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SAMANTHA NAGLE CUNHA DE MOURA

HETEROJUSTICE AND DOMESTIC VIOLENCE BETWEEN QUEER WOMEN IN BELO HORIZONTE, BRAZIL

Belo Horizonte
2024

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Thesis presented to the Graduate Program in Law at the Federal University of Minas Gerais as a partial requirement for obtaining the title of Doctor in Law.

Supervisor: Professor Dr. Marcelo Maciel Ramos.

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SAMANTHA NAGLE CUNHA DE MOURA

Realizou-se, no dia 11 de setembro de 2024, às 13:30 horas, na Faculdade de Direito da Universidade Federal de Minas Gerais, a defesa de tese, intitulada *HETEROJUSTICE AND DOMESTIC VIOLENCE BETWEEN QUEER WOMEN IN BELO HORIZONTE, BRAZIL*, apresentada por SAMANTHA NAGLE CUNHA DE MOURA, número de registro 2020651917, graduada no curso de DIREITO, como requisito parcial para a obtenção do grau de Doutor em DIREITO, à seguinte Comissão Examinadora: Prof(a). Marcelo Maciel Ramos - Orientador (UFMG), Prof(a). Nathalia Lipovetsky e Silva (UFMG), Prof(a). Marilia Montenegro Pessoa de Mello (UNICAP/UFPE), Prof(a). Flávia Souza Máximo Pereira (UFOP), Prof(a). Ludmila Mendonça Lopes Ribeiro (UFMG), Prof(a). Carmen Hein de Campos (UFPel).

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Meninas de Minas

As meninas de Minas são recatadas
Mas lúdicas.
As outras são lúcidas.
As meninas de Minas são pálidas.
As meninas de Minas
Trazem rosários no peito.
As meninas de Minas tiram poemas dos seios.
As meninas de Minas
Recitam de mãos pra trás
E as outras riem.
As meninas de Minas
Têm uma sina
As outras, futuro.
As meninas de Minas
Às vezes suspiram rasgado...
Eu não sei porquê.

Elizabeth M. F. Teixeira[1]

[1] I heard this poem during a public demonstration in downtown Belo Horizonte in June 14th 2024, recited on top of a *trio* with a microphone during rush hour. We were all there to protest Bill No. 1904/2024, the latest cruelty by the Brazilian religious far-right, which attempts to equate abortion after 22 weeks of pregnancy with homicide.

RESUMO

As respostas institucionais à violência doméstica no Brasil ainda são predominantemente heteronormativas: o paradigma oculto é organizado em torno de explicações voltadas para a violência conjugal entre um agressor masculino e uma vítima feminina. Esse paradigma está no centro do funcionamento rotineiro do Sistema de Justiça Criminal (SJC) ao implementar a Lei Maria da Penha (LMP), a legislação que define o que significa "violência doméstica e familiar", quem é protegida e quais são os princípios organizativos das respostas institucionais, incluindo aquelas oferecidas pelas instituições jurídicas. Inspirada pelas críticas feminista/queer do direito, da criminologia/vitimologia feminista/queer e da sociologia das práticas policiais e judiciais, apresento o conceito de heterojustiça como um sistema de regras e instituições que transforma a dominação com base em gênero e na orientação sexual em direito: ela impõe hierarquia de forma explícita ou sub-reptícia, confundindo sua operação estigmatizante com justiça. A heterojustiça opera essa transmutação ao manter cargos públicos como questão aristocrática, com frouxos mecanismos de prestação de contas; ao promover o conservadorismo e perseguir membros tidos como subversivos; e ao ofuscar sua relação histórica com o poder político por meio de uma ideologia judicial de neutralidade. Por meio de uma abordagem de métodos mistos composta por análise quantitativa/qualitativa de 466 medidas protetivas e entrevistas com 20 operadores do direito (promotoras/es, delegadas de polícia e juízas/es) com atuação em casos de violência doméstica em Belo Horizonte (Minas Gerais) desde a promulgação da LMP, demonstro como outras dinâmicas relacionais que perturbam o paradigma heteronormativo são tornadas invisíveis (a LMP não é aplicada) ou apenas inteligíveis através de um enquadramento hetero (aplicação da lei por emulação). Defendo uma análise multinível da violência de gênero que se baseie na interseccionalidade como investigação crítica e prática emancipatória que pode ser capaz de ir além da análise estritamente intersubjetiva ou estrutural da violência, com o fim de englobar uma investigação também em nível institucional que é fundamental para uma avaliação crítica de nosso engajamento contínuo com a heterojustiça.

Palavras-chave: lei Maria da Penha; violência doméstica; sistema de justiça criminal; queer.

ABSTRACT

Institutional responses to domestic violence in Brazil are still primarily heteronormative: the hidden framework is organized around explanations catered to conjugal violence between a male perpetrator and a female victim. This framework is at the center of the normal functioning of the Criminal Justice System (CJS) when implementing the Maria da Penha Law (MPL), the legislation that defines what "domestic and family violence" means, who is protected, and what the organizing principles for the institutional responses to it are, including those by legal institutions. Inspired by feminist/queer legal theory, feminist/queer criminology/victimology, and sociology of police and judicial practices, I present the concept of heterojustice as a system of legal rules and institutions that transforms gender-based and sexuality-based domination into law: it overtly or surreptitiously enforces hierarchy (and commands obedience to it) by conflating its stigmatizing operation with justice. It does this by maintaining public office as an aristocratic affair with lax accountability mechanisms, by advancing conservatism and persecuting perceived subversive members within its ranks, and by obfuscating its historical relationship with political power through a neutrality judicial ideology. Through a mixed-methods approach comprised of quantitative/qualitative analysis of 466 protective orders and interviews with 20 legal professionals (prosecutors, police chiefs, and judges) with experience in adjudicating domestic violence cases in Belo Horizonte (Minas Gerais state) since the enactment of the MPL, I show how other(ed) relationship dynamics that disturb the heteronormative framework are rendered either invisible (the MPL is not enforced) or only intelligible by heteroframing (enforcement by emulation). I argue for a multi-level analysis of gender-based violence that builds upon intersectionality as a critical inquiry and emancipatory praxis that may be able to move beyond strictly intersubjective or structural analysis to also encompass an institutional-level inquiry that is much needed to critically assess our continuous engagement with heterojustice.

Keywords: Maria da Penha law; domestic violence; criminal justice system; queer.

RÉSUMÉ

Les réponses institutionnelles à la violence domestique au Brésil sont encore principalement hétéronormatives: le cadre caché est organisé autour d'explications adaptées à la violence conjugale entre un agresseur masculin et une victime féminine. Ce cadre est au centre du fonctionnement normal du système de justice pénale (SJP) lors de la mise en œuvre de la Loi Maria da Penha (LMP), la législation qui définit ce que signifie « violence domestique et familiale », qui est protégé et quels sont les principes organisateurs des réponses institutionnelles, y compris par les institutions légales. Inspirée par la théorie juridique féministe/queer, la criminologie/victimologie féministe/queer et la sociologie des pratiques policières et judiciaires, je présente le concept d'hétérojustice comme un système de règles et d'institutions légales qui transforme la domination fondée sur le genre et la sexualité en droit: elle impose ouvertement ou subrepticement la hiérarchie (et commande l'obéissance à celle-ci) en confondant son fonctionnement stigmatisant avec la justice. Cela se fait en maintenant la fonction publique comme une affaire aristocratique avec des mécanismes de responsabilité laxistes, en promouvant le conservatisme et en persécutant les membres perçus comme subversifs dans ses rangs, et en obscurcissant sa relation historique avec le pouvoir politique par le biais d'une idéologie judiciaire de neutralité. Grâce à une approche méthodologique mixte composée d'une analyse quantitative/qualitative de 466 ordonnances de protection et d'entretiens avec 20 professionnels du droit (procureurs, chefs de police et juges) ayant de l'expérience dans le jugement des affaires de violence domestique à Belo Horizonte (Minas Gerais) depuis l'adoption de la LMP, je montre comment d'autres dynamiques relationnelles qui perturbent le cadre hétéronormatif sont rendues invisibles (la MPL n'est pas appliquée) ou seulement intelligibles par un cadrement hétéro (application par émulation). Je plaide pour une analyse à plusieurs niveaux de la violence de genre qui s'appuie sur l'intersectionnalité en tant que recherche critique et praxis émancipatrice pouvant aller au-delà de l'analyse strictement intersubjective ou structurelle pour englober également une enquête au niveau institutionnel qui est très nécessaire pour évaluer de manière critique notre engagement continu avec l'hétérojustice.

Mots-clés: loi Maria da Penha; violence domestique; système de justice pénale; queer.

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LIST OF ACRONYMS AND ABBREVIATIONS

CAO – *Centro de Apoio Operacional às Promotorias de Justiça do Ministério Público*

CCRAD – *Coordenadoria de Combate ao Racismo e Todas as Outras Formas de Discriminação do Ministério Público de Minas Gerais*

CEJUR – *Centro de Estatística Aplicada à Justiça de Primeira Instância*

CEP – *Comitê de Ética em Pesquisa*

CJS – Criminal Justice System

CNJ – *Conselho Nacional de Justiça*

CNMP – *Conselho Nacional do Ministério Público*

COMSIV – *Coordenadoria da Mulher em Situação de Violência Doméstica e Familiar*

CSMP – *Conselho Superior do Ministério Público*

DEAM – *Delegacia Especializada em Atendimento à Mulher*

EAMP – *Expediente Apartado de Medidas Protetivas*

FRIDA – *Formulário Nacional de Avaliação de Risco*

GALF – *Grupo de Ação Lésbica Feminista*

IACHR – Inter-American Commission on Human Rights

JVDFM – *Juizado de Violência Doméstica e Familiar contra a Mulher*

LBP+ – Lesbian, Bisexual, Pansexual, and other individuals with non-conforming sexual orientations

LF – *Grupo Lésbico-Feminista*

LGBT+ – Lesbian, Gay, Bisexual, Trans, and other individuals with non-conforming sexual orientations and gender identities

MPL – Maria da Penha Law

MPMG – *Ministério Público de Minas Gerais*

OAB – *Ordem dos Advogados do Brasil*

OAS – Organization of American States

PCMG – *Polícia Civil de Minas Gerais*

PCNet – *Sistema de Informatização e Gerenciamento dos Atos de Polícia Judiciária*

PMMG – *Polícia Militar de Minas Gerais*

PUCRS – *Pontifícia Universidade Católica do Rio Grande do Sul*

REDS – *Registro de Eventos de Defesa Social*

SIDS – *Sistema Integrado de Defesa Social*

SIJUD – *Sistema de Informações Estratégicas do Judiciário*

SOMOS – *Grupo de Afirmação Homossexual*

SPM – *Secretaria de Políticas para as Mulheres da Presidência da República*

STF – *Supremo Tribunal Federal*

STJ – *Superior Tribunal de Justiça*

TCLE – *Termo de Consentimento Livre e Esclarecido*

TJMG – *Tribunal de Justiça de Minas Gerais*

TJMS – *Tribunal de Justiça de Mato Grosso do Sul*

TJRJ – *Tribunal de Justiça do Rio de Janeiro*

TJRS – *Tribunal de Justiça do Rio Grande do Sul*

TRF-2 – *Tribunal Regional Federal da 2ª Região*

UFPE – *Universidade Federal de Pernambuco*

UFMG – *Universidade Federal de Minas Gerais*

UFRN – *Universidade Federal do Rio Grande do Norte*

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Preface *(or: What I have to do with it?)*

Before fulfilling what I promised in the table of contents, allow me to provide clarity about my starting point. Perhaps it is commonplace for you, but I prefer to take the risk of obviousness. Everything I have written in this thesis is the result of my perspective and my metabolism. I have digested, in my own way, everything I have seen, read, heard, and felt over the past few years to offer a possible meaning to the chosen subject (or the subject that chose me, I cannot say for sure). This meaning, having come from my innermost self, is therefore an expression of my subjectivity. I am not a positivist: I have not discovered any preconceived reality. These pages are not the objective representation of life. They are not "the" truth. They are alive in their most chaotic and pure sense: I influenced and was influenced by my surroundings. Eu fiz meu próprio caminho e o meu caminho me fez[2]*, as the rapper Emicida sings. This is just one possible way of addressing the pain that runs through both the text and our lives. Therefore, I need to provide an account of my own encounter with the field*[3]*, making it clear from the outset that, like any research, like any truth, it is limited by the circumstances, idiosyncrasies, and privileges of the writer, by their noble and mundane objectives, by the social, political, economic, and administrative constraints of the place where it was written, and, not least, by the clock of time. It is born of induced and, thus, violent labor.*

Like every Brazilian woman, yes, I have experienced gender-based violence, but my connection with the subject is much more intellectual than visceral. I am empathetic, not a survivor (and even less a "victim"). My encounter with domestic violence studies was a coincidence, an opportunity presented to me in a Northeastern Brazilian public university. In a research group on women's rights, I was introduced to new writings which were very much different (and cooler) compared to the textbooks that accompanied me during my undergraduate studies at the UFRN's law school. While the male voices in the classroom focused on assimilating the social contract, the women's voices on those pages encouraged me to pivot towards critiquing it. This shift allowed me to understand how my life, particularly my experiences of oppression, was implicated in what Carole Pateman (1993) called a "sexual contract": the establishment of men's political right over women and their systematic access to women's bodies. This represented an invitation to inhabit the border of the feminist jurist, one who is simultaneously inside and outside the discipline of law. This "universe of pain" (Vera

[2] Loosely translated to: "I forged my own path, and the path has forged me in return".
[3] Thank you to Maria Fernanda Salcedo Repolês for this insight.

Regina Andrade, 2005, p. 72)[4], the universe of violence, paradoxically saved me from the mystique of the law and simultaneously made me dive deeper into it. When the time came to define the next step in my academic career – pursuing a PhD – I felt an impulse to close a cycle, to return to what led me to choose the profession of researcher.

I heard professors and colleagues taking different positions on the relevance of an academic work like this. In 2011, on the brink of graduating from law school, a professor confessed a certain fatigue with this subject, which, in her view, had already been exhausted. Domestic violence has been a recurring theme for a litany of books, articles, and academic events in Brazil since the approval of the most important piece of legislation on the subject in 2006: the Maria da Penha Law (MPL) or Law No. 11.340/06. A few years later, attending a conference on gender studies and feminisms, the chair of a thematic panel offered an opposite interpretation: "as long as women suffer violence, this subject will remain relevant". Conversely, upon reviewing an early version of a research proposal I wrote back in 2018, another professor provided a hypothesis to explain part of my unsuccessful attempt to enroll in a certain renowned graduate program in Brazil: "Perhaps colleagues have already supervised too many students on this topic".

Indeed, as the professor pointed out, there has been a long history of publications and discussions on gender-based violence both inside and outside academia. This is a subject intertwined with the birth of Brazilian feminist movements in the second half of the last century. For many women jurists, the issue of violence presented itself as a privileged entry point to challenge the law (especially criminal law) from a feminist standpoint, and, more than that, to imagine a place for themselves within a hermetic discipline where we are usually "trained for hierarchy" (Duncan Kennedy, 1982). From there, Brazilian feminist jurists began to weave powerful arguments about fidelity/honesty as a biased parameter for the application of criminal law (Mariza Corrêa, 1981; Marília de Mello, 2010), about sexual freedom as a fundamental right (Florisa Verucci, 1987), on the "*in dubio pro stereotypo*" standard in the adjudication of sexual crimes (Silvia Pimentel; Ana Lúcia Schritzmeyer; Valéria Pandjiarjian, 1998), as well as the androcentric nature of criminology itself, including the more leftist and Marxist oriented critical criminology (Soraia Mendes, 2012; Carmen de Campos, 2017).

[4] I have chosen to include the first names of individuals I cite throughout this text as a means of signaling the gender of the people with whom I am engaging in dialogue. This citation style has begun to be adopted by some Brazilian top journals, such as *Revista de Estudos Feministas*. Thank you to Pedro Augusto Gravatá Nicoli for suggesting this approach during my first qualifying exam.

Since research is part intuition, I decided to follow mine. And as research is also about seeking gaps in knowledge, I began to explore paths within feminist criminology to address my questions: what happens to women who do not resemble Maria da Penha[5], those addressed in Article 5, Sole Paragraph[6], of the MPL? How does the Criminal Justice System[7] (CJS) perceive them? What reasons (political, institutional, and theoretical) prevent the CJS from ensuring a life without violence for all women in all their diversity? I found little theoretical elaboration. The inventory we can make of academic productions in the field of feminist criminology is still very much gender essentialist: its central subject is the White heterosexual victim of sexual and/or domestic violence, in contrast to the normative subject of critical criminology, the poor Black man (Fernanda Martins, 2021). I began to engage with some legal professionals in my hometown, Natal, to seek guidance on these questions that eluded me in my readings. I contacted a prosecutor and a judge, both actively involved in the network against domestic violence in the capital of Rio Grande do Norte state, in Brazil. "There is no power relation between women", they told me.

