence should have priority over the care of men who committed violence. "In addition, this policy must be part of public security and human rights policies, and not be the responsibility of women's policy bodies" (Cortês & Matos, 2009, p. 48). Our female respondents also expressed resistance to using available resources with aggressors.

[...] it was important not to spend the already scarce resources of a new secretariat. What had to be done was to use resources from the Ministry of Justice. That was one of the logics that came up as a possibility and I think it makes sense. (B5).

I agree that the money doesn't have to come from policies for women. Well, today we don't have any budget. But when we had a budget from the SPM, I agree that the money for this service, for its creation and maintenance, did not have to come from the budget of SPM. (B4).³⁴

³⁴ TN: Free translation based on the interviews in Portuguese consulted in this work.

Part of this uproar could have been overcome with the edition of Decree n. 216, of May 27, 2011, of the National Prison Department (DEPEN). It establishes the procedures and criteria for financing projects that seek to implement and execute alternative penalties, especially those related to education and accountability services for authors of violence, with resources from the National Penitentiary Fund in that year. Although some actions have emerged from this scenario, difficulties in financing services continue to exist. The lack of a national policy that guarantees continuous funding means that a good part of the services performed are dependent on political disposition or partnerships with NGOs. For some of the interviewees, the issue of resistance to accountability and education services for authors was overcome. The understanding of its importance as one of the mechanisms to combat violence against women was consolidated. What is still a real obstacle is the lack of resources:

I think that this moment of resistance to services has been overcome. Today what we see is the following: in short, the State - and I will speak more specifically about the Judiciary, but not only the Judiciary -, the city halls, the state governments. In fact, eleven years after the approval of the Maria da Penha law³⁵, they do not comply with all the services. Psychosocial care services for women or family members of these women in situation of violence are not provided. (A5).

[...] I think there was a moment like that [...], exactly because of the feminist pressure to create services and to focus on women. I think this was one of the phases of feminism in Brazil. Anyway, services were created, they were forced to be, and I think it's all part of the process of evolving the look, the perspective. Today, I think you will hardly find feminists who are against services for men. Someone might say, 'no, if there are resources, let's use them primarily with women'. But I think we have to take a broader view,

³⁵ This interview was conducted in February 2017. At the time, therefore, a period of eleven years had passed since the enactment of the Maria da Penha law.

right? So I think that hardly anyone today is against it. There may even be someone, but I think it's rare. Because you already have a history, you already have studies. I think we are in another moment. (A6).³⁶

In particular, we understand that the debate is not completely over. Even when defending the importance of the service, the discourse around the scarcity of resources echoes the idea that care for women in situation of violence should be prioritized. In this sense, the following question was raised by one of our interlocutors during an interview: "If you only have a few resources in a small town, are you going to use them for the female victim or for the male author of the violence?" (B5).³⁷

With few resources, they should be directed first to the people who are suffering, who need immediate care, you know? Even more if you don't have enough, if the resources are few... if it's just the fight, let's focus on supporting women, because they are living in shock; they are living in a more complicated situation, although I also think that there should be services for men. (A1).³⁸

It must be recognized that this debate is extremely sensitive. But when it comes to light, it weakens the understanding of the relational character of the concept of gender and, consequently, of gender-based violence. This interpretation that places men and women on opposite sides in the establishment of priorities related to the investment of resources, as one of the interviewees emphasizes, "is a vision that does not help to change, so to speak, the state of affairs, the violent sociability relations" (A6)³⁹.

³⁶ TN: Free translation based on the interviews in Portuguese consulted in this work.

³⁷ TN: Free translation based on the interviews in Portuguese consulted in this work.

³⁸ TN: Free translation based on the interviews in Portuguese consulted in this work.

³⁹ TN: Free translation based on the interviews in Portuguese consulted in this work.

This reading also seems to prevent a more incisive action by women's groups in order to pressure the State for such a policy to be effectively embodied. These groups are also the main agents in exerting pressure for the incorporation of public gender policies. However, "while the Secretariat of Policies for Women prefers to be involved only with programs dedicated to the care of women, the National Prison Department (DEPEN) still does not prioritize alternative policies to incarceration" (Amado, 2014, p. 41)⁴⁰. In this way, groups for men who commit violence continue to be a program with little impact at the national level.

