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Institutional Violence against Women Victims of Domestic Violence and Access to Justice in the Inter-American Human Rights System*

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1. Introduction

This paper presents some reflections on institutional violence in the context of domestic violence as a widespread problem in Latin America. It will show some general characteristics of this phenomenon in relation to the tendency to judge and decide legally on the basis of stereotypes, especially sexist ones, as a systematic violation of women's human rights. In this regard, I will refer to some cases taken from the jurisprudence of the Inter-American Court of Human Rights. I will try to make some observations on the implications for human rights and the international responsibility of States that impede access to justice.

Institutional violence is a concept that has been used by the Inter-American Court of Human Rights to draw the attention of States to a persistent problem in their own institutions. Curtin and Litke affirms that «institutional violence is violence made possible and facilitated by social organizations having relatively explicit rules and formal status within a culture. *Examples are the educational system, the military, the police force, and the judicial system*. When such institutions promote violence, however, they often do so within a broader social context of systemic violence. Hence, *the rules are more vague [sic], and there may be no identifiable social institutions that facilitate violence*»[1].

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[1] D. Curtin – R. Litke (eds.), *Institutional violence*, Amsterdam, 1999, xiv. Italicised added. A. Joxe, *A critical examination of quantitative studies applied to research in the causes of violence*, in UNESCO, *Violence and its causes*, Paris, 1981, p. 69, presents the relationship between institutional violence and structural violence. According to this author, structural violence is a concept derived from the notion of institutionalised violence presented by the Latin-American Bishops' Conference (Medellín, 1969): «People are not simply killed by direct violence but also by the social order». In the same vein, E.

In relation to the States, institutional violence is a phenomenon that occurs when the authorities, in the exercise of their functions, create obstacles to the exercise of human rights. This problem is aggravated when the obstacle is based on stereotypes about the various conditions that combine to discriminate against a group or an individual. One relevant consideration is that «we might reasonably be asked, as Dom Helder Camara has done, to consider '*that injustice, wherever it occurs, is a form of violence*' and that 'it can and must be proclaimed that is constitutes everywhere the leading form of violence'. *It is this initial and primordial violence that leads to the formation of a 'spiral of violence' in which every act of violence leads to further violence*»[2].

These premises are linked to the idea of law as legitimised violence[3]. To illustrate the increased risks and entrenched barriers created by the androcentric conception of law and its inherent violence, I will therefore focus on the situation of women and girls. Indeed, violence against women is widespread and culturally, socially and institutionally reinforced, normalised and legitimised. At the same time, however, it is minimised and underestimated in relation to the enormous damage it can cause and exacerbate. In this context, institutions provide the ideal framework for the reproduction of patterns of violence that allow it to remain in the collective imagination as natural and, in many cases, as necessary. In this way, institutions can also be the driving force behind the transformation of the situation of systematic violence.

For example, depending on the context, violence against women is also manifested as a form of punishment in which the cruelty with which it is inflicted is part of a broader purpose: that of sending a message, in a scheme that could well be

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Boulding, *Women and social violence*, in UNESCO, *Violence and its causes*, Paris, 1981, p. 240, emphasises the link between structural violence and institutional violence when she states that «The concept of structural violence, that which frames behavioural violence, refers to the *organized institutional and structural* patterning of the family and the economic, cultural and political systems that determine that *some individuals shall be victimized through a withholding of society's benefits, and be rendered more vulnerable to suffering and death than others*». Italicised added.

[2] P. Mertens, *'Institutional' violence, 'democratic' violence and repression*, in UNESCO, *Violence and its causes*, Paris, 1981, p. 215. Italicised added.