These exploratory conversations signaled to me a limitation of the gender-based violence paradigm in thinking about the "Other" – here, queer or LBP+ women. This "mythology of women's nonviolence and lesbian egalitarianism" (Lori Girshick, 2002, p. 49) leads to a lack of appropriate vocabulary to name the experience of violence as such by those who are living it, curtailing resistance strategies from "victims" themselves who may not be able to see their own "victimhood" (Ana Cláudia Macedo, 2020). Let me be clear: it is *not* my contention that intimate partner relationships between women cannot be a source for nourishing love and empowerment; however, this is only part of the story. It is, in fact, a stereotype: assuming that violence is practically impossible or extremely rare (and that when it occurs, it is mutual or perpetrated only by butch women emulating the aggressive man) passes along a reductionist vocabulary that these relationships are idyllic, somehow detached from the gender and cisheteronormative order.

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[5] Maria da Penha Fernandes is a feminicide survivor and a champion for women's rights in Brazil. The domestic violence she suffered for many years at the hands of her then husband became a leading case on gender-based violence in the Inter-American Human Rights Commission. Eventually, her advocacy led to the enactment of a law addressing "domestic and family violence against women" in Brazil, named in her honor.

[6] According to Maria Berenice Dias (2013), this article – which states that all domestic, family or intimate relationships are protected by law regardless of the sexual orientation of the parties involved – represents the first infra-constitutional reference to same-gender families in Brazilian law.

[7] In this thesis, I am using the notion of the CJS in its normative and institutional-instrumental dimension according to criminologist Vera Regina Pereira de Andrade (2005, p. 76): it encompasses law and its formal institutions of social control (police, prosecutors, judges, penitentiary system, etc.).

As I sought additional references, particularly empirical foreign studies on dynamics of violence involving LGBT+ individuals (Claire Renzetti, 1998; Lori Girshick, 2002; Janice Ristock, 2003), it became clear that what had been conveyed to me by these professionals was nothing more than a heterosexist stereotype about relationships between "homosexual" women. I learned that these relationships can also be the site of various forms of violence – some similar to what is already documented in more traditional feminist studies on violence, and some more specific to relationships influenced by the parties' sexual orientation. I began to view this investigation as an attempt at a "counter-history", a form of reparative work for the "silence in the archive" (Saidiya Hartman, 2008, p. 3) surrounding certain accounts we prefer to forget. After all, it is a political act to decide what goes in and what stays out of the canon, what is visible and what remains invisible to our sights. It's the effect of an intentional organization of discourses that determines the stories we can speak of and will be heard (Carmen Maria Machado, 2021).

In this social organization of discourses, law and legal professionals play a central and powerful role. The way law is operated necessarily goes through the subjective position assumed by its legal professionals: its enforcement is also determined by the convictions, behaviors, and individual stances of police officers, prosecutors, and judges who operate the justice system on a daily basis (Isadora Machado, 2013). The legal discourse (re)produced by these agencies of social control has the power to label certain individuals as "victims" and "perpetrators", promoting a particular regime of truth that establishes the boundaries of what is thinkable and unthinkable, acceptable and unacceptable, about the topic of domestic violence. Operators of this system are not detached from the social/political context in which they operate, a conclusion that also applies to women judges, prosecutors, and police officers who deal with the criminalization of women in their work routines. While these women professionals may share experiences of gender oppression with women defendants, they likely will not fully recognize each other, especially due to their class differences and the judicial ideology claiming that law is neutral (Anne Worrall, 1990).

Taking the risk of legitimizing violent processes to "combat" violence, why then engage with the law? For us – feminists, women, jurists, subalterns, and also privileged – the production of knowledge has always come up from the fissures, seeking possible openings and creating new ones, perpetual negotiators of our positions and voices in a hierarchical discipline that sees us not only as inferior but also as *dangerous*. We have been in this game far too long to forget that we are at a disadvantage; we know very well that we cannot be naive when dealing with

the legal field. However, I remain convinced of the importance of strengthening our arguments, of avoiding a "desk-bound criminology" distant from the grittiness of our realities. A concrete understanding of the contradictions and internal logics of formal institutions of social control as they present themselves in our corner of the world is a necessary task to decolonize the prevailing "made-in-the-North" narratives that are still at the helm of criminology worldwide, and Brazil in particular (Fernanda Rosenblatt; Marília de Mello, 2017).

Having said that, anti-essentialist feminisms remind us that, on this side of the world, we also mobilize historical oppressions, despite our perceived theoretical sophistication. My proposal to build this empirical work is not dissociated from the politics of my body. I have never lived a lesbian/bisexual/pansexual relationship, and the CJS has never intersected with my personal life. Therefore, discussing experiences that I can only access vicariously does not allow me to comprehend how it *feels*, in the flesh and in the heart, to undergo the "erotic persecution" (Gayle Rubin, 1999) employed by the law against sexual minorities throughout history. No scientific instrument of validation and reflexivity that I can handle as a researcher can capture the complexity of the subjectification produced by punitive power in the lives of these subjects. This is a limitation that this work does not intend to overcome (because it cannot).

The organization proposed here is also a political act, an act of power. I am aware that a thesis born out of the "*Vetusta Casa de Afonso Pena*"[8] carries its legitimacy and prestige and, therefore, a privileged capacity to determine what can be said about our world. The responsibility is significant, and I am not immune to the ignorance that often accompanies privilege. However, I embody a multitude, just like everyone else, and I conduct research with all parts of myself. As a transborder feminist researcher and jurist, I walk the boundaries between outsider and insider: sometimes I feel inside, sometimes outside, and sometimes both at the same time (Denise Levy, 2013). I am an intellectual *retirante*, and aspiring to be heard in the national (let alone international) academic debate on this subject is still an act of rebellion. My *alma mater*, in a peripheral region of the country, is not celebrated like my most recent and powerful matriarch, UFMG's Faculty of Law or "House of Afonso Pena". Like every doctoral student doing empirical research, I underwent an adaptation process during which I began to perceive the familiar as strange and familiarize myself with the unfamiliar (Ana Lúcia

[8] "*Vetusta*" is an archaic word for "very old". UFMG Graduate Research Programme in Law is the oldest center for legal research and postgraduate studies in Brazil, implemented since 1931. The Free Faculty of Law of Minas Gerais was installed in 1892, less than three years after the proclamation of the Republic. Afonso Pena, who eventually served as President of Brazil, was the faculty's first director.

Schritzmeyer, 2001). Finding a self in this text not only has exposed the geopolitics of knowledge[9] through which I became who I am today but also substantially changed my research questions, helping me take a critical stance at what once was my predominantly foreign, White, and Brazilian Southeastern/Southern theoretical references.

While writers do not have total control over how the text circulates once published, I want to be as clear as possible: this work is not an attempt to undermine one of the most significant accomplishments of Brazilian women since the promulgation of the 1988 Federal Constitution post-military dictatorship. The MPL, in the wake of a favorable international legal architecture, effectively changed the perception of Brazilian society and CJS professionals regarding domestic violence. It is the first piece of infra-constitutional legislation that removes gender-based violence from the confines of the home, launching it into the public sphere as a matter of the state. The feminist critique I articulate here seeks to recognize the diversity of women as epistemic subjects rather than reduce them to an essentialist and narrow understanding of the "Woman" in universalistic form[10]. Yet, we must pose some difficult questions: which women are deemed "legitimate victims" according to current CJS-related gender policies? Should we still mobilize the legal concept of "victim" and all the discursive paraphernalia that accompanies the stigmatizing processes of the CJS for our purposes of social, economic, sexual, and political emancipation?

Timing is an element of legal research: "When is it time to assert a new principle of law? When is it time to openly defy law? When is it time to sit and wait?" (Mari Matsuda, 1988, p. 10). Legitimate concerns about a possible homophobic backlash in this context of "constitutional erosion" (Emilio Meyer, 2021) do not outweigh the severity of the negative consequences imposed by the "double closet" (Lee Vickers, 1996) in which Brazilian LBP+ women find themselves. Similar concerns did not deter the fight for women's lives in the 70s and 80s, even amid a military dictatorship, and our priorities should not change in these difficult times. The key question, therefore, is not *when* but *how* to proceed

[9] Like María Lugones (2018, p. 90), I am also attempting to write "in transgression to my discipline [...] with the aim of building a way into situated knowledge". I speak from a very specific part of the world, and thus the epistemology of this work is grounded in this geography and the place it occupies within the coloniality of knowledge.

[10] Thank you to Flávia Souza Máximo Pereira for pointing this out during my first qualifying exam.

INTRODUCTION

The enactment of the Maria da Penha Law (MPL) did not effectively mean the recognition of all types of family and intimate partner violence, but only those committed within an interpersonal dynamic that mimics a relationship with easily identifiable male/female positions. Despite its recognition of the existence of diverse families, all deserving of protection and assistance, the theoretical framework that underlies the concept of "domestic and family violence" in Brazilian law remains undisturbed, marked by a heteronormative understanding of gender-based violence: it fundamentally arises from a power relation of male domination and female submission (Maria Amélia Teles; Mônica de Melo, 2003; Alice Bianchini, 2014a). The critical potential of a term like "gender-based violence", therefore, gets simplified into a polarized relationship with fixed positions: a "victim" – feminine, fragile, with little or no self-determination, in need of state protection – and an "aggressor" – male, all-powerful, aggressive, and solely responsible for the violence. Consequently, a lot of people and a lot of pain remain in the margins, including those of queer women.

In Brazil, this state of affairs has two interconnected dimensions.

Firstly, the focus on male conjugal violence in Brazil is part of the legacy of a theoretical lineage strongly anchored in the structural explanation of patriarchy and male domination, born from the late 70s to the beginning of the 80s. Violence, especially when it has a sexual connotation, is a fundamental mechanism in the inner workings of a "regime of domination-exploitation of women by men", and so "Violent women are, however, very rare, given male supremacy and their socialization for docility", said one of the most important Brazilian feminists and sociologists of the 20th century, Heleieth Saffioti (2004, p. 44, 72). This trend, linked to Marxist and radical perspectives on violence, prevails among Brazilian feminist jurists, although few later studies sought to deconstruct this dichotomous view of a male aggressor and a female victim (Carmen de Campos; Fabiana Severi, 2019). Coupled with a gender-specific legislation that only protects women, this theoretical framework firmly associates domestic violence with a female experience in a conjugal relationship, with little or no elaboration on experiences involving men, non-binary persons, queer women, and non-sexual/non-romantic relationships.

This framework, strongly tied to the representation of the cycle of violence (tension, then violence, then honeymoon, then tension again, in an escalating loop until feminicide), hinders the naming of all other family and intimate partner dynamics in which the "victim" –

defenseless and trapped in an infernal cycle of violence escalating from psychological abuse to death – is completely subjugated by the power and control of the "aggressor". This perspective establishes an arbitrary hierarchy of severity of violence (physical violence being the most severe, after death itself), advances a stereotype of a passive victim who is not able to employ any resistance strategies to reduce the risk of violence or even to leave the relationship altogether (Leonor Cantera, 2007), and renders women who commit violence as mere caricatures of the "aggressive man". As of now, Brazilian theory, data, and policies are still not ready to move away from this restrictive paradigm.

Drafting the MPL involved strong participation of a consortium of feminist non-governmental organizations, so these theoretical debates are part of the core structure of its text (Isadora Machado, 2014). This fact, coupled with a lack of definition of what constitutes "an action or omission based on gender" in its definition of "domestic and family violence" (Article 5), becomes a convenient gateway for multiple jurisprudential interpretations, which have practical consequences on who can benefit from its provisions. The way in which the law is weaponized involves the subjective position assumed by its legal operators: its implementation is also shaped by the convictions, behaviors, and individual stances of police officers, prosecutors, and judges (Isadora Machado, 2014). The legal discourse (re)produced by formal agencies of social control not only labels certain subjects as "victims" or "aggressors", but also promotes a particular regime of truth that establishes the limits of what is thinkable and unthinkable, acceptable and unacceptable, visible and invisible concerning the issue of domestic violence.

This leads me to my *second point:* the insistence on the supposedly beneficial effects of feminist engagement with institutions of social control characterized by an "enlightened absolutism" (Gizlene Neder, 2007, p. 114) and a pattern of racialized mass incarceration (Juliana Borges, 2020), leads to downplaying the uneven distribution of "protection" that is a central feature of the inner workings of its agencies. Earning this kind of protection becomes "necro-empowerment" (Fernanda Martins, 2021): equating gender-sensitive policy with punitive power ultimately functions to uphold dehumanization. The stigmatizing effect of everyday bureaucracy in the justice system actually de-fangs the feminist "DNA" of the MPL, which was born out of women's and feminists' grassroot advocacy. There is a process of assimilation that ultimately disfigures MPL's main features. This process reinforces stereotypical views of women as fragile and powerless and violence as inherently male, applies a criminal logic that reduces reality to a simple aggressor/victim dichotomy favoring an

individual-level analysis of violence, limits the enforcement of the law with extra-legal requirements (such as a gender-based motivation for the violence committed), and uses a heteronormative perspective that renders queer relationships either illegible or, at best, distorted versions of the heterosexual norm (an operation that is part of what I call "heteroframing").

Regarding the experience of LBP+ women with the CJS, some particular challenges arise, especially given the heterosexism of its institutions (Lee Vickers, 1996), which can be observed from the discourses of some legal operators who still insist on referring to these women as "like men, more butch and more accustomed to the street and delinquency" (Rosemary Almeida, 2001, p. 139). Although violence in these relationships is also subject to the stereotypical interpretations that regulate the behavior of heterosexual women, there is a special risk of legitimizing violent practices (including by the women involved themselves) due to the lingering understanding that there is no asymmetric power relationship between women and, therefore, there is no dynamic of submission and domination in these relationships. There are, however, particular aspects that only a sexuality-sensitive intersectional analysis can observe, especially when we consider that heterosexism helps create an environment of impunity by isolating individuals and preventing them from accessing their families, appropriate public services, and even the CJS (Gregory Merrill, 1996). As a result, the literature describes these experiences as a kind of "double closet", that is, forms of violence unique to lesbian/bisexual relationships and stemming from the sexist and homophobic nature of society.

Nonetheless, we should not take for granted the impacts of who – willingly or not – become involved with the CJS. Decisions are made inside institutions with very particular cultures, one that a participant of this research called "heterojustice". As my fieldwork progressed, I observed a shared set of characteristics that bind these institutions together: *fetishization of liturgy* (it is an extremely formal system, full of solemnities that demands deference from everyone), *oligarchic composition* (mainly composed of individuals from very specific ranks of Brazilian society, namely affluent White men), *conservatism* (especially regarding gender issues), *authoritarianism* (they demand obedience to their particular worldview, with little room for meaningful debate), and *hermetism* (these are institutions with little regard for social and democratic oversight). All of these characteristics command obedience to hierarchy: through the "magic" of its symbolic power and the authority of the state, it serves as a powerful tool to uphold the established order (Pierre Bourdieu, 2010, p. 237), making it seem as if it is dispensing justice. This study, focused on the sixth largest urban city in Brazil, Belo Horizonte (in Minas Gerais state), could very well be about other legal

institutions I worked at as an intern or clerk in other parts of the country. I could not help but remember some statements I heard from legal professionals I worked with along the years, and how they expressed these deep-seated cultural codes that sets these institutions apart from all others. The adversarial mindset that takes roots in their minds and hearts, especially in criminal justice, that very well explains why they think the "tough" judge is the good judge, why the "human rights crowd" is too soft, and why it would be okay to ask in a job interview if I would be willing to "rough it up" with defendants.

These are the institutions tasked with implementing the gender-sensitive perspective of MPL. They hold a long and problematic legacy with slavery (Ana Luiza Flauzina, 2006), sexism (Soraia Mendes, 2012), homophobia (Salo de Carvalho; Evandro Duarte, 2017), and hold a current commitment with punitivism towards the oppressed. When it comes to LGBT+ people, legal and criminological doctrine both contributed to the classification of potential female criminals: the "sapphic", the "invert", the women with an "excess of sexuality" ... they were all part of a typology of dangerous criminals constructed by legal/criminological institutions (Viveiros de Castro, 1934; Aimee Wodda; Vanessa Panfil, 2018). With all this unsorted baggage, we still trust that they will have a neutral disposition and nuanced understanding to properly adjudicate the problems and pains of marginalized people while still maintaining the existing "order". What happens to our humanity when we keep trusting these specific institutions as they keep letting us down?

When it comes to domestic violence, the enactment of the MPL was a shock to legal professionals: still to this day, fundamental concepts of the law (such as "gender") are still largely opaque to the average operator. For many of them, the gendered perspective threw them for a loop: how to maintain neutrality and fight social injustice at the same time? How can we reconcile the principle of equality with "special treatment"? The entry of the category of "gender" into Brazilian law messed up their preconceived notions about what justice is and the institutional mission of their work. In some ways, the law managed to gain ground and these questions, today, are not at forefront of the everyday practices of the justice system anymore. Legal/criminological theories have plenty to say about what the legal establishment had to concede for the MPL to come into existence, but what about *us*? These are the main questions I wanted to answer: *what does the MPL (and Brazilian women at large) stand to lose in order to be enforced by legal institutions? And: should we rethink our gender-based framework in order to think more broadly about domestic violence?*

As the research progressed, it became clear that my initial intuition[11] of locating and explaining gender stereotyping in the enforcement of the MPL for queer women was only tipping the surface. It lacked radicality: *stereotyping is only the symptom; heterojustice is the cause*. In order to get to this overarching idea, I had to move beyond the cases themselves, the language employed by its professionals, and learn to also focus on the broader context of these decisions. From my initial inquiry on the ways in which the CJS produces gender difference itself (and not only passively reproducing a structural gender-based domination), it became clearer that I had to widen my focus to also encompass an institutional-level analysis. Who are the people operating this system? What internal logics and power relations constrain their ability to decision-making? What implicit bias stems from the history of how these institutions came to be? Only with this multi-level analysis I could understand how heteroframing works: it is not a distortion that impacts only the lives of queer women who become involved with the CJS; *it is a device that transforms domination into law (and therefore naturalizes social hierarchy as inherently just) against* all *deviants of the norm*. In the context of domestic violence, it acknowledges only certain women, in certain types of relationships, and for certain types of violence, and all this selectiveness is conflated with gender justice. This is the cost of engaging with (and empowering) the CJS.