DISPUTES SURROUNDING THE EXECUTION OF THE SERVICES

The acknowledgement of the importance of services, as well as the absence of public power in this area, are aspects that open space for other sectors of civil society to act in this field. However, such sectors are not necessarily concerned with feminist causes and with the theoretical discussions proposed in gender studies. As a result, the experiences developed in Brazil take on different methodological designs, which generates distrust among the interviewees about who are the people performing the execution of the services and what are the techniques mobilized.

The Brazilian State has recently attempted to establish the criteria for the operation of these services. The first attempt consists of the General Guidelines for the Implementation of Services of Accountability and Education of Aggressors, published in 2011 by the SPM/PR itself. The document seeks to conceptualize the service, outline its goals and assumptions and establish standards of organization, structure, human resources, evaluation and monitoring, but still in a very rudimentary way.

In 2012, the Base Document for the Elaboration of Technical Parameters for the Education and Accountability Services of Men Authors of Domestic Violence Against Women⁴¹ was published, prepared by the Ministry of Justice and Public

⁴⁰ TN: Free translation based on the Portuguese reference consulted in this work.

⁴¹ TN: The document has not been officially translated into English, so the English title we created is based on the free translation of the original version, in Portuguese: *Documento base para a*

Security, in partnership with the Institute of Studies on Religion (ISER, initials for the original name, in Portuguese, "*Instituto de Estudos da Religião*"). In it, the minimum conditions for the creation and maintenance of the services are indicated, as well as the general norms regarding the care of these men. This is an experience very close to the one - already mentioned in this paper - developed in the city of Nova Iguaçu, in Rio de Janeiro.

In 2016, the Ministry of Justice and Public Security launched a Management Manual for Alternatives to Imprisonment⁴², with a section dedicated to urgent protective measures and accountability services for men who commit violence against women. The document made use of what were considered to be good practices in progress in the country, such as the so-called gender reflective groups. It brings procedures, flows and routines for the application and monitoring of services, as well as an annex with a series of models of work instruments, such as forms for attendance and referrals, attendance sheets, commitment terms, etc. It also establishes criteria for the training of people who work in these interventions.

However, the experiences funded by the Ministry of Justice and Public Security from the resources transferred by DEPEN are still only a few. Between 2009 and 2014 there were only eight proposals, in seven states of the federation: Acre, Alagoas, Ceará, Mato Grosso do Sul, Pará and Paraná, as well as the Federal District (Amado, 2014). And considering that the difficulties in following the guidelines already exist in the face of a state logic, when projects are developed in other ways, the control over them is even more fragile. As one interviewee says: "we have very good intentions. But there is a great gap between good intentions and what we really want to implement in order to fight violence against women. There goes a great distance." (B4)⁴³.

elaboração de parâmetros técnicos para os serviços de educação e responsabilização de homens autores de violência doméstica contra as mulheres.

⁴² TN: The document has not been officially translated into English, so the English title we created is based on the free translation of the original version, in Portuguese: *Manual de Gestão para Alternativas Penais*.

⁴³ TN: Free translation based on the interviews in Portuguese consulted in this work.

I'm afraid of services that don't have a (...), a service in which professionals don't have a qualification in gender studies, in masculinity, in feminism. Because the speech of man is an extremely seductive speech. It is very easy for us to believe that they are victims. So if someone unprepared is going to lead a group, that person can still do these men a disservice. (B1).

[...] what worries me a lot [...] is that the gender perspective, working with gender, is something that is very far from the answers that are being given. Because, like, as with the rest of what is provided for in the Maria da Penha law, the work with men who commit violence is going in a direction much more of assistance than in the sense of bringing these men to care services. (B4).⁴⁴

Paying attention to this point is also necessary to ensure that interventions do not come close to defending familist ideals, based on a restrictive and prejudiced Christian morality that, by preaching the sacredness of marriage, can make it difficult to recognize violence against women as a serious violation of human rights. This can be seen in the following statements:

Who is working on these rehabilitation services? Who are these people? Is there a proper training that has to be done? As far as I know it doesn't exist, right? I've met some people who are judges. They go there and they come with a Christian family talk. For the love of the goddesses! And here's my concern: who are the people performing this work? Are these people properly skilled to do something that involves a feminist gender perspective? Or even something that is not CHRISTIAN, you know? In some places the evangelicals are doing these jobs, dude! And these people also work in prisons. That's what worries me. (TO 1).