[3] The idea of law as violent is developed by W. Benjamin, *Critique of violence*, in M. Bullock – M. W. Jennings (eds.), *Walter Benjamin, Selected Writings, 1913-1926*, London, 1996, p. 236-252; then taken up again by C. Menke, *Recht und Gewalt: Erweiterte Neuauflage mit einem Nachwort des Autors*, Berlin, 2018. M. P. Fersini, *Diritto e violenza. Un'analisi giusletteraria*, Firenze, 2018, analyses the theories of Benjamin, Menke and Derrida on the relationship between law and violence in order to show that there is a paradox whereby law is the instrument with which illegitimate violence must be fought with legitimate violence, with which law itself benefits from violence. In this sense, the author states that legal theory is at a crossroads with regard to the recognition of this paradox, since the recognition of this paradox implies the search for alternatives to overcome it. Otherwise, according to the author, not recognising this contradiction means taking sides between a fierce criticism of the law or an idealisation that legitimises it.

defined as psychological terrorism[4]. This is the case, for example, with the femicide of women involved in prostitution, whose bodies are tortured, dismembered, slashed, and impaled[5]. In this context, the way in which the institutions react is relevant, because it is precisely the institutional approval, for example at the judicial level, that can favour the possibilities of leaving the objective violence unchanged[6]. Indeed, some of the cases presented in this paper show how the situation of systematic violation of women's human rights in Latin America favours a climate of generalised impunity, which, in turn, translates into greater institutional violence. The only way to break this vicious circle is to begin by identifying institutional violence in its forms and implications.

2. Some details on access to justice in the Inter-American system and its relation to institutional violence

Without claiming to be exhaustive, institutional violence can be described as any behaviour (by action or omission) of state agents that constitutes effective aggression against people from discriminated groups. All in the exercise of their duties as public officials.

For example, as can be seen below, institutional violence occurs when the authorities have a mandatory duty to investigate crimes and fail to do so, by failing to investigate and sanction those responsible for the crimes, or by doing so ineffectively. When they make a decision based on discriminatory stereotypes or when their decisions reinforce prejudices against a discriminated group of people. When they adopt interpretations that prioritise procedural rituals over substantive exercise of human rights, thereby concretising various forms of denial of justice. When they fail to apply differentiated approaches to determine the disproportionate impact of the decision in aggravating pre-existing vulnerabilities, thereby materialising manifest inequality. When they fail to issue protection orders due to underestimation of the facts based on prejudices about the potential victim. When they do not fully evaluate all the materials and evidence in the process, or when they do not question a person's testimony because they belong to an institution as a proof of credibility, as is often the

[4] Among others see L. Ramos Lira – M. T. Saltijeral Méndez, *¿Violencia episódica o terrorismo íntimo? Una propuesta exploratoria para clasificar la violencia contra la mujer en las relaciones de pareja*, in *Salud Mental*, 2008, p. 469-478. Available in: http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S0185-33252008000600007&lng=es; I. M. Martín-Pozuelo, *Perspectivas teoricas sobre la violencia contra las mujeres: una aproximación jurídica al concepto de 'terrorismo machista' en España*, in *Femeris*, p. 76-102, 2019, https://doi.org/10.20318/femeris.2019.4930; B. Marugán Pintos, *Domesticar la violencia contra las mujeres: una forma de desactivar el conflicto intergéneros*, in *Investigaciones feministas*, 2012, p. 155-166.

[5] It is important to note that this tendency towards brutality in crimes against women is not limited to prostitution.

[6] For a reflection on the need to distinguish between objective (and symbolic) and subjective violence, see S. Zizek, *Violence: Six Sideways Reflections*, Hampshire, 2008.

case with the actions of members of the security forces, politicians, public figures, among others. When they fail to recognise the systemic nature of violence in order to assess individual incidents.

These examples concern one facet of institutional action: access to justice. It is important, however, to consider access to justice not only as a guarantee of access to the courts, but also as «components related to the application of criteria of material or substantive justice in the resolution of social conflicts, on the one hand, and with elements related to the design and elaboration of laws and their interpretation and practical application by legal operators, on the other»[7]. In this sense, access to justice would also include the recognition of rights and the guarantees for their exercise, including the provision of all institutional means for their full enforcement.

In the Inter-American system, access to justice has been characterised as an international obligation of States, derived from Article 25 of the American Convention on Human Rights (ACHR) (right to judicial protection)[8]. According to the Inter-American standards, this obligation has two facets: a positive one, which consists in organising their institutions in such a way that all individuals, without discrimination, have access to judicial resources; and a negative one, which consists in not impeding access to any remedy. Therefore, States must act actively to remove all obstacles of any kind that impede access to justice.