Moreover, we should not be dismissive to rethink our theoretical assumptions on domestic violence itself. If gender means the "social construction of the masculine and the feminine" (Heleieth Saffioti, 2004, p. 45) or the "constitutive element of social relationships based on perceived differences between the sexes" (Joan Scott, 1986, p. 1067), our understanding of "gender-based violence" should be wider than "violence against women". It has the aptitude of encompassing all interpellations that goes beyond the discursive construction of the feminine and the dichotomous relation man/woman, opening up space for investigations on how different social technologies – such as law – may also constitute other(ed) gendered subjects (Teresa de Lauretis, 1994), like queer men[12] and trans persons. Not only that, the critical meaning at the core of the concept of "gender" is absolutely compatible with an

[11] I speak of "intuition" instead of initial hypotheses because the methodology I used to conduct this research, grounded theory, requires of the researcher that they refrain from preconceived ideas or tentative conclusions before entering the field. The reasoning here is not inductive nor deductive, but *abductive* (a dynamic process between data, theory, and ever-changing questions). So, I had some intuitions as I commenced this journey, but I always tried to keep my own theoretical background somewhat in check so I could be open to the emergence of the field.

[12] The (de)construction of the idea of hegemonic masculinity by the academic field dedicated to researching men/masculinities since the late 1980s is an example of exploring the potential of a gender-based perspective (Robert Connell; James Messerschmidt, 2013).

intersectional approach (Kimberlé Crenshaw, 1991; Patricia Hill Collins, 2019) in all its radicality: gender does not exist on its own, irrespective of other systems of power (such as lesbophobia and racism), and does not produce effects in the ether, untouched by the specificities of power relations that structure our many institutions.

Aiming for this multi-level analysis of domestic violence, I chose to converse mostly with feminist and queer criminology/victimology, sociology of police and judicial practices, as well as feminist/queer legal theory. These fields provided me with very important insights that guided me through the analysis. Queer-related studies reminded me how every form of legal power has a productive effect: regulatory power not only acts upon a pre-existing subject but also shapes and forms such a subject (Judith Butler, 2004). Being a discourse permeated by power relations, law produces certain truths that guide society to recognize some identities and discard others (Mônica Cruz, 2015), constituting a hierarchical system of sexual value that oppresses some people by attaching them to criminality and pathology (Gayle Rubin, 1999; Nic Groombridge, 1999). These studies have a critical stance with all forms of essentialism and binary thinking that normalizes some forms of existence against others, evidencing how identities are contingent, and not natural (Salo de Carvalho, 2012; Matthew Ball, 2014). Feminist-related inquiries shed light into the dangerousness of a unitary notion of "Woman", the judicial ideology of neutrality (Carol Smart, 1989), the selectiveness of the CJS along gender and racial lines (Vera Regina de Andrade, 2005; Thula Pires, 2013; Juliana Borges, 2020) and its double punishment towards women (including defendants) through stereotyping (Carol Smart, 1977; Anne Worrall, 1990). Sociology of the juridical field, finally, helped me think about how habitus shapes judicial behavior (Pierre Bourdieu, 2010), the importance of political and economic relations in the functioning of the justice system (Felipe Castro, 2018), and how their members understand themselves, their mission, and the people whose lives they regulate (Antônio Paixão, 1982; Ludmila Ribeiro; Vivian Paes, 2016).

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Before delving into the methodological design of the study, I should set the stage for a moment. For everyone who has never worked at or entered into a courtroom in a major Brazilian city, let me share how it feels like: the institutional environment usually requires a peculiar formality and presents an aura of skepticism towards external individuals, especially ones trying to "meddle" into the orderly flux of their routine. Hierarchy seeps into the body and the simplest interactions: how to dress, how to behave, how to think, and how to refer to figures of authority.

If the court is in session, always refer to a judge or a prosecutor as "Your Excellency" ("*Vossa Excelência*"); if having a meeting in chambers, refer to them as "Doctor" ("*Doutor(a)*") (the latter is extended to lawyers and police chiefs). The environment is full of written and unwritten rules (as all human institutions) but obedience is invoked by the intimidating presence of armed police officers, surveillance technology, and a massive architecture that usually contrasts with the surrounding neighborhood. If "rigidity means death" (Gloria Anzaldúa, 2005, p. 706), courtrooms suck the life out of you – even the ambiguity of an uncertain walk in a corridor may provoke a guard to ask: "Where are you going?".

Although the structure may vary (especially in the countryside, where usually the resources are meager), in the courtrooms and prosecutor's offices I visited in Belo Horizonte, the initial reception usually involves armed security personnel and a metal detector, with inspection of one's personal documentation and a quick inquiry about the purpose of one's presence there. This ritual repeated itself every time I needed to access judicial proceedings (often more than once a week) or interview someone in person at some offices scattered around the city. To reach this stage, however, meant several months of seeking proper authorizations from all three institutions I would be interacting with during the research: Minas Gerais' Civil Police (PCMG), Minas Gerais' Public Prosecutor's Office (MPMG), and Minas Gerais' Court of Justice (TJMG). Seeking authorization from the PCMG was a rather fast process; seeking authorization from the MPMG and the TJMG required more persuasion and time.

Once access is permitted, the external element is dealt with caution: in the field I was constantly reminded of my place as an outsider. At Lafayette Courthouse ("*Fórum Lafayette*"), I was not allowed to remain in the premises after the last employee/intern left the building, which would definitely have hindered the execution of a substantial part of this study if I were not a full-time researcher. The boundaries of my prerogatives were questioned many times along the way, despite having prior approval by the university's Ethics Committee and all three institutions involved. From gaining access to docket numbers to making partial copies of the proceedings, I had to negotiate my position as a credible researcher continuously. My presence was sometimes perceived as disruptive: sitting in "someone's chair" to read cases or using the copying machine for too long elicited annoyed or even stressful reactions. Requests for the retrieval of archived judicial proceedings would often be forgotten or ignored, and I could sense growing dissatisfaction from some who considered my requests as adding to their workload. "Look how much work you're giving me!", said a court personnel in a somewhat jesting manner.

At the same time, some legal professionals and court personnel were more open and curious, willing to make the whole experience in the courtroom a little more inviting for me. *Mineiro*[13] culture would make its way into the rigidness of courtroom culture, and the traditional black coffee and other treats would be offered to me as a sign of welcome. Academia can be both a nuisance and a respectable thing in these settings, but our entry into those spaces and those lives still relies heavily at the personal behest of the most powerful person in the room: the judge (in the courtroom), the prosecutor (in the prosecutor's office), or the police chief ("*delegado(a)*"). Accountability by external bodies and individuals not related to the justice system is seldom appreciated, which reinforces a power dynamic tilted towards legal professionals and not the general public. Each court will enforce its own rules of engagement, leaving outsiders at a very vulnerable position to negotiate. Some were laxer, some were more suspicious and stricter.

I write all of this because it is important to share the "pain of the thesis", as the anthropologist Miriam Pillar Grossi (2004) named it, for other researchers who also want to enter these institutions wholeheartedly. We seldom talk about how it *felt* to research. The places I talk about here come with several barriers to entry and persistence, but there is a way. Keep in mind, however, the multitudes about myself: I come from the legal field, I am a White feminine-presenting woman, and worked as a doctoral student at one of the top law schools in the country. These variables certainly impacted how I navigated these spaces. Being in academia was an asset for gaining support from legal professionals who admired research or had previous/ongoing experience as researchers. Conversely, it had the opposite effect on others who may have perceived me as an outsider with a penchant to merciless critique of their work without the "street cred" that comes from the daily grind. Simultaneously, being from the legal field would open a few doors by making me look more as an insider to some, who would call me "*Doutora*", a sign of deference to legal professionals, irrespective of having a PhD or not. My gender presentation and petite figure, on the other hand, would sometimes give off the impression of being younger and inexperienced, maybe lacking respectability. Because this research (and all others) has always been an embodied endeavor, presenting my reactions to what I have seen and heard during fieldwork is par for the course.

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[13] "*Mineiro(a)*" refers to people born in Minas Gerais state, Brazil. The common stereotype about *mineiros(as)* is that they are welcoming, soft-spoken, food lovers, and prone to casual conversation, even with strangers.

Since I wanted to delve into a fairly unknown subject, I figured I should trust the emergence of the field. Grounded theory seemed to be the best methodological choice because it would allow me to engage in an abductive analysis in which I would maintain a recursive relationship between my questions, the data, and theory throughout the research (Kathy Charmaz, 2008; Patricia Collins, 2019). This methodological choice, at the same time strongly inductive and prone to abstraction through the co-construction of data and theory during fieldwork, certainly impacted my decision-making along the way, as I will discuss shortly. I designed the study to have two equally important parts: 1) analysis of protective orders proceedings ("*Expediente Apartado de Medidas Protetivas*" or EAMPs) involving queer women in Belo Horizonte's domestic violence courts since the implementation of the MPL; and 2) semi-structured interviews with legal professionals (police chiefs, prosecutors, and judges) with some experience in the field of domestic violence in Belo Horizonte since the enactment of that law. I did not include interviews with public defenders due to time constraints – I would have needed to obtain another letter of authorization from the chief of Minas Gerais' Public Defender's Office so that I could submit the entire research proposal to UFMG's Ethics Committee (CEP)[14]. Because I was far behind schedule due to the Covid-19 pandemic and other academic commitments, I decided to proceed with the Minas Gerais' Civil Police (PCMG), the Minas Gerais' Public Prosecutor's Office (MPMG), and the Minas Gerais' Court of Justice (TJMG).

The objective with the first methodological strategy was to outline an initial overview of the phenomenon of domestic violence against LBP+ women in Brazil. This was no small feat, considering the lack of reliable and generalizable data on the subject, as well as the deepening anti-LGBT+ sentiment during Bolsonaro's presidency, which also permeated legal institutions during the design and execution of this research. This expectation proved fruitful. Through the proceedings, I could sketch a novel understanding of the experiences of individuals impacted by the CJS who are still largely invisible in theory and policy: who are the plaintiffs and defendants, what is being reported, and the measures (or lack thereof) taken by legal institutions that comprise the "network" ("*rede de enfrentamento*", or the interinstitutional support network tasked with preventing and combating domestic violence in Brazil). From there, I could access valuable information about the women (race, education level, age, gender identity, sexual orientation, etc.), specific aspects of the relationship between

[14] I submitted all of the documentation, including the authorizations from the heads of all three institutions, in May 11th, 2022 (CAAE No. 58610222.7.0000.5149). Approval was granted on July 21st, 2022.

plaintiffs/defendants (type, duration, common children, cohabitation, financial dependency, etc.), characteristics of the violence (types of criminal offenses, where it happened, recurrence, etc.), as well as data on case processing (requested and granted protective measures, legal arguments up until sentencing, among others).

The decision to focus on EAMPs rather than criminal police investigations ("*inquérito policial*") or criminal lawsuits ("*ação penal*") stemmed from another intuition that confirmed itself during the fieldwork. The primary and most common interest of women seeking assistance from the CJS is not the criminal investigation, but rather the protective order (IPEA, 2015; Marília de Mello et al., 2018; CNJ; IPEA, 2019). Nowadays, these matters proceed autonomously from the criminal inquiry, in separate procedures, so it is common in court practice for the criminal investigation to be abandoned well before the protective order procedure for several reasons: the plaintiff may not want to pursue criminal charges at the police station; she may retract her complaint within the legal deadline; she may fail to confirm the statement she provided during the police investigation, making a potential conviction in a criminal action nearly impossible; and she may simply no longer be found by the CJS to be subpoenaed. This became evident during my brief stint as a postgraduate intern at the 18th Public Prosecutor's Office of Belo Horizonte for three months in 2021: while dealing with hundreds of criminal investigations, I witnessed recurrent dismissals prompted by the legal ramifications of the "victim's disinterest" in the criminal punishment of their aggressor. Therefore, the choice for EAMPs considered this "attrition rate" (Aliraza Javaid, 2018, p. 750), constituting, in my view, the best option to obtain a greater volume of information for the purposes of this research.

To be able to locate the proceedings, I contacted TJMG's sector tasked with coordinating actions related to domestic violence ("*Coordenadoria da Mulher em Situação de Violência Doméstica e Familiar*" or COMSIV[15]) to request access to the database maintained by the tribunal's applied statistics center ("*Centro de Estatística Aplicada à Justiça de Primeira Instância*" or CEJUR). This database has a few variables: identification of the court; type of jurisdiction (criminal, jury, etc.); docket number; class of proceeding (EAMP, criminal action, etc.); principal subject (threat, feminicide, etc.); data source; date of distribution; status of proceeding (if active or dismissed); date of dismissal; type of party (plaintiff, defendant or third party); and sex. Since it does not have "sexual orientation" as a variable, I had to request for a

[15] COMSIV is the tribunal's department tasked with providing data regarding all proceedings related to the MPL to the National Council of Justice ("*Conselho Nacional de Justiça*" or CNJ), the highest administrative body of the Brazilian Judiciary branch.

filtered database by the defendant's sex and then manually "excavate" the proceedings involving only "homosexual" women through a case-by-case analysis of the facts in the plaintiff's statements[16]. Even though this was a time-consuming task, it ended up being a blessing in disguise because it allowed me to constantly compare decision patterns for different types of relationships involving women, romantic/sexual in nature or not.

Once I had secured the database with docket numbers[17], I started to establish my presence in the Lafayette Courthouse in October 2022. At the time, two of three judges from the *Juizados de Violência Doméstica e Familiar contra a Mulher* (or JVDFMs) signaled their interest in the research. With their authorizations, I obtained access to the EAMPs from these two JVDFMs and the two Criminal Courts that preceded them. Given that the majority of the proceedings is still on paper (only from December 2021 onwards were EAMPs distributed electronically via PJe, the Brazilian electronic judicial process system), the flux of de-archiving was the following, always in rounds and in this order:

Figure 1. De-archiving flux in TJMG (2023)

Source: author.

[16] Following the literature's guidance (Paulo Eduardo da Silva, 2017), I worked with only archived proceedings for two reasons: first, active proceedings would not provide all the information I was looking for (such as the outcome of the case); second, these proceedings usually circulate a lot between institutions and parties, not being available all the time in the court for consultation.

[17] I received a database from COMSIV in November 2021; however, it lacked a filter for the defendant's sex. Consequently, I had to request renewed access to the tribunal, which initially intended to reverse the decision to provide me with the docket numbers. After some back and forth, I finally received an updated dataset in January 2023.

Each JVDFM set a certain quantity of cases to be retrieved at a time: one of them established a maximum of 40 (forty) cases; the other, around 60 (sixty). When the requests were sent to the archive within the same week, the average response time was around two weeks. In total, the process outlined above was repeated 15 (fifteen) times. Because it was sometimes a cumbersome process, I attempted to shorten this path to speed up the analysis by proposing to the public servant in charge of the archives department my direct access to the cases in that department, thus reducing the steps and not adding more work to the court personnel. This, however, was denied, as the archive alleged that it only responds to the court's requests and not to the researcher's pleas. Therefore, I suggest future researchers consider the (slow) pace of Judiciary rituals in advance when organizing their schedules.

In total, I requested access to **767** EAMPs dispersed between 2009 and December 1st 2022 in the abovementioned courts (column "Proceedings for which access was requested" in Table 01). I could see two types of data entry errors as I would go through the process outlined in Figure 1: one, many cases from other courts were mistakenly included in the dataset as if they belonged to one of the courts under study (that is why the screening step was important); two, some cases involved either heterosexual couples or only men as defendants. Even though the original dataset stated that the total number of proceedings involving women from the courts under study was 1732 cases, this number actually dropped to **1650** cases (maximum), as we can see in the column "Proceedings that actually belong to the courts under study" in Table 01 below. In the end, from 767 EAMPs I requested, **597** proceedings effectively arrived from the archives[18]. Excluding all the proceedings with only male defendants, the total number of sampled proceedings ended up being **466** cases – **83** of them involving only LBP+ women (columns "Sampled proceedings with women defendants" and "Sampled proceedings with LBP+ women defendants" in Table 01). This whole "excavation" process took me six months (January to August 2023).

Table 1. Number of EAMPs considered in the study per year of dismissal (Criminal Court 1, Criminal Court 2, JVDFM 1, and JVDFM 2)

Year of dismissal	Total number of proceedings	Proceedings that actually belong to the	Proceedings for which	Sampled proceedings	Sampled proceedings with LBP+

[18] 146 cases were either from other courts or were not sent back by the archives department. This department, however, did not explain why some proceedings were not sent back to the JVDFMs.