⁴⁴ TN: Free translation based on the interviews in Portuguese consulted in this work.

[...] about the monitoring and support centers, most of the social work is super, super pro-family. Pro-family means that all that matters is not the physical or psychological integrity of the woman, or the man, to be honest. What matters is that the family stays together. There is a price to pay for that. Most social work staff learn this. The centers do everything they can to avoid fighting. (A2).⁴⁵

Another concern is related to the type of approach used by services. The idea is that they should not adopt a merely cognitive-behavioral or therapeutic approach, since such perspectives would also distance them from their accountability ideal. These worries are expressed in the following statements:

And I also think that if the work is done from a cognitive or behavioral perspective, this may not be the most appropriate way. I have criticisms about cognitive-behavioral. [...] In this case, when the man gets very nervous, he will be told to drop out of the picture, so he won't attack. That's you teaching a man a behavior. But sometimes he hasn't worked on what leads him to the violent conduct. In my opinion, I think we have to start from the point of recognizing violence, and that is what means being reflective. It's taking responsibility and, from that on, not committing violence again. I think the proposal doesn't have to be to teach how not to commit without thinking about the process that leads to violence. (B1).

Because if you follow this therapeutic line, in which the psychotherapist does not have the role of judging, what the professional will always do is return the question. If the patient asks, 'Did I do wrong?', the answer of a therapist trained in traditional therapy, in the psychoanalytic method, so to speak, the usual answer will be: 'I don't know. What do you think? Why do you ask me? Do you think your behavior was bad?' In a therapeutic line this is fantastic! It

⁴⁵ TN: Free translation based on the interviews in Portuguese consulted in this work.

turns out that these groups were also created to say: the State charged you for what you did. (B5).⁴⁶

According to the “cycle theory of violence” (Walker, 1999), the dynamics of domestic and family violence follows a circular and continuous movement, consisting of three phases. The first one, the tension building, is characterized by the construction of a tension in the relationship. This is when the first minor incidents occur, such as verbal aggression, threats, deterioration of objects, jealousy attacks and controlling behavior, etc. At this time, as a rule, women seek to reassure their partners and prevent the situation from getting worse, often assuming responsibility for the actions of their partners.

The next stage, called "the acute battering incident" (Walker, 1999), is identified as the one where there is an explosion of violence. The violence are intensified, escalating to physical aggression. The woman tends to experience feelings of fear, shame, frustration and anger. In some cases, it is when the woman decides to seek help from family, friends or public agencies, trying to promote distance from the perpetrator of the violence.

In the third and final phase, also called "loving-contrition", the partner who committed violence tends to regret and to attempt to get closer to the woman. He can argue that his behavior was not premeditated, but the result of an emotional lack of control, being, therefore, forgivable. He also assures you that he will not act violently again. The result can be that the woman remains in the relationship. At this point, the cycle is restarted.

In this way, if the professionals working in the reflexive groups do not have theoretical training in gender studies and if they are not committed to promoting the accountability of the authors of violence, as one interviewee stated, men “take the opportunity to improve their arguments. They end up coming out with even more knowledge of their verbal ability and then they dominate the people around them with their more accurate verbal skills.” (B5)⁴⁷.

⁴⁶ TN: Free translation based on the interviews in Portuguese consulted in this work.

⁴⁷ TN: Free translation based on the interviews in Portuguese consulted in this work.

THE "PLUS" OF THE PENALTY

In its original wording, the Maria da Penha law did not make it clear at what point, in the criminal proceedings, the participation of men in accountability and education services should be imposed or offered. The article 35 of the law presented services as a right to be promoted by the Union, states, municipalities and the Federal District, to the extent of their competences. In addition, accountability and education services were framed as a penalty, as provided for in article 45, which alters the Brazilian Law of Penal Executions in order to allow the judge to determine the obligatory attendance of men who committed violence in recovery and re-education programs. Recently, with the enactment of law n° 13.984/2020, the services were also presented as an urgent protective measure.