The basis of this obligation is its relationship with the right to live a life free from violence and discrimination, in accordance with the protection provided by the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women (hereinafter the Belem do Pará Convention) and the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter CEDAW) and its Optional Protocol. This is because access to justice is a necessary and indispensable condition for the eradication of violence against women. Therefore, the problem of institutional violence in states has been examined by the IACHR and some national courts, since institutional violence has the effect of perpetuating violence, because it usually leads to re-victimisation and impunity.

In this regard, both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have noted the existence of various obstacles to women's access to justice. The Inter-American bodies consider obstacles to access to justice, those imposed by the administration of justice. In this sense, reference is

[7] D. Heim, *Mujeres y acceso a la justicia*, Buenos Aires, 2016, p. 15.

[8] «1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. 2. The States Parties undertake: a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b. to develop the possibilities of judicial remedy; and c. to ensure that the competent authorities shall enforce such remedies when granted». English version taken from the website of the IACHR available on https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm.

made to the judiciary, but also to the police authorities in the investigation of crimes. The Commission has expressed concern about several structural problems in the administration of justice in the Americas. In particular, about impunity and the ineffectiveness of judicial systems in preventing violence against women. This problem is aggravated by the attacks on the independence and impartiality of the judiciary, lack of funding and precarious infrastructure, instability of judges or the threats received by judges, prosecutors and witnesses, accompanied by inadequate protection measures on the part of the State[9].

The IACHR has also recognised important economic barriers to access to justice. These may result in the impossibility of exercising the right of defence or in asymmetries between the parties that may make it impossible to enforce rights. Thus, in the Inter-American system, the guarantee of access to justice includes the elimination of any hindrance that results from the economic situation of the persons concerned. This can be achieved through the provision of free legal services to those who do not have the resources to guarantee their effectiveness, taking into account the rights concerned or the technical aspects of the legal actions. Another economic barrier could be the cost of proceedings. Indeed, excessive costs could violate Article 8 of the ACHR[10], since effective judicial protection (Article 25) is not only possible through the formal existence of the remedies, which should be effective and affordable. Furthermore, it is essential to consider the material differences between social groups

[9] Report of the Rapporteurship on the Women's rights, Inter-American Commission on Human Rights on Access to justice for women victims of violence in the Americas, 2007, p. 3, available at https://www.cidh.oas.org/pdf%20files/Informe%20Acceso%20a%20la%20Justicia%20Espanol%20020507.pdf.

[10] «1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court; b. prior notification in detail to the accused of the charges against him; c. adequate time and means for the preparation of his defense; d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel; e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law; f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts; g. the right not to be compelled to be a witness against himself or to plead guilty; and h. the right to appeal the judgment to a higher court. 3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind. 4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause. 5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice».

in order to identify structural situations of inequality, as discriminated persons face greater difficulties in accessing justice.

In fact, the guarantee of access to justice for vulnerable or discriminated groups must start from a necessary premise: the law is not neutral, and therefore, its literal application, without considering the way in which vulnerability determines the possibilities of the subjects, will end up deepening inequalities. In this way, another form of institutional violence can be identified. One criterion for recognising when there is a risk of this form of violence being configured could be to identify the occasions on which patterns of discrimination can occur, because they can place people in a particular position of vulnerability vis-à-vis the state. In this way, a relevant asymmetry is configured that jeopardises equality, since the person is completely unable to defend himself or herself or to exercise his or her rights. In these cases, States have the obligation to provide qualified, complete, and comprehensible information on the rights of marginalised groups and the legal means to guarantee them.

This obligation is reinforced in relation to specific groups of persons for whom special protection obligations exist, such as children or detainees[11]. In these cases, it is necessary to take into account the interaction of different conditions of vulnerability, without losing sight of the fact that there is an aggregation of vulnerabilities, which requires the State to adopt a differentiated perspective. This implies analysing discrimination in relation to its historical roots. For this reason, sex-based discrimination must be an inevitable consideration in establishing the standards that should guide State action.