	(according to CEJUR/TJMG)	courts under study[19]	access was requested	with women defendants	women defendants
2009	1	1	1 (100%)	0	0
2010	10	9	10 (100%)	6	0
2011	57	55	57 (100%)	20	3
2012	108	105	30 (27.77%)	17	2
2013	91	86	10 (11%)	2	1
2014	98	97	13 (13.27%)	9	1
2015	136	113	136 (100%)	77	8
2016	231	221	49 (21.21%)	30	4
2017	201	201	18 (8.95%)	16	2
2018	177	177	0 (0%)	0	0
2019	205	192	192 (93.66%)	100	17
2020	113	109	29 (25.66%)	17	7
2021	181	178	99 (54.7%)	84	21
2022	123	106	123 (100%)	88	17
TOTAL	**1732**	**1650**[20]	**767**	**466**	**83**

Source: CEJUR/TJMG and author.

The 466 cases depict women in various relationship dynamics: mother/daughter, grandmother/granddaughter, aunt/niece, sisters, partners, girlfriends, etc. I created two separate databases based on the type of relationship because I was not permitted to make copies of all the proceedings (and that would simply be too time-consuming). Since the main focus of this study relies on the experiences of queer women with the CJS, I made partial copies of all 83 cases involving LBP+ women, allowing for the construction of a second more detailed dataset. Consequently, for all women (N = 466), the database includes the following ten variables: docket number; court; author type; name(s) of judge(s); judge's sex; judge's race; enforcement of MPL (dummy variable); granting of protective order (also a dummy variable); year of filing; and year of dismissal. For queer women (N = 83), I used an online form with 50 (fifty) questions organized into four sections: 1. Sociodemographic characteristics of the plaintiff and defendant; 2. Characteristics of the plaintiff/defendant relationship; 3. Characteristics of the reported

[19] This is due to erroneous data from CEJUR/TJMG stating that several cases come from one of the courts under study when in reality they are from other lower courts' caseload. However, the total number (N = 1650) is probably lower because, as the third column shows, it was not possible to request access to 100% of the caseload from the abovementioned lower courts to check if other cases also have this information wrong.
[20] Of these, 128 cases have only male defendants.

instance(s) of violence; 4. Information regarding the proceeding in the CJS; 5. Sensible information worth noting (see Appendix C). As I was going through the proceedings, I would answer this form for each proceeding to facilitate an initial apprehension of all these information. Once I cleaned this data, I further built a more detailed dataset with 201 (two hundred and one) variables that I compiled and analyzed using Stata/MP 17.0.

The selection of cases was conducted through theoretical sampling, guided by the explorations I wanted to undertake, my intuitions, and the interactions I had in the field, following grounded theory's orientations in a somewhat flexible manner. From 2009 to 2022, the courts under study underwent significant changes in their composition, structure, and modes of interpretation of the MPL. Therefore, I chose to focus on proceedings that would capture these changes over time, based on their year of dismissal. Consequently, I requested access of all or almost all proceedings at four points in time (I will refer to them as benchmark years): 2009-2011, 2015, 2019, and 2022 (see Table 01). Since the flux of de-archiving was based solely on docket numbers, I would randomly[21] select the pre-defined number of proceedings per round within each year of interest. Nevertheless, despite the small sample size, which does not provide enough statistical power for hypothesis testing purposes, the conclusions of this thesis are drawn from the analysis of **30.62%** of all proceedings involving women defendants from two JVDFMs (and their previous Criminal Courts) since the enactment of the MPL. This dataset represents, to this day, the most comprehensive data available on the subject in Brazil.

The second part of the methodological design – semi-structured interviews with legal professionals who have previous or ongoing experience with the enforcement of the MPL in Belo Horizonte since the law was enacted – was intended to investigate legal operators' perceptions regarding core concepts of the MPL (such as "gender-based violence"), their views on intimate partner violence between queer women, how enforcement may differ for instances of violence committed by women in non-romantic/non-sexual relationships, and the institutional goals and challenges when dealing with this subject in their careers. This helps to illuminate the normative, theoretical, and institutional foundations of the "protection" supposedly offered by the CJS and how it relates (or not) to the feminist principles underpinning the MPL.

I used three slightly different interview protocols, one tailored for each professional category. All of them were loosely organized into three parts: 1. Personal trajectory within the

[21] One could be stricter about the randomness of this procedure and question it because I did not use an automated method to randomly select the proceedings in each year to ensure that each EAMP had the same probability of being selected. Either way, within each year, the proceedings were selected with no pre-defined criteria.

institution; 2. Questions about the interviewee's institution; and 3. Questions regarding domestic violence and the MPL. Some insights provided by the interviewees led to unforeseen directions, prompting adjustments to the interview guides as needed. Consequently, as the interviews progressed, I continuously refined the protocols to better address emerging questions and themes, which I triangulated with subsequent participants and other sources of information (see the latest version of these protocols in Appendix A). As for the collection of sociodemographic data of the interviewees, I administered an online survey (Google Forms) to the participants at the conclusion of each interview[22] (see Appendix B). This approach served to mitigate potential discomfort that may arise from direct inquiries about sensitive topics such as the participants' identities, particularly sexual orientation. Moreover, given that for most of the interviewees our initial substantial interaction occurred during the interview itself, this method proved especially effective.

In total, **20 (twenty)** legal professionals were interviewed from March 2023 until April 2024. Three interviews (one of them divided into two parts) were conducted in person, and seventeen were conducted online via the Zoom platform[23], lasting an average of 1 hour and 30 minutes each. I was able to record (video and/or audio) all interviews for coding purposes, except for one at the request of the informant. These interviews are codified throughout the thesis as follows: seven judges (J-1, J-2, J-3, J-4, J-5, J-6, and J-7), six prosecutors (MP-1, MP-2, MP-3, MP-4, MP-5, and MP-6), and seven police chiefs (PC-1, PC-2, PC-3, PC-4, PC-5, PC-6, and PC-7)[24]. Access to these legal operators, I must say, was facilitated by both my prior experience as an intern in the Public Prosecutor's Office and the great generosity of two informants who were essential for the snowball sampling to begin. At the end of each interview, I would always ask if the interviewee could recommend a few colleagues with whom I should speak next. In traditional and closed institutions like those in the legal world, establishing trust with their "gatekeepers" effectively lays the groundwork for identifying key figures and persuading them not only of the importance of the research but also of the seriousness of the invitation. After all, a degree of credibility is gained through the informant who recommended you.

[22] Thank you to Ludmila Ribeiro for pointing out the need to shed some light on the interviewees' profile at the qualifying exam, and also to Rachel Ellis for helping me to think it through operationally.
[23] Given that most of the interviews were conducted while I was abroad as a visiting scholar at the University of Maryland, the online format became essential.
[24] In total, I contacted 33 (thirty-three) individuals. One refused to participate, two kept rescheduling, and the rest did not respond or stopped responding.

Most of the participants are aged 30 years or older, identify as women, cisgender, White, heterosexual, and graduated from private institutions from Minas Gerais, Rio de Janeiro or São Paulo. I will not disclose the positions they hold/held for anonymity reasons, as stated in the informed consent form ("*Termo de Consentimento Livre e Esclarecido*" or TCLE). With the exception of two interviewees who are no longer active in their respective careers, as well as two interviewees who are still active but now work in related areas, all participants remain engaged in the field of domestic violence in Belo Horizonte. Collectively, they have an average of 19.8 years of experience in their respective institutions (SD = 9.59), and 6.58 years (SD = 4.39) in the subject of domestic violence. The variation in experience with domestic violence is smaller for police chiefs, but they also have, on average, the least experience with domestic violence among the three professional categories. Prosecutors had the highest number of years of experience in these matters, but they also had the highest dispersion (the least experienced prosecutor had one year; the most experienced, 15 years).

Table 2. Amount of experience of interviewees (frequency, average, and standard deviation)

INSTITUTION	Frequency	Average experience in the institution (years)	Average experience with domestic violence (years)
POLICE CHIEFS			
POLICE CHIEF ("*DELEGADO/A*")	7	9.43 (SD = 3.15)	4.5 (SD = 2.47)
PROSECUTORS			
PROSECUTOR ("*PROMOTOR/A DE JUSTIÇA*")	5	24.5 (SD = 9.03)	8.33 (SD = 5.72)
APPELLATE PROSECUTOR ("*PROCURADOR/A DE JUSTIÇA*")	1		
JUDGES			
JUDGE	6	26.14 (SD = 4.38)	7.14 (SD = 4.38)
APPELLATE JUDGE ("*DESEMBARGADOR/A*")	1		

Source: author.

I transcribed and then coded all of these interviews using excerpts as units of analysis, organizing them under overarching themes, which yielded 116 (one hundred and sixteen) lines of coding. As I was looking for relationships between these initial codes, categories emerged: for instance, entering the field/career, stereotyping, resisting the subject of domestic violence,

being sensitive to the subject, gender-based motivation, and the gravitational force of criminal procedure. All of them converged to the central category: "heterojustice". I did not conduct this process only at the end of all interviews; transcription, coding, and analysis were done along the way and in tandem with the quantitative/qualitative analysis of the proceedings. The interviews were conducted in two rounds: the first *corpus* comprised eight interviews; the second, twelve interviews. This approach was useful, as I could make an initial assessment of emerging patterns, which helped me rethink some of my questions and seek triangulation on some specific themes that would better shed light on judicial behavior and enforcement of the MPL.

The two dimensions (proceedings and interviews) benefitted greatly from each other. The interviews pointed to unforeseen paths about the history of the institutions; the legal controversies of the past and present; the stereotypes that underlie decisions that, on the surface, present themselves in a seemingly harmless technical-legal guise; the anxieties of the professional practice; the power relations within the career; the process of feminist self-discovery, among other topics. Some insights from these conversations led me to focus on the search for proceedings from specific years to check how certain shifts in judges' understanding translated into the limits of the judicial procedure over the years covered by the research. When this strategy saturated, I began to prioritize the years in which the quantity of proceedings that met the research's inclusion criteria was higher and, thus, expanded the sample of EAMPs involving LBP+ women.

The proceedings, in turn, provided me with information that gradually altered the script of the semi-structured interviews formulated at the beginning of the journey. I qualitatively analyzed the proceedings by coding main themes that emerged as I read them[25]. This became a valuable source of information that I simultaneously compared with the ongoing qualitative analysis of the interviews. New inquiries arose from the review of the case files, so I was trying to confirm or refute certain perceptions or interpretations with the interviews, checking how they would translate into the sensitivity and everyday routine of the participants. Fortunately, the cases brought the information I was looking for and even more: how a woman's pain is translated and interpreted by the unique language of the CJS; the lack of standardization by the police in filling out important data; the stereotypical sentencing patterns related to often

[25] Citations to excerpts of proceedings will be coded throughout because the TJMG treats EAMP's docket numbers as confidential information. Therefore, cases from JVDFM 1 will be coded as "JVDFM1-[*random number*]". Cases from JVDFM 2 will be coded as "JVDFM2-[*random number*]". Cases from Criminal Court 1: "CC1-[*random number*]". Criminal Court 2: "CC2-[*random number*]". Very few cases from Criminal Court 3 were randomly found and cited here, using the same format: "CC3-[*random number*]".

outdated perceptions of legal and jurisprudential concepts (such as "gender", "hyposufficiency", and "victim"); the family-oriented perspective of some legal professionals associated with a deep-seated distrust of women's speech; and the learning curve of legal professionals to understand some of the more "radical" aspects of the MPL.

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This thesis is divided into three chapters: "Heterojustice" (Chapter 1), "The 'messing up' of Maria da Penha Law" (Chapter 2), and "The double closet: a first look into the archive" (Chapter 3). Each chapter is informed by the joint analysis of judicial proceedings and interviews, interwoven with the thread of my theoretical perspectives. The titles and subtitles in quotation marks are direct quotes from these interviews. Although I move back and forth in time frequently, the construction of the chapters follows a certain chronological logic: we start with the formation of institutional legal cultures, move through their estrangement with the arrival of the MPL (and the decisions and transformations that have occurred over the years in the interpretation of its provisions), and finally, I weave a critique that can give new meanings to the present enforcement of the MPL and help forge a path into a new future.

In Chapter 1, the underpinnings of heterojustice are presented. I begin by examining how traditional liturgies entrenches a historical legacy of colonialism, racism, and *machismo* at the very core of legal institutions in Brazil until today. Since the birth of the Brazilian state, these institutions were forged to provide a legal veneer (and legitimacy) to uphold the fundamental hierarchies of our society. The most apparent manifestation of this profound relationship between justice and political power is the elitist composition of its members – mostly male, White, and proprietary – which further deepens the great distance between legal professionals and commonfolk in their everyday practice. I further discuss how this is the perfect environment to advance an anti-gender neoconservatism, especially with the rise of a religious far-right worldwide that rallies around the fight against a supposedly "gender ideology" that goes against the "natural order of things": the traditional heterosexual family.

In Chapter 2, I focus on the feminist fight against domestic violence in Brazil (with all its contradictions) and the "*bagunça*" (or the "mess") that several legal professionals referred to as the initial introduction of the gender-based perspective brought by the MPL (and the feminist advocacy that preceded it) into the rigid routines of the CJS. I myself refer to this encounter as a *crash* between heterojustice and feminist-inspired legislation: if we follow

Kimberlé Crenshaw's allegory of intersectionality as a road intersection, and law as the ambulance that is called upon to assist a victim of an accident, Brazilian law (in the broadest sense, encompassing its institutions) is not an ambulance that does nothing; rather, it runs over the "victim" once again. This collision manifests itself by subduing the radicality of the law's provisions and by inventing new requirements with supposedly technical arguments to justify systematically not enforcing it to hundreds of women over time. The latest version of this historical pattern – full of distrust of women's voices and desires – turns the gendered perspective of the law on its head (the so-called "gender-based motivation"), making it into an evidentiary piece of information that must satisfy the high burden of proof imposed by legal professionals, against the public interest of safeguarding the right of *all* women to a life without violence.

Finally, in Chapter 3, I present the first comprehensive court data on domestic violence involving queer women in a major Brazilian urban city, spanning from 2009 to 2022. I discuss findings of prior international research and use them as stepping stones to evaluate whether they hold true or not in the sample I analyzed. The parties' sociodemographic characteristics are presented, along with the most reported violent incidents, the complexities of help-seeking behaviors by queer plaintiffs, and data on processing of the cases by the CJS (such as the types of protective orders most requested and granted and arguments given by judges for not granting them). I further discuss sentencing patterns concerning the gender and race of judges and the extent to which the decision-maker's identity might impact judicial decisions. All of this showed how the invisibility of Black and queer experiences is a product of careful consideration by legal institutions, and the general lack of vocabulary to deal with these cases serves to obscure how heterojustice has always actively produced knowledge about the oppressed and their lives.

1 HETEROJUSTICE

1.1 "A very traditional tribunal": office liturgy and obedience to hierarchy

Each legal institution has a particular history and habitus[26-27]. But how does heterojustice function as a coherent system of justice with a specific internal logic? Here, I aim not to focus on the singularities and the conflicting interests of some of its components – in this research, represented by the TJMG, PCMG, and MPMG –, but rather to look for their commonalities. They complement each other as they all serve as parts of a "chain of legitimacy" while exercising the CJS's symbolic power: its pervasive rhetoric of autonomy, neutrality, and universality is part of the work of rationalization needed to make the system of legal rules appear to those who impose it, and to those who are subject to it, as totally independent from the power relations that it sanctions and consecrates (Pierre Bourdieu, 2010, p. 212, 216, 220). Rather, as I will show throughout the next chapters, legal reasoning is more commonly characterized by inconsistency and discontinuity, making the "interstices of legal rigidity and judicial flexibility" (Anne Worrall, 1990, p. 20, 21) a productive and most interesting subject of inquiry for sociology of law, criminology, victimology, and legal theory.

Heterojustice is not a concept I found in literature. Referring to Minas Gerais' historical heritage as a place where men fought for freedom and independence from Portuguese colonial rule[28], J-1 used this term to pinpoint the hyper-masculinity that still characterizes TJMG's traditional ways since colonial times (a tribunal that, since its establishment in 1873, never had a woman president or a woman general inspectorate). "The majority of the tribunal's composition is male[29]. Education in Minas Gerais still, although it is changing a lot today, is

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[26] A few excerpts from this sub-section were previously published in *Revista Direito e Práxis* (v. 15, n. 1) under the title "*Apresentando Julgamentos Feministas Brasileiros*", co-authored with Fabrizia Pessoa Serafim. Here, I only use passages that were written by me.

[27] Conversing with Pierre Bourdieu's sociological concept, "*habitus*" refers to "socially acquired tastes, preferences, ways of thinking and acting, learned and otherwise acquired from one's family, education, and life experiences" (Nicole Van Cleve, 2016, p. 218). When one focuses on the juridical field, *habitus* may be understood as "pre-reflexive determinations inscribed in the bodies and minds of individuals who make up the legal elites. These are incorporated into the subjects during their respective socialization processes and find their reflection in the historically pre-constituted tendencies in the fields where the agents operate. These fields, in turn, limit the spaces of possibilities, that is, they condition what can or cannot be done by these individuals" (Felipe Castro, 2018, p. 25-26).

[28] Minas Gerais' flag actually says: "*libertas quae sera tamen*", or "freedom, albeit late", the motto of the "*Inconfidência Mineira*", a separatist movement led by local elites in 1789 motivated against the Portuguese crown's excessive taxation on gold revenues.