We can say that the legislation, at least apparently, breaks with some historical references of the dominant concept of penalty and punishment. This concept is constructed from two fundamental distinctions: punishment/reparation and punishment/reward. The modern idea of penalty was created in opposition to the idea of reward. The modern penalty, therefore, would necessarily involve a negative form of punishment, with the capacity to reduce the well-being of those who commit the criminal practice. Punishment (as opposed to reward) excludes the possibility of thinking of less radical or more positive ways of sanctioning individuals, such as pecuniary penalties or alternatives penalties. The possibility of interpreting these penalties as a reward (and not as a punishment itself) illustrates the point of view of their application as something “decriminalizing” or “depenalizing” (Pires & Cauchie, 2011).

If we consider that the Maria da Penha law, based on the obligatory referral of men who committed violence to accountability and education services, tried to innovate in terms of criminal law, empirical research has shown us that this innovation has not been implemented, neither from a practical nor a cognitive point of view, that is, from the point of view of thinking on the issue. And without a change of conception “it is possible, but relatively complicated, to speak of an innovative idea when it has not yet been selected, when its effect of innovation has

not yet been produced in the central structures of the system” (Pires & Cauchie, 2011, pp. 324-325).

The concept of innovation implies a different answer from those that are ordinarily employed for a given question. It is “a response that reactivates possibilities that were institutionally excluded” (Pires & Cauchie, 2011, p. 300). In other words, something innovative is something that deviates from a structure that is assumed to be central and which is taken as a point of reference.

To exemplify this character of innovation, Pires and Cauchie (2011) use the Brazilian legislation on drugs: law n° 11.343/2006. This law, contrary to what is observed in most Brazilian (and Western, as a whole) criminal law, promoted an “unlikely” change in terms of penalties. The answer to almost all typical behaviors in Brazil is imprisonment or fine. However, article 28 of this law typifies the crime of possession of drugs for personal use and allows the offender to be sentenced to a warning sentence, perform the provision of community services or the educational measure of attending educational programs or courses. Prison, at least at first glance, is excluded from the list of possibilities. Thus, the measures envisaged do not fully correspond to the notion of punishment that is usually used in criminal doctrine and policy, that is, those tending to prioritize distressing and imprisonment measures.

[...] there are criminal laws that exclude the possibility of imprisonment and choose to exclusively select the fine. Thus, “excluding prison” is not such a rare event. But in this case the prison is not placed by the fine. The fine one is also missing. And this law still has other surprising aspects: it excludes imprisonment and fine by referring to “crime” in the strict legal sense of a particularly serious category of criminal offenses (as opposed to a criminal misdemeanor or an administrative offense). Here, the penalties provided for are not classical penalties, such as fine or imprisonment, but penalties that do not usually have the legal status of criminal penalties. This selection can

be considered, then, as “highly unlikely” in modern Western legislative practice (creation of criminal sanctions). (Pires & Cauchie, 2011, p. 302-303)⁴⁸.

The change in the law only leads us to a generalized expectation that the new law can possibly be used to guide judicial decisions. The change may encourage the application of the innovative element, but it does not guarantee that this element will be the solution chosen by the criminal justice system. Also because, according to article 27 of the drug legislation, the penalties provided for therein can be applied individually or cumulatively, and may also be replaced at any time, provided that the Public Ministry and the Defense are previously heard. This leaves a certain margin of discretion for the judge. On the one hand, the magistrate can assume the position of reproducing the norm in a literal sense. On the other hand, he/she can propose other sanctions, such as those provided for in article 28 for other crimes (Pires & Cauchie, 2011).

The speech of our interlocutors and the documents researched indicate that the traditional model of punishment is still the central reference for dealing with the issue of violence against women. Participation in accountability and re-education services is, therefore, a kind of “plus of the penalty” – an expression taken from an interview –, used to achieve what the prison itself is unable to do.