Another important aspect of access to justice is the right to due process, which implies, among other things, the obligation to establish clear rules in order to determine the permissible and specific behaviour of institutional agents. In this way, it is possible to avoid discretionary and arbitrary state action, which can constitute institutional violence. In the Inter-American system, due process includes: the right to legal assistance; the right to defence; the right to a reasonable time to exercise all defence mechanisms; the right to receive an informed and legally defensible decision; the right to judicial review; the right to an adequate and effective judicial remedy and; the right to equality of arms.

With regard to equality of arms, its consideration as an essential aspect of due process makes it possible to confront discrimination. Its application implies the adoption of any measure that agrees to mitigate the effects of material inequalities

[11] With regard to these two groups of people, the IACHR has issued various advisory opinions in which it has emphasised the need to understand their rights as human rights. Thus, the Court has explained how States can apply some differentiated approaches in order to comply with their international obligations. See Advisory Opinion OC-29/22, of 30 May 2022, on differentiated approaches to some groups of persons deprived of their liberty, available at https://www.corteidh.or.cr/docs/opiniones/seriea_29_esp.pdf (in Spanish only) and Advisory Opinion OC-17/2002, 28 August 2022, on the legal situation and human rights of children, available at https://www.acnur.org/fileadmin/Documentos/BDL/2002/1687.pdf (in Spanish only).

between the parties, so that they do not result in disadvantages within the process[12]. This would be a way of guaranteeing the principle of equality and non-discrimination. According to this principle, states must establish instruments to prevent the incidence of the asymmetry of the relationship between the parties within the process. This would be the case, for example, in a labor dispute between an employer and an employee, or in a complaint for sexual harassment between a student and a professor, or of domestic and sexual violence between a daughter and her father. In the case of violence, the asymmetry between the victim and the aggressor is obvious, as well as the possibilities of control.

Likewise, access to justice is linked to the effectiveness of judicial protection under Article 25 of the ACHR. In fact, in the Inter-American system, the adequacy of effective judicial protection is guaranteed by the fulfilment of the obligation to define a simple, rapid and effective recourse for the protection of human rights. The adequacy of remedies requires that they be simple, urgent, informal, accessible, and independent. They must be dealt with by independent bodies, as individual resources or as collective precautionary measures; there must be no limits on the legitimacy of action; people must be able to appeal to national bodies if the local ones do not guarantee impartiality; and various forms of protection must be available. According to this, institutional violence could exist if the authorities prioritise formalities over substantive protection.

Given this characterisation, it is possible to identify when public servants commit institutional violence. In principle, this type of violence exists when institutions do not respect these standards. Particularly problematic, as the IACHR has recognised, is the adoption of measures or decisions based on prejudices regarding the

[12] This requirement was developed by the Colombian Constitutional Court in the decision T-344/2020. In this case, the Court applied the gender perspective in two different private law cases: in these cases, two women (poor, illiterate, without formal employment), victims of domestic violence, constituted enforceable titles forced by the need for their aggressors to leave the shared home. In both cases, they were sued in separate executive proceedings for breach of the guaranteed obligation. In both cases, they lost due to what is known in Colombian law as *manifest ritual excess*, whereby public officials, bound by an unrestricted respect for procedural forms, omit the substantive assessment of facts and evidence, seriously violating the fundamental rights of the parties. This is particularly relevant in contexts of vulnerability, where the equality of arms imposes an obligation to ensure that the underlying discrimination does not result in the impossibility of exercising and enforcing rights. In both cases, the officials ignored the fact that executive titles were born vitiated by force and violence. The Constitutional Court concludes that institutional violence has been configured here. In one of the cases, the Court itself incurs in institutional violence because, although it recognised the defect in the title, it upheld the auction of the property on the grounds that it had already been delivered. With regard to this last case, the Court expressly affirms that the victim can have recourse to the contentious-administrative jurisdiction to demand that the State be held responsible for the institutional violence suffered. It is indeed reprehensible and contradictory that the Court did not order the annulment of all the proceedings, with the consequent reimbursement of what has been paid, as an effective way of overcoming the violence suffered by the victim. On the contrary, its decision, while condemning the institutional violence suffered, ends up revictimising the woman, since in addition to losing her house - which she shared with her minor son- she will have to initiate a new process against the State, with all the delays that this entails.

identity conditions of people (migrants, women, blacks, etc.), and this determines a lack of seriousness in the verification of the facts within the process.