[29] Data on this is hard to find. The last two "censuses" of the Judiciary contain no reliable information on the gender and racial composition of the TJMG (Brasil, 2021; 2024a). I could only find data on the overall composition of all state courts in the country. Regarding gender, 59.3% of judges in these courts are male (Brasil, 2024a, p. 22).

oriented towards this reference of masculinity to occupy these positions", said the interviewee. "These positions", I might add, may also encompass the MPMG and the PCMG, as both are still fiercely masculine in their compositions: for the former, 64.9% of prosecutors are men, and 56.6% of them are either White or Asian[30] (Brasil, 2018a, p. 77; Brasil, 2023b, p. 40); for the latter, 71.4% of police chiefs ("*delegados*") are men[31] (Fórum Brasileiro de Segurança Pública, 2024, p. 53).

As J-1 recalled, Minas Gerais is the "most fragmented state of the federation", divided administratively in 853 municipalities, a sub-division that runs along economic and gender lines: a state systematically exploited for mining (its name literally means "General Mines") whose geographical divisions, far from being natural, are rather "spatial delineations of power relations" (Durval de Albuquerque Júnior, 2011, p. 36) that placed men as the natural incumbents of positions of political power along its history.

> We have a cultural overload of male leaderships exploiting these localities. So, we successively pass this from generation to generation, and consequently, those who were raised in these places were and are, along with their generations, occupying positions of control in our state. That is why this heteronormativity in our state is very present and very strong (J-1).

The naturalization of this powerful straight male figure comes with very sophisticated rituals that sacralizes the tribunal as a site of deep formality and solemnity that commands universal respect and oozes the expectation of domination from the "profane" (or the layperson), as Pierre Bourdieu (2010, *passim*) called. "A very traditional tribunal", full of "rules, liturgies, and formalities" (J-1), that gives off the impression of judges as more like gods than men – "it is more of an elite role; it's a position that earns more, you know, so it ends up having this 'god-like' air around them, right?" (PC-4) and "Everything will be on hold, waiting for His Highness to step down from his pedestal to attend to us" (PC-6). The regal/religious parallels are striking: ceremonial rituals, a male conductor in proximity to the divine, constant usage of Latin expressions, and ancient "priesthood" formal wear ("*vestes talares*") so as to "confer solemnity and respect to judicial acts" – all black (to denote self-sacrifice) with white details for judges (to represent "impartiality"), red details for prosecutors (standing for "rigor in the enforcement of the law"), and green details for lawyers ("hope in the resolution of conflicts based on the enforcement of the law") (Brasil, [2019-2024]b).

[30] Asian persons comprise only 2.2% of prosecutors in all Public Prosecutors' Offices in Brazil (Brasil, 2023b, p. 22), so it is safe to say that most of this frequency of 56.6% is comprised by White men in the MPMG.
[31] I could not find official data on the racial composition of the PCMG.

Reverential posturing, formal clothing, baroque and self-aggrandizing language are the common demeanor among legal professionals in official settings, a subtle dance full of choreographed gestures that provides, at once, shared membership among peers and a hierarchical sense of the juridical division of labor for whoever is in the bottom of the status/prestige ladder (judges on top, prosecutors in the middle, police chiefs in the bottom[32]). As in a classroom of a typical law school, the CJS is also "hierarchical with a vengeance": all this modeled behavior "encodes the message of the legitimacy of the whole system into the smallest details of personal style, daily routine, gesture, tone of voice, facial expression", serving as a true "language", a way to convey that one "knows what the rules of the game are and intends to play them" (Duncan Kennedy, 1982, p. 56, 66). This language, of course, acts as a gatekeeping device between the divine-like and the profane: it establishes a clear line of who belongs and who does not. So, when an interviewee, a judge, kept referring to me as "Doctor Samantha" or "Professor Samantha", and referring to the TJMG as "the Distinguished *Tribunal de Justiça de Minas Gerais*", this ceremoniously reaffirmed a "hierarchical distance" (Antônio Paixão, 1982, p. 66) between us. It meant: "the tribunal lets you in because you belong – for now".

This "office liturgy" helps elevate the judicial authority of the act of interpretation as a rational and impartial distillation of the legitimate and true meaning of legal rules; it transforms a social conflict between interested parties into a regulated debate among competent professionals. This "collective work of sublimation" attests that the judge's decision expresses not the will and worldview of who makes the decision, but rather the "*voluntas legis*" or "*voluntas legislatoris*" (the will of the law or the legislator). Legal definition, therefore, becomes an "effective fiction" created by authorized professionals whose interpretation is the "legitimate, just vision of the social world" (Pierre Bourdieu, 2010, p. 212, 225, 229, 253). In this work of sublimation, "impartiality" becomes an operative notion in the dehumanization of the act of deciding: its common sense involves ideas such as objectivity, rationality, and autonomy by focusing only on what is in the proceeding, not allowing the judge to sympathize

[32] This is not to say that police chiefs do not enforce these hierarchical ceremonies while discharging their duties. See, for instance, what Antônio Paixão (1982, p. 66) said of police stations' internal organization in the metropolitan region of Belo Horizonte in the early 80s, and how this analysis survived the test of time: "Police chiefs wear suits and ties, while other police officers dress informally; the police chief is always addressed as 'doctor'; incident reports use the formal second person plural, and subordinates only enter the police chief's office at their command". There is a clear hierarchy between law graduates (judges, prosecutors, police chiefs) and other personnel, as well as between all of them and the profane.

with the cases that come to their desk. The opposite of that is to be subjective, partial, activist, interested in the cause, and therefore, a *bad* judge.

In these terms, impartiality adopts more utopian contours than a properly observable reality in forensic routine. The danger (even if abstract) of being seen as an unethical judge, however, generates concrete effects. Even if some judges recognize the importance of feelings, preconceived notions, and values while discharging their duties, they also know that this insight "cannot be made explicit to the procedural actors, nor written in the judicial records, because their expression would contaminate the appearance of impartiality that needs to exist to sustain the myth of disinterested jurisdiction" (Bárbara Baptista, 2013, p. 305). Without this founding myth (and the performative reinforcement through liturgy by all legal professionals), the Judiciary "would close its doors", as a judge stated in a qualitative study conducted in Rio de Janeiro's courts (or TJRJ) (Bárbara Baptista, 2020, p. 210). A strict hierarchy is needed to organize not only judicial instances and their powers, but also the norms and sources that confer authority to judicial decisions: impartiality, defined as the observance of formal and logically coherent rules from a non-political doctrine, is needed so that the arbitrariness – and the privileged origin of its ranks – that lies at the center of legal discourse may not be revealed (Pierre Bourdieu, 2010, p. 214, 228, 243).

To be clear, this specific notion of impartiality has nothing to do with the necessary guarantee against trafficking of influence, favoritism or persecution of procedural parties, and other acts of corruption in the exercise of the office. These safeguards, of course, need to exist. What I am stressing here is a reality that no legal abstraction can contain: the people who walk the corridors, sit in chairs, draft decisions, speak in hearings, adjudicate in sessions, and order arrests and releases, are flesh and blood; they are profoundly mundane. The expectations of a "good judge" – one who alienates their own personality and obliterates themselves to transcend to a higher position that allows them to make a just decision – are archetypal of a heroic and superhuman figure that effectively dehumanizes the fallible judge who actually exists (Jane Pereira; Renan de Oliveira, 2018). Its disembodied assumption expects an untenable position from very human judges who hold very particular social positions.

This sublimation process paints a "good judge" with specific qualities: one has to ignore the historical and social context in which their decisions will have effects, to distance oneself from emotions that the narratives of the proceedings may cause them, and to seek to forget (and not keep in check), when deciding, the formative past experiences and worldviews one carries while occupying the judge's seat. It demands a transcendental stance that, being an extremely

vague ideal in theory and unattainable in practice, creates a hermeticism that rejects, by default, discussions about the CJS's role in the (re)production of social hierarchy. Moreover, it disregards the necessity of openness to distinct perspectives and experiences that need to be considered and evaluated in the system's decisions, rather than obscured at the moment of interpretation. Acknowledging the existence of "situated knowledges" (Donna Haraway, 1988, *passim*), in this state of affairs, becomes politically costly.

In reality, Justice in Brazil (and everywhere) has always been political. The relationship between legal institutions and the political elites throughout various periods of its history is well-documented in literature – whether it be as a colony under the Portuguese crown (16th century until independence), as an imperial power post-independence (1822), during the nascent republic (1889), under the military dictatorship from the 1960s to the 1980s, or as a democratic republic (1988-). It is no small detail that the Minas Gerais' court of appeals (then called "*Tribunal de Relação*") was instituted by imperial decree, with appellate judges (all men) appointed by the emperor himself, Dom Pedro II (Brasil, [1997-2008]). Similarly, it is noteworthy that the first instance of the Judiciary in Minas Gerais (and all other provinces in the country), along with a decentralized police ("*Chefaturas de Polícia*") assisted with police chiefs ("*delegados*"), and public prosecutors in each judicial district[33], began to be organized by the imperial 1832 Code of Criminal Procedure and the Law No. 261 (1841) (Brasil, [2019-2024]a; [2024?]). For a long time, there has been a "symbiotic relationship" between Justice and political power, particularly judges, who were the true "pillars" of the structuring of a new order after independence, comprising a very powerful professional segment in the construction of Brazil as a nation (Gizlene Neder, 2007, p. 139).

During the period between 1822 and 1831, 33.33% of the emperor's secretariat, 41.66% of senators, and 27% of House representatives were simultaneously engaging in political activities and judicial duties as judges; in 1831, judges constituted 45.73% of the emperor's secretariat and 52.76% of senators (Felipe Castro, 2018, p. 251). A "privileged class [...], ideologically united by values, beliefs, and practices that in no way identified with the culture of the country's population", judges were the perfect public servants in a nascent modern state: they represented and developed "rigid, hierarchical, and disciplined forms of action that best revealed the pattern favoring bureaucratic practices for the exercise of public power and the strengthening of the state" (Antonio Carlos Wolkmer, 2003, p. 87). They were instrumental in combating the plurality of jurisdictions that existed during colonial rule, paving the way to a

[33] Note: the creation of a Public Prosecutor's Office as an independent institution only emerged with the republic.

unitary jurisdiction exercised by legal operators aligned with the monarchy's interests (Felipe Castro, 2018, p. 240). Moreover, alongside a competent bureaucracy, imperial power understood it needed to invent a new "national consciousness" to successfully centralize power in the image of the emperor. The formation of new legal professionals became central to this political endeavor, with careful attention given to the development of a new intellectual elite born and bred in Brazil, directing the "process of ideologization through education" (Gizlene Neder, 2007, p. 138). Indeed, in 1827, five years after independence, the first two law schools in the country were established.

All this modernization, however, even if somewhat inspired by the Enlightenment ideas of the French Revolution, had no intention of subverting hierarchy; quite the contrary. It was an "Enlightened absolutism": a tamed liberalism that preserved a rigid hierarchical social and economic order, with special attention to agrarian and slaveholding economic interests (Gizlene Neder, 2007, p. 146, 154). In reality, there was another enlightened revolution in the minds of Brazilian elites at the time: the Haitian Revolution. In 1804, revolutionary struggle is ended after Haitians had defeated sixty thousand English soldiers and forty-three thousand Napoleonic armed forces, making Haiti the first independent state built by former slaves and freed Black people (Marcos Vinícius Queiroz, 2017, p. 67). "The fear of the Haitian Revolution becomes the constitutive negative of state normativity throughout the 19th century, creating legal captivity for the Black population, both in slavery and in the post-abolition period" (Marcos Vinícius Queiroz, 2022, p. 57). This had profound legal repercussions in many countries, including Brazil, impacting both the definitional contours of legal concepts such as citizenship, property, liberty, and equality, as well as the enhancement of formal social control tactics employed against Black people.

The weaponization of the law's symbolic power in favor of a genocidal project of mass extermination and control of Black individuals was a significant aspect of the birth of the nation, especially during revolutionary times and internal unrest. Law and its professionals were never neutral. For instance, the 1824 Brazilian Constitution did not counter slavery despite its liberal ideals (Ana Luiza Flauzina, 2006, p. 54), which was formally abolished only in 1888, making Brazil the last country in the Americas to do so (Tamires Sampaio, 2020, p. 53). At the same time, despite other regulations deeming enslaved persons as objects, the 1830 Criminal Code considered them legal subjects only for the purpose of criminal punishment – notably, among many other crimes, vagrancy ("*vadiagem*"), a catch-all offense systematically used against Black and poor individuals, which criminalized not taking an "honest and useful occupation,

from which one can make a living" (Article 295) (Brasil, 1830). This actually gave permission and legal precedent to a broad discretionary power to police and judges to control and render suspicious the liberty of movement of racialized individuals in the country – a feature of Brazilian society still today. Underlying these legal texts was not rationality and universal values, but politically motivated fear brewing in the belly of the powerful: the prospect of an ungoverned mass of Black people with the capacity for self-organization foreshadowed not only the downfall of a profitable economic system of exploitation, but also of White supremacy itself (Ana Luiza Flauzina, 2006, p. 55, 56, 58).

In the latest major political rupture in Brazilian history, the military dictatorship (1964-1985), legal institutions again performed the role of providing legitimacy and the full coercive powers of the law to the regime. The conservative and authoritarian habitus of the Judiciary fitted comfortably with this new *status quo*, so much so that most judicial members voluntarily cooperated with the militaries in power, including the Supreme Court – whose president, Álvaro Ribeiro da Costa, was physically present at the House of Representatives when, in a concerted effort between insurrectionist congressmen and the military, the seat of the presidency of the Republic was declared vacant. After twenty-one years of extrajudicial killings, torture in dungeon-like police stations, persecution of political opponents and sexual minorities, censorship of the press and the arts, and curtailing of constitutional rights, the president of the Supreme Court at the time, José Carlos Moreira Alves, in his opening speech at the assembly that would draft the 1988 Federal Constitution (still in force today), "thanked the militaries for twenty years of government, which were coming to an end with a peaceful transition to democracy without a constitutional rupture" (Felipe Castro, 2018, p. 327).

During the "years of lead" ("*anos de chumbo*"), as this time of Brazilian history is frequently called, the designation of an "internal enemy" was not based only on political affiliations to the left, but also according to a specific sexual morality, one that associated homosexuality with "a form degeneration and corruption of youth". Again, the offense of vagrancy showed to be a powerful device, now to enforce a "hetero-military dictatorship" which was particularly brutal against queer people (Renan Quinalha, 2021, p. 18, 22). Even if the practice of "sodomy" was not criminalized since the imperial Criminal Code, sexual interactions deemed "unnatural" never ceased to be heavily controlled by the state's punitive power. Carnival was the only time for a momentary suspension of heteronormativity, as João W. Nery (2019, p. 17), the first transgender man to have undergone sexual redesignation surgery in Brazil, recalled:

> Outside of Momo festivities, a "man" couldn't dress as a woman, otherwise he would be arrested. It was enough to have longer hair or be an androgynous figure for the police to take them to the police station, accusing them of "vagrancy" or "indecent exposure". Most of the time, when detained, they had to perform cleaning services and sexual favors for the policemen to be released.

In Belo Horizonte, the reality of persecution against queer individuals was daily and vicious by the CJS, even before the military dictatorship was installed with the fierce support of military forces in Minas Gerais and the "*mineira* traditional family". Both the PMMG and PCMG were openly repressing LGBT+ individuals in the capital throughout the 60s, with raids, "cleaning" operations, and the shutdown of bars and nightclubs catered to this public (Luiz Morando, 2018, p. 53). With the dictatorship, repression got even worse, with spectacular police operations on queer hotspots in Belo Horizonte, such as "*Operação Limpeza*" (or "Cleaning Operation") (Renan Quinalha, 2021, p. 44). Vagrancy, lack of documents, indecent exposure, prostitution... all legal arguments, shrouded in law's legitimacy, employed by the police (and condoned by – at least – systematic omission from the MPMG and TJMG) to wipe queer existence out of public view.

One year before the coup, under the behest of the PCMG, police raids had already started at the capital, with the aim of "morally clean the city [of Belo Horizonte]" (Renan Quinalha, 2021, p. 44). In 1963, a "moralization campaign" led by the Public Safety state secretary, with the support of the PMMG and PCMG (especially the police station tasked with combating vagrancy, called "*Delegacia de Repressão à Vadiagem*") expelled "30 sexual inverts" from Raul Soares square, a meeting point for prostitutes, pot-smokers, petty criminals, and queer people in the capital at the time. In 1965, the police chief from the "*Delegacia de Costumes*" (or "Morality Police Station"), Francisco de Assis Gouveia, set to ban men from going out on the street with a feminine-presenting look, punishable by arrest: "Tight pants, lipstick, and face powder, from this day forward, according to the police chief, 'are strictly forbidden for inverts, and if they persist in the abuse, they will be arrested by investigators'" (Luiz Morando, 2018, p. 55, 57). Anyky Lima, one of the most important leaders of the trans and *travesti*[34] movement in the country, as well as her fellow activist, Vanusa Morimoto, remembered the "total submission" relationship with Belo Horizonte's CJS during the years of lead as the following:

[34] "*Travesti*" is a Brazilian queer identity that may be defined as a "person who experiences female gender roles but does not identify as a man or woman, understanding themselves as part of a third gender or a non-gender. Referring to them using feminine pronouns, with the article 'a', is the respectful way to address them" (Jaqueline de Jesus, 2012, p. 16).