The document prepared by the SPM/PR in order to outline the general guidelines of the services expressly states that the main goal of the initiative is promoting “the monitoring of penalties and decisions handed down by the competent court with regard to the aggressor.” In the synthesis of the discussions that emerged at the event that resulted in the elaboration of these guidelines, there are statements such as: “there is a crime that needs to be punished”; “the center is an element of education, not punishment”. These sentences indicate that the attendance of men to the service is not seen as a penalty in itself, but only as a complement. In order to be a penalty, it must carry a negative character. The penalty is dissociated from any prospect of gain or reward for those who have

⁴⁸ TN: Free translation based on the Portuguese reference consulted in this work.

violated the penal norm. Positive intervention is even allowed, as long as it does not eliminate the imposition of an afflictive penalty.

So, the Maria da Penha law includes two situations: first, even during the criminal proceedings, access to psychosocial care is offered to the victim, her family members and the author of the violence; and, after the author of the aggression is convicted, the judge can apply a penalty, a plus of the penalty, both on alternative sentences involving restriction of rights and on custodial sentences. The judge can apply a plus that would be the obligation for the perpetrator of violence to attend in these re-education groups - the name given by the law or that later came to be used as accountability for men who commit violence. (A5).⁴⁹

Thus, the proposal brought by the Maria da Penha law “is more similar to an alternative idea, with a potential bifurcation point that is only potentially innovative” (Pires & Cauchie, 2011, p. 325). This idea, nonetheless, has not yet been able to be implemented in practice. And the reason is that the barriers imposed by traditional theories of punishment have not yet been broken. It means there is an “epistemological obstacle” (Pires, 1999) to the implementation of these services. In other words, a way of thinking that is typical of the legal culture of the 18th and 19th centuries is still, on the one hand, perceived by some social actors as signs of progress. On the other hand, however, it also represents a kind of setback or barrier to the implementation of the process of humanization and updating of law (Pires, 2019).

4. FINAL CONSIDERATIONS

Studies in the field of violence against women, and especially those that discuss the effectiveness of the Maria da Penha law, have shown that the criminal

⁴⁹ TN: Free translation based on the interviews in Portuguese consulted in this work.

response is still the central one given to the problem, when compared to assistance and preventive measures⁵⁰. Some wings of feminist groups reject non-prisonal punishment: they understand that the criminalization of gender-based violence and its punishment with custodial sentence is a fundamental symbolic requirement for dealing with the matter. From the point of view of these groups, it would be impossible to dissociate this social issue from its treatment by the criminal justice system (Sinhoretto & Tonche, 2019).

In fact, at an earlier time, it was believed to be important to invest in the intensification of punishment, in order to rule out the possibility of trivializing or naturalizing violence against women. However, today this discourse stands as a barrier to the consolidation of new possibilities to face the problem.

As can be seen in the statements of our interviewees, violence against women, especially when it occurs in a domestic and family context, does not necessarily follow a linear flow. Rather, it operates in cycles or phases that include moments of crisis and reconciliation. And these situations are not always rationalized, as our classical justice system, marked by its binarisms and simplifications, still assumes (Sinhoretto & Tonche, 2019).

Interventions with authors of violence seem to focus, at least in theory, on reflections on gender relations and on the exercise of masculinity. Taking this into account, interviewees' narratives suggest that these programs can work strategically. They would help these subjects to build non-violent alternatives for the resolution of their interpersonal conflicts. However, it is not enough to emphasize its importance, it is necessary to effectively bring the dispute into the public sphere.

Creating the necessary conditions to make progress in the current political field will not be easy. In recent years we have not been able to move forward enough in terms of implementing these services. And what is expected of the times to come is even less promising, given the advance of conservatism and the scenario of dismantling of public policies about gender. It will already be a great challenge if we manage to maintain the little progress we have achieved so far. In this context, we must bet on collective mobilizations of men in support of feminist demands and

⁵⁰ See, for example, Campos (2015) and Pasinato (2015).

on the action of feminist and women's movements themselves. They are, more than ever, fundamental mechanisms for the consolidation of a national and integrated public policy of intervention with men who commit violence against women.

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