This is what Miranda Fricker refers to as epistemic injustice and Kristie Dotson defines as epistemic violence[13]. These concepts are relevant in relation to institutional violence and the administration of justice. Indeed, as Gaile Pohlhaus, Jr. assesses, «the idea of 'epistemic injustice' draws together three branches of philosophy -political philosophy, ethics, and epistemology *to consider how epistemic practices and institutions may be deployed and structured in ways that are simultaneously infelicitous toward certain epistemic values (such as truth, aptness, and understanding) and unjust with regard to particular knowers*»[14]. Therefore, epistemic injustice, in the form of testimonial injustice[15] and hermeneutical injustice[16], is a very common phenomenon in law. The reason for this is that each person, according to his or her upbringing and life experiences, has a set of prejudices (conscious and unconscious), by which some knowers (women, children, immigrants, blacks, persons with disabilities, etc.) are not considered as subjects capable of producing authoritative knowledge. In this way, the law itself is produced and administered by people with prejudices (e.g., based on sexist, ableist, racist, adult-centred, xenophobic stereotypes, etc.). This lack of neutrality in law and justice creates invisible barriers to access to justice and then leads to the perpetuation of violence[17].

This situation imposes on individuals and institutions the need to correct epistemic injustices. In legal terms, this would mean an exercise in identifying prejudices and biases, in order to challenge them. It also means identifying asymmetries in order to recognise the others as real subjects. It is an exercise of epistemic responsibility, as Medina argues, to pay attention to the conditions of oppression under

[13] See M. Fricker, *Epistemic Injustice: Power and the Ethics of Knowing*, Oxford, 2007; M. Fricker, *Evolving concepts of epistemic injustice*, in J. Kidd – J. Medina – G. Pohlhaus, Jr., *The Routledge Handbook of Epistemic Injustice*, New York, 2017, pp. 53 ss.; and K. Dotson, *Tracking Epistemic Violence, Tracking Practices of Silencing*, in *Hypatia*, 2011, p. 236-257.

[14] G. Pohlhaus, Jr., *Varieties of epistemic injustice*, in J. Kidd – J. Medina – G. Pohlhaus, Jr., *The Routledge Handbook of Epistemic Injustice*, New York, 2017, p. 13. Italicised added.

[15] It occurs when a Hearer does not give a Speaker sufficient credibility, based on prejudicial stereotypes: M. Fricker, *Epistemic Injustice: Power and the Ethics of Knowing*, Oxford, 2007, p. 20. For more on this concept, besides Fricker's book , see J. Wanderer, *Varieties of testimonial injustice*, in J. Kidd – J. Medina – G. Pohlhaus, Jr., *The Routledge Handbook of Epistemic Injustice*, New York, 2017, p. 27 ff.

[16] J. Medina, *Varieties of hermeneutical injustice*, in J. Kidd – J. Medina – G. Pohlhaus, Jr., *The Routledge Handbook of Epistemic Injustice*, New York, 2017, p. 41, defines it as «the phenomenon that occurs when the intelligibility of communicators is unfairly constraint or undermined, when their meaning-making capacities encounter unfair obstacles».

[17] «At many turns, opportunities for epistemic injustice abound in the practices of our legal system because our institutions and ourselves are not up to the challenges of understanding the experiences of others in difficult situations foreign to our own and because we remain unaware of the role that unexamined prejudice and bias play even in our best efforts to be impartial»: M. Sullivan, *Epistemic justice and the law*, in J. Kidd – J. Medina – G. Pohlhaus, Jr., *The Routledge Handbook of Epistemic Injustice*, New York, 2017, p. 293.

which an individual acts. This would imply overcoming the social imaginary based on a culpable ignorance about those who suffer discrimination[18].

With these premises, I will now present some examples in which the IACHR has identified institutional violence in cases of domestic violence, in terms of the violation of access to justice. These are not the only examples of institutional violence in the Americas, but given the need to limit the analysis, I prefer to focus the attention on domestic violence, because it allows us to see a direct relationship between the negligence of the State (institutional violence) and the perpetuation of private violence. This explains the selection of the only two relevant decisions; although there are many other cases in which the IACHR has ruled on institutional violence that can be considered paradigmatic, they are not presented because they do not relate to domestic violence.