> [*Anyky Lima:*] I was greatly threatened here in Minas Gerais, by the neighbors and by the police. I was pelted with stones, I was cut, and I was repeatedly arrested on charges of vagrancy and for lack of documents. They would arrest us on Friday and release us on Monday. In prison, besides cleaning bathrooms and getting slapped around, we had to have sex with the police officers.
>
> [*Vanusa Morimoto:*] I was arrested many times at the police stations; it was very common at the time, for the crime of vagrancy [...]. At the police station, we would have sex with the officers, smoke marijuana; it was relatively calm. [...] When we were arrested at the station, they would release us days later. [...] Our relationship with the police was one of total submission. There were officers who turned a blind eye to prostitution spots on the street in order to collect bribes from the girls. When one of them rebelled against any abuse, it was straight to the police station for her... (João Nery, 2019, p. 91, 156-157).

Discretionary power is associated with a "stockpile of knowledge" that, in the routines of punitive agencies such as the police, organizes humanity into reductive and stigmatizing categories based on arbitrary criteria, commonly referred to as "*jeito*": a way of carry oneself that encompasses linguistic, bodily, and facial characteristics and mannerisms. This may label an individual either as an honest working-class person ("*trabalhador*", "*pessoa de bem*") or as a vagrant and deviant ("*vagabundo*", "*marginal*") – in short, a "bandit" ("*bandido*"). According to this legal common sense, the police officer acts as the "garbageman of society" (Antônio Paixão, 1982, p. 75, 79), tasked with removing the undesirable from the sight of the well-intentioned Brazilian (and particularly *mineira*) traditional family, a function that is seldom kept in check by prosecutors at large[35]. The imagery of "dirty work" and the almost military mindset are strong characteristics of the "first responders" of the CJS to this day: the expectation of a new police chief may be to deal with the "scum" ("*escória*") of society (PC-6), which justifies the only possible language that they will be able to understand: violence.

> When you apply for the police, [...] that's the mindset. You say: "No, I'm going to work as a police officer, carry a gun, ride in a patrol car with the sirens on, making noise, with a gun on my hip, and shouting "Stop, police, hands on your head!" When you apply, that's what you think it is, right? (PC-7).

Until recently (around ten years ago), this very *macho* mindset was mentioned as an ideology instilled in the Minas Gerais' Police Academy ("*Acadepol*"), a necessary training for all police chiefs who passed their entry exams. One police chief remembered how militaristic

[35] The Public Prosecutor's Office is tasked with the oversight of police activity, according to the 1988 Federal Constitution (Article 129, VII).

the training was, with very degrading disciplining of the "*jeito*" of the newest members of the PCMG:

> It was like the Military Police. We had to salute, stand still singing the anthem, and do marches. [...] Oh, our hair had to be tied in a specific way. Some ridiculous things like that, you know? Shoes had to be black, no lipstick, no makeup, and so on. We looked like a bunch of robots, a bunch of little soldiers, you know? [...] They would berate us, you know? Very much like military stuff. [...] I don't know why, it's a... kind of a remnant of the dictatorship, you know? (PC-6).

As other researchers have noted, civil police in Brazil still have a strong authoritarian institutional culture, characteristic of repressive juridical systems (Ludmila Ribeiro; Igor Machado, 2014, p. 177). This culture also reflects a corporatism stance that repels or at least hinders outside accountability and fruitful dialogue with external actors. Some even consider the PCMG (responsible for criminal investigations) to be even more closed off than the PMMG (tasked with preventive policing), even if both may be deemed as almost "total institutions" (Cláudio Beato Filho, 2015, p. 34, 36). As rightly stated by Julita Lemgruber (2002, p. 7), Brazilian police forces have always been conceived as instruments for security of the state and the ruling classes:

> None of the political transitions in our history – even those involving relevant changes in other sectors – have substantially affected the continuity of this "parallel power", whose basic function has been to maintain not public order in the modern sense of the term, but hierarchical order, founded on the deep economic and power inequalities that have characterized Brazil's social formation throughout the country's history. This explains the persistence of police forces as an "arbitrary regime", even under democratic Constitutions, and their extraordinary ability to resistance attempts at oversight and institutional reform.

The literature, however, rightly notes that this "democratic deficit" – with its bureaucratic insulation, hermetism, elitist rituals, and distant citizen participation (Rosane Lavigne, 2011, p. 84; Salete Maria da Silva et al., 2016, p. 164) – is not a special characteristic of the police. It is, rather, the normal functioning of the entire Brazilian judicial system. The Public Prosecutor's Office still privilege a desk-bound approach to its activities (Ludmila Ribeiro, 2017, p. 78), as well as a complicit posture regarding police brutality (as stated by MP-2, the MPMG acts as "the PMMG's lawyer"). It has weak accountability mechanisms and broad discretionary powers, all wrapped up in an idealism of representing an "incapable society" from their inept politicians ("We are going to change Brazil! We are going to make this work!", as

MP-4 recalled), with some characterizing the institution as a "political agent of the law" (Rogério Arantes, 2007, p. 327, 330). Furthermore, the Brazilian Judiciary is characterized by some as a "magistocracy" ("*magistocracia*"): authoritarian (co-responsible for mass violation of rights, such as mass incarceration and police brutality), autocratic (represses the independence of ideologically different judges), autarchic (refuses accountability mechanisms), income-oriented (seeks to accumulate wealth through politics), and dynastic (family favoritism is common practice and tolerated) (Conrado Mendes, 2023, p. 11).

Generally, the legal professionals I interviewed confirm the literature. Despite the common instinct of self-preservation by many of them – "The big problem I see is that often people don't realize the volume of judicial work. And sometimes they want to blame the Judiciary for everything" (J-6) and "Just the existence of the correctional body is already a sign that there is no public function without what we call 'accountability'" (J-4) – some instances of self-reflection also took place. The TJMG and the MPMG were not immune from criticism by their peers for their elitism and common lack of democratic openness:

> It is easier to speak with Justice Carmen Lúcia [*from the Supreme Court*] – indeed it is, because she actually answers – than to sometimes speak with a judge (J-3).
>
> But there used to be judges who wouldn't see any lawyers, right? Now, these days, I think they do, right? (J-7).
>
> The Public Prosecutor's Office mimics a "stereotype" of the Judiciary, which is distinct from the constitutional project, being an institution that is still very hierarchical (MP-2).
>
> The Judiciary is more distant. I mean... in terms of engagement (MP-6).
>
> I think there's a distance, I think they [*judge and prosecutor*], like... [...] "I am on my pedestal, I don't need to come down", right? (PC-4).
>
> What we [*police officers*] deal with, nobody wants to deal with. The judge doesn't want to see that. The judge wants to hear the guy when he is already cleaned up, coming from the prison already... processed, you understand? (PC-7).

Naturalizing contradiction is a genetic feature of the modern Brazilian state, a task relentlessly executed by jurists until today. Since its birth, rigidity of formality and procedures coexists with arbitrariness, social hierarchy, and violence. Legal theory and practice play a strategic role in mystifying its complicity and participation in providing legitimacy and a formal architecture to sustain systems of power and privilege along history. Past legal texts (some of

them still enforceable in more recent law, such as vagrancy[36]) are absolutely not memorabilia of a distant reality: *their legacy is to provide a framework of domination that commands a complex and constant effort of passiveness through cognitive dissonance from us all*. It is the "logic of conservation" of juridical labor at work:

> [...] it continuously connects the present to the past and guarantees that, except for a revolution capable of challenging the very foundations of the legal order, the future will mirror the past and the inevitable transformations and adaptations will be thought of and expressed in the language of conformity with the past (Pierre Bourdieu, 2010, p. 245).

It is this cognitive dissonance that allows legal professionals to still uphold lofty ideals of their institutions (J-1: "a citizen Judiciary: participatory, collaborative, welcoming, with very keen listening"; PC-5: "a citizen public safety" that "promotes rights"; MP-2: a Public Prosecutor's Office that acts as a "counter-power"), and of themselves (J-7 and MP-6: "promoting justice"; MP-5 and PC-3: "making a difference"; MP-3: "helping people"; PC-3: "being the first guarantor of peoples' rights"). In the halls of power, "sincere fictions" (Nicole Van Cleve, 2016, p. 53) about the magnanimous function of the law as an instrument of social pacification are constantly reinforced and inculcated so as to keep obfuscating the real extent of our social and institutional problems, and what and who are causing them. If heterosexual society is the one that not only oppresses queer people but also all those in the position of being dominated (the "different" and the "others") (Monique Wittig, 1992, p. 29), then *"heterojustice" is a system of legal rules and institutions that overtly or surreptitiously enforces gender-based and sexuality-based hierarchies (and commands obedience to them) by conflating them with justice. Through its operation, domination becomes law.*

1.2 "A bourgeois, conservative, and individualistic profile": judicial aristocracy

Usually, research on judicial behavior focuses heavily on *what* – the decision-making (arguments, timing, processing, discretionary powers, and so on) –, and less on the *who* – the people taking the decisions (where do they come from, how and why did they get there, their ideology and lifestyle) (Conrado Mendes, 2023, p. 63). If social privilege often accompanies epistemic power (Djamila Ribeiro, 2017, p. 24), knowing those who bring these institutions to

[36] *Decreto-Lei* No. 3.688/41, Article 59: "To habitually surrender oneself to idleness, being fit for work, without having an income that ensures sufficient means of subsistence, or to provide for one's own subsistence through illegal occupation: Penalty – simple imprisonment, from fifteen days to three months".

life becomes important not only for understanding their decision patterns, but also for recognizing how these institutions act as political actors in the society they are part of. The following story is a very telling account in this regard. Notice the entitlement of a woman judge who called a police chief, screaming, because they had arrested a "playboy" who sexually assaulted a cleaner working in a high-end nightclub in Belo Horizonte:

> Then the lawyers went there, talked to the judge – no judge had ever called me during my shift. She called, saying his arrest was my responsibility, that it was absurd, that... because of a kiss, just a kiss, I was arresting him. Then I said: "Ma'am! A kiss?! Didn't you see the video?! She was working, she was sexually harassed!" "Oh, but he did it as a joke!" I said: "Then do this: just as I arrested him, you can release him! Issue the warrant!" "Oh, but I can't issue a release warrant! Oh, I need other elements to issue a release warrant, I can't do it! And if he goes to prison and something happens to him, it will be your fault!" And she was yelling at me on the phone, yelling! Yelling! Then I said, "Wow, this is absurd! What is this?!" Then she said: "I want a phone number... fax." I said, "There are no more fax machines in police stations!" Then she... I said, "Just do this: isn't the court officer on duty? Send the court officer here with the decision!" Because she said he had gotten a hair transplant, [...] his hair was already long, and that if they shaved his head in prison, it would be my fault. And that they couldn't shave his head. Then I said, I insisted... I said, "So do this: send the court officer here with the decision!" Then she sent the court officer there with the decision. Because I said, "No, I won't accept it over the phone either! Send the written decision here with your signature!" Then she sent the decision, stating that they were not to cut his hair. Can you believe it? (PC-4).

This interaction not only highlights the hierarchical division of legal labor I mentioned in sub-section 1.1 – judges at the top, police at the bottom – but also indicates how class complicity may arise between legal professionals and *certain* parties. In a country plagued by mass incarceration of Black and poor people, it would be difficult to find a judge willing to go out of their way during a shift to ensure a defendant does not have their hair shaved off. This type of "VIP" treatment and the exonerating language that accompanies it ("just a kiss", "a joke") is an intraclass privilege: it is easier to sympathize when the defendant appears it could belong to one's own social circle; likewise, it is easier to downplay the victim's pain when she looks like one's domestic worker. "The closeness of interests and, above all, the affinity of *habitus*, linked to similar family and educational backgrounds, favor a kinship of worldviews" (Pierre Bourdieu, 2010, p. 242).

In Brazil's CJS, prosecutors and judges are typically part of the economic and political elite. They hold the highest-paying positions in public service[37], enjoy special working benefits not accessible to the masses (especially stability in the job for life, two months of vacation, and other add-on benefits on their salary), and collectively wield a kind of power that can even influence the course of national politics and the enactment of consequential legislation. It is not uncommon to find several individuals from the same families occupying prestigious positions within legal careers, sometimes with the "help" of powerful family members in these institutions[38]. "Because there are colleagues who recommend, you know? Relatives and such, for... – I think that's *so* [*emphasis*] shameful – for the son to do something, for their law firm to do something..." (J-7). In state's Public Prosecutor's Offices, for instance, prosecutors are still, in large part, "heirs of the imperial *bacharéis*": 35.6% are descendants or nephews of lawyers (Ludmila Ribeiro, 2017, p. 60). They, similarly to judges (Marcelo Ramos; Felipe Castro, 2019, p. 3), because of the position of prestige and social dignity they occupy, are "closer to the image of an aristocrat than of the people".

The "main" entry into public legal careers requires passing a highly competitive public exam ("*concurso público*") that tends to favor young candidates who can afford special preparation courses and have the financial means to dedicate years to study without immediate labor market pressures. "These young people who started entering the profession, always coming from... an upper middle class or who had the means to just study without working, who did not have... contact with the population, so to speak, these people began to join the profession" (MP-4). Designed to be a guarantee of accessibility to public office, this exam, which is organized by the same social segments since many generations, in practice makes the recruiting process highly restrictive to the majority of candidates, leading to a high

[37] Brazilian judges have a higher income than judges in the largest economies in the world (such as the United States, Germany, and England) and are in the top 0.2% of the Brazilian social pyramid (Conrado Mendes, 2023, p. 60). Because of Resolution No. 133 from the CNJ, legal elites have consolidated the interpretation that the Constitution (Article 129, Paragraph 4) guarantees equality between the careers of judges and prosecutors, including for remuneration purposes: neither can be considered inferior or superior to the other, which means both careers earn the same.

[38] See, for instance, the lobbying around the nominations of the daughters of two Supreme Court justices to occupy a seat at TJRJ and TRF-2. One fifth of seats in federal and state's appellate courts must be occupied by lawyers, who must run in an election inside the OAB, who will then present a list of six names to the court. Subsequently, the court will vote for three names out of the list, and the final decision on who gets the seat will be made by the state's governor (in the case of a state's court) or the president of the republic (in the case of a federal court). Justice Luiz Fux justified his intentions of launching his daughter's name to the bid to the then governor of Rio de Janeiro in this manner: "I have nothing to leave her" (Malu Gaspar, 2016), as if the position was family inheritance. To journalists, justice Marco Aurélio de Mello (now retired) said: "I never asked for votes, I only called after she visited them [*the appellate judges from TRF-2*] to thank them for their attention to her" (Mariana Haubert, 2014). As Brazilians say: "*para bom entendedor, meia palavra basta*" (or "to the wise, half a word is enough").

homogenization of its ranks – mostly male, elitist, and White (Ludmila Ribeiro, 2017, p. 60, 77). Once invested in the powers accorded by the state to a judicial authority, this particular *habitus* only serves to deepen the radical distance between legal professionals and the working people whose conflicts they will have to decide (Marcelo Ramos; Felipe Castro, 2019).

Because entering in these institutions means ascending socially, the initial motivations of many legal professionals are very mundane. Many look for stability: "I think I already had a profile of seeking security, a job that would offer me that security, that stability of a *concurso público*. I admit that I arrived a little bit like, on a parachute" (PC-1). Others are drawn by the high pay: "the earnings of judges improved, working conditions also improved, making it more attractive" (J-6) and "I thought that practicing law didn't have good... pay and such. So, I went to college and started studying for the exam" (PC-7). Some want more autonomy in their work, "different from practicing law [*as a lawyer*]" (MP-5), with more flexibility of working hours (J-7), features that can be seen as a sign of power and status. "I will opt for a legal career, which has autonomy, a certain authority, a certain power and status, which is not the same as that of a judge or prosecutor, but at the moment I cannot reach those careers, so I will go for a police career" (PC-7).

Once inside, decisions on where to work are made with less latitude: administrative needs and rules (such as seniority or merit) restrict one's possibilities to choose where and with what to work. It is the rule to have people working in domestic violence with no prior interest nor training on the matter before going into office, holding only an abstract understanding of the MPL's text:

> I also needed some time to study gender (J-1).
>
> I didn't even learn this in college; I'm learning this in the police force (PC-2).
>
> I started my career without any specialized knowledge; life taught me a lot, and the women I assisted taught me a great deal (PC-5).
>
> I really didn't have much of a foundation (J-3).
>
> You start out lost, you say, 'Wow!'" (J-2).
>
> [...] when we start our career as prosecutors, we have the training course and that's it. So, when you move between prosecutors' offices and such, there isn't any further training, no (MP-4).
>
> I got here kind of raw (J-6).

Although judicial ideology upholds the view that all professionals are already prepared "because those who are not either will say they are not, or the oversight bodies will remove them from there" (J-4), some legal professionals are more upfront on the matter. Constrained decisions on where to work are still made, usually motivated by pragmatic reasons (and not necessarily vocation or interest in the field of work). For J-2, working with domestic violence was a way of staying put in Belo Horizonte with more leeway in defining compatible working hours with their family life: "to have my schedule at a time that I think is better for my routine [...]. So I went, right? So, like, I don't know, to say, 'oh, I went because I had the right profile', I don't think that was it, you know?". Because preparation for and participation in *concursos* are almost a job in itself, it is common to have people travelling and passing exams in other states, working in places that are far away from their families. For some, then, working with this subject was a way to stay in the capital, closer to the airport or to their hometown: "I wanted to take shifts precisely so I could come to [*name of hometown*], you know? So, like, I went, I asked to go. And some of my colleagues did too" (PC-6), and "So I preferred to stay in Belo Horizonte, which is the capital, and because it has an airport, it was easier to get around, and when I wanted to go to [*name of hometown*], it was easier" (PC-7).

To be clear, these motivations to enter the career and work with domestic violence are not, in and of themselves, indicative of a bad or incompetent professional. This is not a causal relationship. However, they do provide a facilitating environment for inconsistent and insensitive decision-making by professionals who hold power, are not subject to rigorous training or review, and are often disconnected from the communities, problems, and people they serve. This helps explain the hierarchical distance between the competent and the profane. Being part of the top 1% of the social pyramid, coupled with lax checks and balances, becomes a dangerous invitation to carelessness and distortion of the institutional mission:

> This is a criticism I make, but... the Public Prosecutor's Office and the Judiciary that I know have become very focused on their own guarantees, their own remuneration. It has become very self-centered, losing, let's say, that social commitment. [...] There has always been this issue of wanting to enter a public career because it offers stability, a good salary, and a better-paying career. But this has become something, well, absurd. And we began to notice that the colleagues who joined to work were very concerned with this, with the status, with the car they were going to buy (MP-4).

The "average pendular prosecutor" (MP-2), who "dances to the tune", becomes more preoccupied with maintaining privileges and nurturing a good relationship with the Executive

branch than fulfilling their obligations toward social justice, particularly when it involves standing against political power. If one views a public career merely as a means of social ascent or status enhancement, the justice component of the job gets easily lost. It becomes increasingly common for professionals to avoid entry-level positions in the countryside, where the state's presence is most needed, in favor of remaining in the capital, "where you can spend your money" (MP-4). Complaints like "Oh, I don't like the countryside" and "Oh, it [*the career*] starts far away" are standard among these professionals, much to the dismay of seasoned colleagues who have earned their "street cred" by working with highly vulnerable populations in small towns and with few resources. "[...] then you won't be able to be a prosecutor, because you start your career in the countryside! [...] You know this when you enter! It's no secret to anyone!" (MP-6).

Along with this physical distance between professional and profane, a symbolic distance fueled by elitism also contaminates notions involving poverty, crime, and identity, which directly impacts the interpretation and enforcement of the law. Explanations for why people commit domestic violence are often linked to a perceived lack of "cultural level" among the masses (J-6: "if the cultural level of our population improves, I think everything in Brazil will improve. [...] we have to improve [...] the level of education of the people, better distribute the income"), while affluent people are seen as more sophisticated, even when they perpetrate violence (PC-5: "the more typical violence are psychological, moral, and patrimonial"). A class-based distinction in access to assistance services, such as shelters, is also naturalized: "problematic" women – those addicted to drugs, homeless, and/or with mental health issues – are not allowed to stay in private hotels to be safe from their aggressors but only in public institutions, so they do not "bring problems" to the guests (PC-2).

Furthermore, a professional elite more concerned with constructing its own credibility in the face of public opinion than to effectively promote social transformation ends up prioritizing high-profile issues such as corruption and criminal investigations, rather than defending historically oppressed people, such as indigenous persons, *quilombolas*, and sexual minorities (Ludmila Ribeiro, 2017, p. 71, 77-78). The lack of preparation and ease when talking about LGBT+ experiences are a reflection of this distance. Conflating gender identity and sexual orientation was common during interviews – when I asked about lesbians/bisexuals, some would start talking about trans persons as if they were the same. LGBT+ individuals are still exotic to the typical legal professional: "The three main issues for transsexuals are: name, registration, and bathroom. These are the main issues for transsexuals today. Transsexuals often

lead a nocturnal life. We don't encounter transsexuals during the day" (J-1). In a country with worrying accounts of hate-related homicides against trans persons with high levels of cruelty (Organização dos Estados Americanos, 2015, p. 97), all the complexity and courage of the fight led (in broad daylight) by Brazilian trans persons for a life without violence is not recognized by heterojustice.

This hierarchical distance (both physical and symbolic), of course, comes with a very specific worldview of law and society. Nowadays, a "very strong conservative wave" (MP-4), with several religious and conservative colleagues (J-2), further entrenches an already "liberal-conservative environment" (MP-2) in these institutions. Some legal professionals identify this as an ideology that makes legal institutions identify more with dominant classes and thus be more prone to maintaining the *status quo* – "let's keep what's good, let's stay and not be destroyed" (MP-4). This is the lingering "Enlightened absolutism" mentioned in sub-section 1.1, still at work. But legal institutions, as I have been saying, are not immune to the winds of politics. Organizing around conservative values has surged in some quarters since the ascension of the far-right to the highest office of the land. The creation of the conservative "*MP Pró-Sociedade*" in 2018, a private association comprised of prosecutors from all regions of the country, is a direct by-product of this national context and a significant example of the change of tides. Created amidst the turmoil caused by the electoral presidential race that led Jair Bolsonaro to power, many prosecutors from the MPMG helped to build it from the ground: five are founding members, and 32 (out of 44) formally adhered to it.

Among its core tenets, the Public Prosecutor's Office is framed not as an agent of social transformation but as a defender of society, with conservatism presented not as an ideology but as a self-evident truth: "it is a natural tendency" because "people do not want the good and beautiful things to be destroyed to make new things on top of the ruins" (MP Pró-Sociedade, 2018). Named by the association as "criminal effectivism" ("*efetivismo penal*"), this initiative reinforces the pervasiveness of the social defense ideology that commonly plagues the Brazilian CJS. By mobilizing expressions such as "good people" ("*pessoas de bem*") and "banditolatry" ("*bandidolatria*"), it advances a hardcore criminal approach that defends the "seclusion of the criminal" and the "right of society and victims to defend themselves" (MP Pró-Sociedade, 2018; 2019). Seizing the opportunity of a favorable environment for this type of discourse, heterojustice upholds the principles of "legitimacy" and of "good and evil" in criminal matters: the delinquent is seen as a negative and dysfunctional element, and criminal deviation is the evil that must repressed by society, represented by the (good) state (Alessandro Baratta, 2002,

p. 42). To meet this goal, hyper-violence is routinely accepted, and interinstitutional complicity (judges – prosecutors – police officers) must function systematically, downplaying or negating brutality altogether by giving it a legal veneer ("self-defense", "victim's rights", etc.). Now, more than ever since the promulgation of the 1988 Federal Constitution, the "*bandido bom é bandido morto*" (or: "a good bandit is a dead bandit") motto becomes a rallying cry for conservative legal professionals, now empowered not only by the authority of the office but also by public opinion.

This kind of legal western, which frames complex social problems as a battle between the "good guys" and the "bandits", is a framework that also seeps into domestic violence adjudication. However, when it comes to women victims, the aggressor's humanity is partially preserved: he is part bandit, part the "average family man". Meaning: "a good man, a good family man, someone who works, that has a good conviviality with his coworkers, with his family" (J-2); "common people, who do not accept to be in that position. Many times, they say: 'I am not a bandit, I am a hard-worker'" (PC-4). "Law and order" coexist seamlessly with *macho* leniency (see sub-section 1.3). Either way, the CJS keeps performing its self-aggrandizing role, enabled by this specific legal habitus. The possibility of violence is always there, "in the pen of the justice system", ready to curtail freedom for everyone involved: after all, "the criminal justice system is pure violence" (MP-1).

1.3 "Feminist, full of *mimimi*": gender ideology and stigmatization of subversive members

If one reads most doctrinal books and articles on domestic violence from Brazil, those aimed at law students and legal practitioners, chances are that the reader may end up with the impression that the battle has been won. The good fight is over: the MPL is enacted, Brazilian society has heeded the call, and the issue is being taken seriously, including by its institutions – *especially* the CJS, now better equipped with specialized courts and efficient legal mechanisms to steadfastly enforce the new legal framework (though some acknowledge how much progress still needs to be made)[39]. One might even get the impression that a new

[39] "The Maria da Penha Law, by creating the Domestic and Family Violence against Women Courts, provided a completely different approach to the conflict, as it equipped these judicial bodies with a whole preventive and supportive apparatus for the victim and the aggressor (as well as for family members and witnesses). Because of this, the functioning of these Courts differs significantly from that traditionally left to criminal justice, as it does not limit itself to addressing criminal responsibilities and handing out punishments" and "The number of Police Stations and Domestic and Family Violence Courts, for example, is quite small and usually concentrated in large metropolitan areas" (Alice Bianchini, 2014b, p. 21, 25).

consensus has emerged on the matter: that gender-based violence, especially in a domestic context, is universally recognized as a serious issue and a matter for the state[40]. The issue is often framed as a challenge of ensuring the promises of the law come to fruition, and even when criticism is directed at law enforcement, institutional-level critiques are usually absent, making it seem like a mere issue of insufficient training[41] and/or infrastructure[42].

But reality in the field might feel a lot more complex. I asked: "Would it be fair to say, in your perception, that today the issue of gender-based violence in the courtroom is still seen as minor, secondary, not as important as other matters?" The response: "Your statement is perfect. It is fair, *very fair* [*emphasis*]" (J-5). As I mentioned before (sub-section 1.1), part of the operation of heterojustice is to shroud domination with a legal veneer. Nowadays, the most common discourse that legal professionals will adhere to – at least in public – is the one we want to hear: domestic violence is a public issue, it is important, and we, the CJS, take it very seriously. But this is only the surface, the said veneer: in daily forensic life, resistance is still widespread and rampant. The majority of legal professionals I talked to acknowledge this, even if some couch it in more generous terms, as a work in progress.

The most common reason given to explain this rabid resistance is plain *machismo* on the part of legal professionals. There is a sexist continuum over time: although the long arc of history is bent towards more openness to the subject (especially due to the protagonism of women operators within these spaces), hermetism and conservatism die hard in these institutions and show no indication to subside anytime soon. Dealing with "the victim of domestic violence" and their recurrent needs is seen as cumbersome by many, as some recalled hearing from their peers:

> The judges would say, "Well, they come here making all this fuss, but when it comes down to it, they don't press charges, they don't do anything, they come and say they want to give up" [...] "Don't these women have anything to do?! Don't they have a pile of clothes to wash?" (J-7).

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[40] "We are all treated by the State as equals in rights and duties, and it is no longer acceptable to view women as objects or property. Any form of violence against women is no longer tolerable" (Brasil, 2018b, p. 18).

[41] "The Maria da Penha Law is considered one of the three best in the world. However, statistics show that homicide rates have not decreased since the law came into effect. What failed? The law or its enforcement? The truth is that those responsible for enforcing the law fail every day" and "Due to the lack of training and understanding of violence, authorities mistreat women, fail to take action, attempt to reconcile the victim with the partner, or question the woman's responsibility in the incident" (Valeria Fernandes, 2014, p. 49, 51).

[42] "The police authority must have resources, appropriate spaces, and qualified professionals to receive those who arrive suffering, hurt, and afraid. It is also imperative to create Domestic and Family Violence against Women Courts, equipped with interdisciplinary teams, not only in capitals and large cities. Likewise, it is essential to establish a support network that ensures the victim that protective orders will indeed be enforced. Despite all these challenges, this law is recognized as the most effective in the country" (Maria Berenice Dias, 2018, p. 11).

> I even talk a lot about my colleagues, the men, and they say things like, "Oh! She goes there, and then she comes back withdrawing the complaint, she's already living with him again!". I think this is also seen very poorly. Because people don't study these gender issues (J-2).

> "Oh, but you are going to listen to the same woman two, three times, you are going to try to do something, and she will go back to her husband, you don't see any results in your work, it's not an operational police station" (PC-3).

> [...] there are still many people, both men and women, who are very sexist, who see this as unnecessary, think it's an exaggeration, think it's not like that, that the justice system is still used a lot by women who want to get men out of the house, by women who want to benefit from it, so it still exists, it still exists (MP-5).

> There is indeed prejudice against women in situations of violence, right, when attending to these women. Many people don't have the patience, don't have the right profile, [...] because violence... the woman lives in a cycle, or spiral [...]. So, she is always coming back. And this also tires public security personnel a lot (PC-2).

> [...] there is sexism within the police structure itself. [...] "Oh, but she liked it!", okay? I heard that during the police academy. I was like... "Is no one going to say anything?", you know? Later, this guy became police director (PC-6).

> There is structural sexism, there is institutional sexism. So, it's difficult to see the victim. [...] And you see this within the institution. "Oh, you work with those women! [...] Let me tell you, I'm ashamed" [...] "Oh, they'll go back [*to the aggressor*]! Look, doctor, they've already gone back!" [...] We have operators who present themselves, wear the guise of great protectors, give speeches in hearings... [...] but they are misogynistic. Misogynistic, prejudiced, it's horrible, you know? It's a true revictimization and institutional violence against the victim (MP-6).

There is a "repulsion" (PC-7) that lingers with the enforcement of the MPL, still seen by many as "just a little proceeding" (J-3) that does not amount to the same importance as processing other crimes that have come to be traditional parts of the activities of the CJS, such as homicides and drug trafficking (MP-3). There is a "feminizing" process over this type of work, labelling it in demeaning terms, and making it seem extraneous to the mission of the justice system and a complete waste of time of legal professionals. This is even more evident in the speech of police officers, probably because this institution is the closest one to the "heat of the moment", open for service all day every day in Belo Horizonte, and bearing the brunt of being the "primary entry door" of the system. Peers in the police call this type of work "police window dressing" ("*perfumaria policial*") (PC-5), and a "fuss" ("*frescura*") (PC-6), deeming it a very easy type of investigation, but a tiresome one (PC-4 and PC-5). Overall, helping women in a situation of violence by providing them with resources – like a vehicle to get them to

somewhere safe, getting food, or a place to sleep for the night – may be met with responses like: “Look, this place where you work is not a social assistance center; it’s the Judiciary” (J-1), or “this is not police work [...]. This is work for a psychologist, a social worker” (PC-7).

So, even if several infrastructure developments take place – such as the installation of specialized police stations and courts to process domestic violence cases – these do not necessarily mean a true commitment to the cause, but rather signify virtue-signaling maneuvers to cater to public opinion.

> When I joined the institution, my view on this matter was that it was a unit that existed because there was a [*legal*] provision for it. [...] But I noticed a certain discredit, a certain lack of importance in practical terms. The allocation of resources, personnel, training – it apparently existed *pro forma*, not with the intention of actually being a specialized police unit (PC-5).
>
> Everything related to the Maria da Penha Law, to violence against women, is still seen as something of lesser importance. Unfortunately, there is even a movement [...] in the [*appeals*] court, for political reasons, to abolish the specialized chamber (J-3).

One of the most shocking pieces of data shared with me during fieldwork was the fact that the TJMG and the PCMG have such a deep-seated stigma regarding domestic violence that assigning a professional to work within a specialized court or police unit would be considered a form of penitence for past mistakes committed in their jobs. If the court servant was problematic, “they were sent to handle domestic violence cases” (J-2). The same for police officers: “the punishment: stay at Women’s [*Police Station*]. Putting up with those annoying women over there” (PC-6). Even though several interviewees mentioned that this has “improved a lot” (J-2), or that in Belo Horizonte “it still exists; not much, but it exists” (PC-4), this is just one of many manifestations of the lack of importance given to the issue. Another is to stigmatize even who *wants* to work in those places: “you’re going to the Maria da Penha [*court*]?! You’re crazy!” (J-2), and “Wow, why? What did you do?” (PC-3).

Professionals who work with domestic violence and are vocal about gender-related issues (like domestic violence, LGBT+ rights, and better female representation inside these institutions) are commonly stigmatized by their peers, a reality that many interviewees pointed to (notably, most of them women). “Now, being stigmatized, yes! Anyone who works in domestic violence knows this” (MP-6). Tilted institutional power relations and the neutrality ideology that seeps into juridical work make the supposedly “militant” kind of professional a “bad apple” in the eyes of the hegemony – “my work is considered ‘ideological’ by certain

colleagues", said MP-2. "They talk to us like this: 'you're too feminazi'" (MP-4), or "Wow, but so-and-so is really overdoing it with this topic" (J-5), and even "Oh, you're nervous, speak more softly" (J-3). The stigmatizing of perceived "subversive" peers has the negative effect of prohibiting an honest debate about gender in these institutions, spiking the costs of being outspoken: "No, I feel it [*difficulty in talking about gender at the TJMG*]. Even today. It's very difficult [...]. It even creates some discomfort, because people judge you" (J-2), and "by speaking your mind, you end up being marked, right? So today, I don't participate in anything in the court's administration. Because [...] I think I'm seen as a threat" (J-3).

Even sharing one's experiences with gender discrimination within the institution may be met with judgment from peers. An online post by a prosecutor from MPMG, describing an interaction she had in a WhatsApp group full of colleagues is very telling. She recalled how some male prosecutors started to downplay accounts from several female peers about their experiences with gender-based discrimination inside the institution. Comments included the following: "[*he*] added that he hoped for a generation with less '*mimimi*'[43]", and "when things are overly problematized, there is a risk of seeing prejudice and humiliation in everything". Also, some chastised the women for bringing it up in that specific group chat, as if this was an inappropriate topic to discuss among peers:

> A prosecutor left the group, and three others, all men, expressed that the space [...] would be inappropriate for the debate. It is important to note that, on previous occasions and without any protest, messages on topics completely unrelated to the group's purpose were shared, including Father's Day greetings, motivational messages, and even a link to an article about "gender ideology" (Ana Gabriela Rocha, 2018).