3. Institutional violence in contexts of domestic violence

With specific reference to family relations, one of the examples in which the IACHR has considered institutional violence to be systematic is in the context of domestic violence. In this scenario, it is common for the actions of the authorities to be mediated by different types of stereotypes, although here the authoritarian conception of the family and couple relationships assumes greater importance[19]. For example, in the case of violence perpetrated by the victim's partner or ex-partner, there is usually more than one red flag, sometimes even with several complaints of aggression or threats of aggression.

This was the case in the 2001 decision Maria da Penha Maia Fernandes vs. Brazil. In 1983, she was the victim of a double murder attempt by her then husband and father of her three daughters. Her attacker shot her in the back while she slept causing irreversible paralysis and other serious damage to her health. He later tried to electrocute her in the bathroom. By 1998, more than 15 years after the crime, and despite two convictions by the Ceará Court of Inquiry (in 1991 and 1996), there had still been no final decision in the case and the assailant remained free. In 2001, the IACHR found the State responsible for omissions, negligence, and tolerance of domestic violence against Brazilian women.

For the Court, the conditions of domestic violence and State tolerance were defined in the Belém do Pará Convention. Thus, the State was responsible for the

[18] See J. Medina, *The epistemology of resistance. Gender and racial oppression, epistemic injustice, and resistant imagination*, Oxford, 2013, p. 119 ff.

[19] By this I mean the influence of the concept of *potestas* in the configuration of violence. In fact, the idealisation of family relationships and the exaltation of authority favour the legitimation of certain behaviours as the exercise of authority. Violence is then justified as normal and, finally, as necessary to maintain harmony within the family. See N. Rueda, *La responsabilidad civil en el ejercicio de la parentalidad. Un estudio comparado entre Italia y Colombia*, Bogotá, 2020, p. 141 ff. and 331 ff.

failure to comply with the obligations under Article 7, in relation to the rights it protects, including the right to a life free from violence (Article 3), the right to respect for their life, physical, mental and moral integrity and personal security; the right to personal dignity, the right to equal protection, and the right to a simple and rapid remedy before the competent courts that will protect them against acts that violate their rights (Article 4). The Court also considered that the right to judicial guarantees and protection under Articles 8 and 25 of the American Convention, in conjunction with the obligation to respect and guarantee rights under Article 1(1), had been violated as a result of the unjustified delay and negligent handling of the case.

The Court also made individual recommendations and public policy suggestions. In short, these are: Complete the prosecution of those responsible; Investigate and account for irregularities and unjustified delays in the process; Grant symbolic and material reparations to the victim; Promote the training of specialised judicial and police officials; Simplify criminal justice procedures; Promote alternative ways of resolving intra-family conflicts; Increase the number of women's police stations with special resources and support to the Public Ministry in its judicial reports; Include in educational curricula units on respect for women, their rights, the Belém do Pará Convention and the management of intra-family conflicts.

Case law shows that the authorities tend to underestimate some behaviours, considering them «normal», such as controlling the victim's movements and communications, for which they do not order protective measures. The use of sexist language to blame the victim for her situation is also common[20]. Officials often state that jealousy, even when expressed in coercive behaviour, is part of a love relationship. The influence of biases and cultural prejudices is evident[21]. There is also a significant under-reporting of violence suffered by children and men, probably due to stereotypes. Indeed, children are seen as the property of their parents and, as with all other forms of violence, there is a misunderstanding of what constitutes abuse and maltreatment.

[20] For example, the Court identified these practices in relation to the situation in Ciudad Juárez in Mexico. It stated that «(...) almost at the same time as the homicide rate began to rise, some of the officials responsible for investigating these events and prosecuting the perpetrators began to use a discourse that ultimately blamed the victim for the crime. According to public statements by some high-ranking authorities, the victims wore miniskirts, went dancing, were carefree, or were prostitutes. There are reports that the response of the relevant authorities to the victim's relatives ranged from indifference to hostility»: IACHR, *Situación de los Derechos Humanos de la Mujer en Ciudad Juárez, México: El Derecho a No Ser Objeto de Violencia y Discriminación*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, par. 4, available at https://www.cidh.oas.org/annualrep/2002sp/cap.vi.juarez.htm. This report highlights the serious situation of violence faced by women and girls in Ciudad Juárez, including homicides, disappearances, and sexual and domestic violence, and makes recommendations to help the State strengthen its efforts to respect and guarantee their rights.

[21] This was recognised by several States in the replies to the questionnaire distributed by the IACHR on women's access to justice. One question related to the greatest achievements and challenges in the implementation of laws and public policies to prevent, punish, and eradicate discrimination and violence against women. See the Report on women's rights of the Inter-American Commission on Human Rights on Access to justice to women victims of violence in the Americas, cit., par. 150.

In this way, a first barrier to access to justice arises from the behaviour of state agents. It is therefore a form of institutional violence. This discourages reporting and makes it even more difficult to intervene to break the cycle of violence. But even when complaints are received, there is no guarantee of effective access to justice.

An example of this can be found in the 2018 case of V.R.P, V.P.C. and other vs. Nicaragua. Mrs. V.P.C. took her nine-year-old daughter to the doctor. The doctor found that the girl had a torn hymen and condylomas in the perianal area. He concluded that the girl had venereal disease, a diagnosis confirmed by an obstetrician-gynaecologist. Both doctors then stated that, according to these findings, V.R.P. had been the victim of sexual abuse and had suffered anal penetration. The girl then declared that her father was the aggressor. For this reason, the mother denounced him to the criminal authorities for the crime of rape.

During the criminal proceedings, in a public hearing, and before the jury met to deliberate in secret, one of the defence lawyers gave the foreperson of the jury a package and two sheets of paper sent by the defendant. The jury declared the defendant innocent. The private prosecution filed a petition for annulment on the grounds of alleged bribery of the jury members, and the verdict was declared null and void after various recourses and appeals. In the end, however, a district court declared the annulment action inadmissible and confirmed the innocence of the accused.

During the trial, Mrs. V.P.C. attempted to denounce several irregularities in the investigation, including complaints against the forensic doctor and the deputy public prosecutor, as well as against the judge in charge of the trial and the judge acting as president of the jury court. As a result of V.P.C.'s complaints, the Deputy Public Prosecutor, the forensic doctor, a member of the jury and the judge and jury president filed lawsuits against V.P.C. and her relatives for slander and defamation. However, they were legally assisted by lawyers related to the defendant. In the end, Mrs. V.P.C. and her two daughters had to leave Nicaragua and go to the United States, where they were granted asylum.

The Court held that the State was a second aggressor because of the revictimisation, which constituted institutional violence according to the definition of violence adopted by the Belem do Pará Convention. According to the Court, institutional violence includes violence directly or indirectly perpetrated or tolerated by the State or one of its agents.

In addition, the tendency to use the figure of the alleged parental alienation syndrome in cases of sexual abuse of children as another form of institutional violence has become widespread in the region. So much so that the Committee of Experts on the Methodology of Systematic and Permanent Multilateral Evaluation[22] and the United Nations Special Rapporteur on Violence against Women have expressed their

[22] The Committee of Experts is the technical body of MESECVI in charge of analysing and evaluating the implementation process of the Belém do Pará Convention.

concern about the illegitimate use of this figure in countries that are parties to the Belem do Para Convention. They affirm that the alleged parental alienation syndrome is a figure that perpetuates gender-based violence and violence against children. They also make it clear that its use in legal proceedings can lead to state responsibility for institutional violence[23].

4. Institutional violence and its relationship with the state responsibility

If institutional violence is seen as something that the victims of domestic violence do not have to tolerate, then the behaviour of state agents when they must intervene is the efficient cause of an unlawful harm that would allow them to claim a compensation. Even if the direct violence is perpetrated by a person who has no connection with the State, the failure of the State to fulfil its obligations to protect women's human rights and, in particular, to the guarantee the right to a life free from violence, worsens the position of the victim and, therefore, any negligence in this regard allows her to claim compensation from the State for all the damage she has suffered as a result of institutional violence.

To this end, the Inter-American Court of Human Rights has established the admissibility of the international responsibility of the State in cases where it violates the standard of due diligence and where foreseeable and avoidable risks become real. For example, in V.R.P., V.P.C. and other vs. Nicaragua, the Court acknowledged that the State appeared as a second aggressor, its institutional violence had multiplied the girl's traumas and could be classified as cruel, inhuman and degrading treatment under Article 5(2) of the American Convention[24].

Thus, the Court has stated that a better understanding of specific crimes is achieved when officials take into account the structural and systematic nature of inequalities and violence against certain groups of people. According to its own jurisprudence, States have a positive duty to act to protect and prevent violence against vulnerable groups particularly exposed to discrimination. For this reason, it has been possible to hold States responsible even when the victimising act was committed by a

[23] Committee of Experts of the MESECVI and the United Nations Special Rapporteur on Violence against Women express their concern about the illegitimate use of the figure of parental alienation syndrome against women, August 12, 2022, available at https://www.ohchr.org/sites/default/files/documents/issues/women/sr/2022-08-15/Communique-Parental-Alienation-SP.pdf

[24] Other cases in which the IACHR has ruled explicitly on institutional violence include Fernández Ortega and other vs. Mexico and Rosendo Cantú and other vs. Mexico, both in 2010, the Court identified a series of institutional barriers that prevent attention to violence against women in indigenous and rural areas, which could lead to State responsibility; in Masacres de El Mozote y lugares aledaños vs. El Salvador, in 2012, the Court ordered the strengthening of the institutional capacity of the State through the training of members of the Armed Forces of the Republic of El Salvador on the principles and norms of human rights protection and the limits to which they must be subjected.

third party. This was possible when the conduct was perpetrated against discriminated groups or through structural patterns of violence.

In this way, the Court presents a broader vision of the State's obligations in relation to human rights. This is an interpretation of equality that requires abandoning the idea of the law as neutral with regard to differences, in order to make the state the main actor. It must therefore create social balances, especially when we are dealing with people who have been historically discriminated against or who are victims of structural violence, as is the case with women.

In these cases, the attribution of responsibility is based on a specific negligence of the state in not preventing or tolerating the violent actions of third parties. These criteria help to integrate the concept of institutional violence in order to include the irregular failures of public authorities. State responsibility for institutional and structural violence could be a relevant instrument for addressing it, especially if the attribution is in a restorative key and if alternative forms of symbolic reparations are taken into account.

This requires a process of training public servants in the exercise of their functions with an intersectional perspective, but also a structural transformation of law programmes at universities to teach human rights and develop the capacity to recognise the discrimination that women suffer on a daily basis, and to recognise how some stereotypical ideas and values impede the realisation of human rights.

5. Conclusion

This paper has presented some inter-American standards on access to justice in order to show their relationship with institutional violence, defined as the violence perpetrated by state agents in the exercise of their functions. In this way, they create de facto obstacles to access to justice and then facilitate the perpetuation of violence.

Although the IACHR has explicitly identified institutional violence in cases of violence against women, this paper presents the only two decisions on domestic violence studied by the Court. In both cases, impunity was encouraged by the State, and there were several omissions that hindered access to justice. In this context, it is clear that the State appears as a second aggressor, perpetrating institutional violence. This legitimizes the victims to demand reparation for the damage suffered as a result of the actions and omissions of state agents, since this is a violation of women's human rights.

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RIVISTA DI
DIRITTI COMPARATI

ABSTRACT: Il contributo presenta gli standard interamericani di accesso alla giustizia nel contesto della violenza contro le donne. Analizza i criteri per identificare la violenza istituzionale nei casi di violenza domestica. Cita alcuni casi tratti dalla giurisprudenza della CIDU.

ABSTRACT: This paper presents the Interamerican standards on access to justice in context of violence against women. It presents the criteria to identify institutional violence in cases of domestic violence. It cites some cases taken from the jurisprudence of the IACHR.

KEYWORDS: access to justice – domestic violence – institutional violence – women's human rights – IACHR

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