The way some operators deal with the "militant" or "ideological" labelling is to strategically use language: to keep saying what needs to be said, even if by "de-fanging" the message. So, avoiding loaded terms like "gender" and "feminism", and refraining from self-identifying as a feminist, is seen as necessary by several professionals in order to keep advancing the debate within these institutions:

> So, I've been careful not to delve too much into gender concepts, not to get into feminism, the waves and all that; why? To avoid pushing away people who wouldn't listen to me if I mentioned something. Complex times! (MP-3).

[43] This is an expression very common among people who ideologically identify with the right: it means "whining", and is usually used to criticize those who denounce identity-based discrimination. It is commonly used in online right-wing forums and channels and quickly spilled over into the mainstream.

> No, I don't say "I'm a feminist". I don't say it. People know how I think. But I don't... I don't say it. Because I know it's a pejorative term. Unfortunately, it is these days (MP-4).

> Every time I go discuss and everything, I say, "Look, we're not going to debate gender. I didn't come here to debate gender, I came here to discuss violence against women" (MP-5).

> For sure, for female police chiefs or... judges, prosecutors who take a stand, I believe they... encounter many obstacles and have to weigh their words carefully, yes... Because otherwise, they get disapproving looks, definitely, I'm sure of that (PC-6).

These expressions have become politically charged fairly recently, even though a gender-based perspective has never been an easily accepted discourse in the CJS (see Chapter 2). For some, it is necessary to not domesticate one's words, otherwise the "ghost of gender ideology" (MP-6) will remain very much alive. This ghost has been circulating for the past thirty years in some Latin America countries, such as Paraguay and Peru, but actually began to pick up steam much later in Brazil, after 2007, when a systematic propagation of anti-gender discourses actually began to circulate in Catholic spaces, and even more so after 2013, when fundamentalist Evangelical digital media and leadership started to engage in anti-gender political mobilization (Sonia Corrêa; Isabela Kalil, 2020, p. 47, 48).

Pope Benedict XVI's 2012 Christmas speech – considered by some researchers to be the "intellectual mentor of anti-gender crusades" (Sonia Corrêa; Isabela Kalil, 2020, p. 47) – posits the main tenets of this ideology: quoting Simone de Beauvoir's "one is not born a woman, one becomes a woman", Joseph Ratzinger decries the "attack we are currently experiencing on the authentic form of the family (constituted by father, mother, and child)" and chastises this "new philosophy of sexuality" presented under the term "gender" as a "profound falsehood". "Man is now contesting the fact of having a nature, constituted by his corporeality, which characterizes the human being", he said, and defended that "the very essence of the human creature is to have been created by God as male and female" (Gabriela Ramírez, 2020, p. 27-28).

This type of argument has been adeptly politicized by the Brazilian far-right, becoming a rallying cry for an anti-woman, anti-LGBT+, and anti-communist agenda that has been successful in passing anti-gender legislation and policies favoring the "traditional family". This is done under the guise of protecting innocent children from indoctrination (to prevent them from becoming transgender or homosexual) and maintaining the "natural order" of social relations. This serves to uphold the notion of Brazil as a Christian nation, organized around a

fundamental and immutable dichotomy: "Man" and "Woman", with a hierarchical social-sexual relationship – the former, as the *pater familias*, or the *macho* head of the household; the latter, as the submissive mother responsible for the social reproduction work of the heterosexual family. This archaic discourse has been at the center of several election cycles in Brazil, weaponizing sensitive issues such as abortion (evangelical churches pressuring Dilma Rousseff during the 2010 presidential election) and fueling a vicious online fake news machine. This machine has accused the left of outlandish actions, such as distributing a "gay kit" with homoerotic books and erotic baby bottles with penis-shaped teats to public schools and daycares (Jair Bolsonaro's campaign and supporters at the 2018 and 2021 presidential elections) (Márcio Falcão; Letícia Sander, 2010; Louise Queiroga, 2021).

Several legal professionals confirmed the entry of this type of ideology into Belo Horizonte's CJS: "by the way, there are colleagues who even give talks against gender ideology" (J-5) and "I may have to deal with prosecutors [*in domestic violence*] that are extremely radical and *bolsonaristas*. There are prosecutors with the Brazilian flag on their WhatsApp" (MP-3). For them, this rendered the discussion of gender-based violence within its institutions as highly politicized: "the gender question still suffers *a lot* [*emphasis*] from prejudgment by judges, prosecutors, public defenders, and lawyers" (MP-6). One interviewee even mentioned how the violent protests against the presence of Judith Butler in Brazil, scheduled to give a talk in an academic event in São Paulo in 2017[44], had an impact in day-to-day interactions with peers:

> [...] one couldn't even mention the term "gender", as it was not well received by the court or by female and male colleagues. Why? Judith Butler had just been in Brazil. [...] bringing up gender was such an issue... you had to know how to handle these expressions here in the court because they didn't understand. They were precisely seeking out this article from the church that had attacked Judith Butler (J-1).

This anti-gender discourse, created by Catholic institutions and disseminated by Evangelical media, is particularly powerful and dangerous because it comes through as a pseudo-academic narrative that disguises its "religious moralizing substance". However, despite this "sanitization" process, the objectives are still religious-based, especially when it

[44] Outside the venue where Butler was scheduled to speak, far-right protesters chanted against gender ideology while holding Bibles, crucifixes, and the Brazilian flag. They accused her of incentivizing pedophilia and ultimately burned an effigy of her dressed as a witch to the sound of the Lord's Prayer. "Burn the witch!", "Brazil is a conservative country, against gender ideology. Butler out!", and "Man is man, woman is woman, and here in Brazil you don't do whatever you want", were some of the vitriol spewed that day (Felipe Betim, 2017).

relates to education: control over it is a strategic move because "it implies the perpetuation of ideological transmission of religious, economic and political values and symbols" (Gabriela Ramírez, 2020, p. 30, 31). Indeed, education has been a fertile battleground for gender ideology in Belo Horizonte's CJS:

> [...] some people expressed the opinion that this [*gender ideology*] was absurd, that it shouldn't be addressed. The issue of education in schools was greatly affected by this, you know, I know that my colleague in [*the specialized prosecutor's office related to*] education faced many demands in this regard, with people saying it was absurd to talk about it, to debate it (MP-5).

Notably, several interviewees frequently mentioned a high-profile class action case, filed by two prosecutors from MPMG in 2018, against *Colégio Santo Agostinho*, a traditional catholic private school in Belo Horizonte, one month before the 2018 presidential election that would later elect Jair Bolsonaro. This proceeding is a product of this broader context that I have been pinpointing here, with an inaugural petition full of "buzzwords" and worn-out arguments that we have come to know as being part of the vocabulary of anti-gender movements. The complaint came from several parents of students, who went to the MPMG to denounce the presence of "gender ideology" in books provided for children at elementary school. The parents alleged that the school was distributing "literary texts inappropriate for the children's age [*eight to eleven years old*]" and that they were approaching "the topic of gender identity in a cross-curricular manner across various subjects in the school curriculum" (Brasil, 2018c, p. 2, 3). Students protested the parents' "censorship" more than one year before the filing of the case. In an open letter, they asked:

> To the parents, here is something to reflect on: what are you really concerned about? Is it the desire to keep your children isolated from everything that diverges from what you have been taught, or is it the provision of teachings that are deeply connected to community living and respect for differences? (Liziane Lopes, 2017).

The prosecutors – both serving at the specialized Prosecutor's Office for the Rights of Children and Adolescents – agreed with the parents: they said that the material "confronted the moral values of the family", that it amounted to "brainwashing" that "confounded children's heads", by legitimating "pedophilia as a natural right", and by forcing "change of clothes and accessories" (Brasil, 2018c, p. 28, 29, 31). The "gay kit" fake news is there ("it incentivizes children and adolescents to develop homosexual behaviors"), the anti-Butler critique is also

there ("She is an advocate of a rhetoric of social subversion, which denies the ontological existence of male and female sexes, confusing basic semantic and legal concepts for our society"), and the overall trope of gender theory as "extremist feminist politics" that encourages pedophilia and disregards the "natural rule of things", such as the heteronormative family and the "binary nature of the human species", are definitely present as well (Brasil, 2018c, p. 8, 9, 16, 25, 36). After filing, a legal internal battle ensued inside the MPMG, with the specialized Prosecutor's Office for Education filing for the suspension of the case because the case stepped over their attributions (G1 Minas, 2018).

In the domestic violence context, the arsenal of arguments that can be traced back to anti-gender ideology is also present. See the following examples provided by the same interviewee, both involving trans persons. This is a discourse rooted in biological essentialism, presented as if "it is natural, you can't escape it, folks!" (PC-2). The explanation given to these cases functions as a powerful mechanism to control the perceived disorder stemming from fluid identities. Notice how aggressivity is firmly kept in the realm of masculinity and fragility in the realm of femininity, and how nature is presented as an irresistible force, rendering any external presentation as mere superficial modifications that cannot change one's true inner self – a legal demand that has been called the "toll of nature" ("*pedágio da natureza*"), an implicit fee that one must pay in order to be considered by the justice system (Thiago Coacci, 2017, *passim*).

> So, we were facing a trans woman who was about 1.90 meters tall, extremely strong, and a very small, very fragile trans man, right? And he himself raised the issue. First, he was crying, just like a woman does when she is menstruating. And he spoke while crying, crying a lot. He said, "Look, I am the victim, she is extremely strong, she is extremely big, I am hurt, and my hormones are female. That is my biological sex, I should be able to get this protective order". And that was something that shocked me because we don't think we're going to hear this from a trans man. [...] And she was exactly as he had said, extremely strong, with a look, a demeanor, a much more aggressive behavior, and as he himself told me, biologically, with male hormones, without any kind of fragility shown there. And then I kept thinking, my God, what a challenge! It was something unusual for me! Unusual!
>
> "I just wanted to take a shower alone. And she came and kept banging on the bathroom door, invading my privacy! Look: you are a woman! A woman doesn't do that. She doesn't stay at the door banging, invading a man's privacy while he's taking a shower". What did he mean? He meant to say to me, in other words, that she... he was the fragile figure because he was biologically female. And the other was not the fragile figure, [...] because he was biologically male. [...] In the end, what did he say? I am the woman, I am the fragile one, but my orientation, my gender – I identify with the male gender, but I am a woman. He practically said this to me and to the officer. The other, no – she identifies with the female gender, but she is a man.

It is no surprise that this type of ideology is taking roots in the CJS. Heterojustice's stockpile of knowledge is very much compatible with this renewed ode to hierarchy presented by anti-gender discourse. For many legal professionals, the pretext of protecting traditional family and controlling deviance is seen as a natural mission of the law, including its institutions. In a qualitative study on decisions by the TJMG's appeals court from 1989 until 2010 (Thiago Coacci, 2013), we can see that the "nature" argument related to debates on the right to change one's legal name and gender marker on public documents is very common parlance in judges' decisions. The justice system's gaze creates the deviant and the very notion of "sex", now even more emboldened by these recent developments: "It [*same-gender relationship*] is not a relationship seen as normal, no. So much so that you see we don't have reliable data [...]. Why? Because many cases do not reach the justice system. Because they will encounter resistance, a prejudiced gaze" (MP-6). Indeed, others recounted many instances, old and new, of this dominating gaze: a colleague "accusing" a peer of their disposition to grant adoption to gay couples during a public judgment session (J-7), police officers bonding behind the curtains while engaging in recreational homophobia (PC-5), as well as demanding that queer people only live their sex lives in private, away from public view (PC-6).

But "gender ideology" as a discourse prospers not only because of this union of purpose between tradition and crusade. It only produces systematic effects because it is *allowed* to prosper with no much accountability. One recent case of internal homophobia in the MPMG is a good example of the lack of efficient oversight mechanisms in legal institutions, which helps to create an environment of impunity and peer-complicity in cases of mischarge of duties. In a public session among appellate prosecutors in 2021, one (male) member spontaneously complained about an online publication by one of MPMG's operational support centers (or CAO) that dealt with discrimination against LGBT+ youth and homelessness:

> […] the CAO published an article, quote, "discrimination increases the risk of LGBTI youth" – I don't even know what that "I" stands for – "becoming homeless, say UN rapporteurs". [...] I don't see any involvement of the institution here, right? This is really something out of this world to publish this in the CAO, right? I think it's an encouragement to this perdition that is our youth (Alex Bessas, 2021).

A few critical responses ensued, such as a representation by MPMG's body tasked with coordinating actions against racism and all other forms of discrimination (or CCRAD), which requested an internal investigation against the appellate prosecutor for breach of duty. The

inspector's decision (which I could not find on MPMG's official website), however, quashed any possibility of sanctions against his colleague. According to reporting from local media (Alex Bessas, 2021), it stated that it was a "subjective opinion" protected by the inviolability of prosecutors' statements according to the Constitution, basing the dismissal of the case on the "necessity of tolerating the intolerant". Instead of chastising the colleague who made a homophobic remark, the inspector criticized the body that filed the complaint, characterizing the representation as "belligerent" and motivated by "emotional or partisan arguments". After the case was attracting attention from the media, the head of MPMG enacted a resolution to curtail future representations between peers: members of CAOs, before representing to internal or external oversight bodies, should notify the head of the institution beforehand and they "must do so without making a value judgment". According to sources from local reporting, the head of MPMG and the homophobic prosecutor were "close friends".

A concerted effort by LGBT+ rights organizations took this case to the National Council of the Public Prosecutor's Office (or CNMP), in Brasília, asking for a revision of the local decision. Unanimously, council members voted for accepting the case ("*Revisão de Processo Disciplinar*" No. 1.01355/2021-30), with the rapporteur stating that invoking the inviolability of the statements and opinions of prosecutors to justify the comment made by the appellate prosecutor would mean "distorting this guarantee given to the Brazilian Public Prosecutor's Office, using it as a safe-conduct for making statements that are completely misaligned with the very activity of the office" (this guarantee originally was meant to protect public officials from persecution) (Brasil, 2022a). At the CNMP's 18th Ordinary Session in 2022, the council members decided that the appellate prosecutor's remarks demanded the penalty of "censure", to be enforced in a public session by the MPMG (Brasil, 2022b). Even for me, a researcher with prior training in law, it took some time to find the enforcement of this decision. Finally, I found it in the meeting minutes from the 1st Ordinary Session of MPMG's Superior Council (or CSMP), held in January 30th, 2023. In the middle of several other administrative acts published in the official diary that day (page 33 of a 112 pages document), I found the following – notice that the appellate prosecutor's name is anonymized:

> Then, the Presidency, pursuant to Article 213 of Complementary Law No. 34/1994, imposed a censure on the Appellate Prosecutor E.A.G. in accordance with the decision issued in the context of Administrative Disciplinary Procedure No. 1.00536.2022-39, of the *Conselho Nacional do Ministério Público* – CNMP (Brasil, 2023e, p. 33).

After more searching, I found the audio of this decision, taken in one minute and nine seconds (Brasil, 2023c; 2023d). During the public session, the facts of the case are not mentioned, the justification for the CNMP's decision is not presented, and not even the docket number of the proceeding is made public. The CSMP's president asks the council: "Everybody agrees?". Someone answers: "Agreed." Then, the finale: "Therefore, I consider that the penalty was enforced. Notify the *Conselho Nacional do Ministério Público* [CNMP]" (Brasil, 2023d). This is an example of how hermetism commands obedience to hierarchy from their "subversive" members while maintaining a veneer of a law-abiding institution. Notably, this case signaled a strong message within the MPMG to other prosecutors who might consider calling out a peer. According to an interviewee, several members of the nascent working group on LGBT+ rights in CCRAD left the initiative after this case, even those who encouraged that the initial representation be filed. Today, according to them, the group is "emptied".

This type of disciplinary procedure – merely formal, mostly conducted by peers or other legal professionals, and not attuned to the substantive aim of dissuading powerful officials of discriminatory behavior while discharging their duties – warrants the skepticism by some with the reach of the two oversight bodies enshrined in Articles 103-B and 130-A of the Federal Constitution (added by a 2004 amendment called the "Judiciary reform"). The CNMP and the CNJ cannot be deemed "external" oversight bodies, due to their "predominantly endogenous composition" (Rogério Arantes, 2007, p. 330). At the CNMP, out of fourteen members, eight are prosecutors, two are judges, two are lawyers, and only two come from civil society (who must have a "notable legal knowledge"). In the case of the CNJ, the correlation of forces is inverted: nine are judges, two are prosecutors, two are lawyers, and two are citizens from civil society. They still are, therefore, peer-based juridical entities. The lack of truly external oversight bodies with the power to appropriately hold legal professionals responsible for their actions invites arbitrariness into the center of CJS's routines and internal power relations (as we will see further in sub-section 2.2).

Again, discourse does not match reality with this topic of accountability: "[...] all the misconducts are investigated! [...] It should be noted, they are so rare that they do not even contribute to statistics" (J-4). The fallacy of self-restraint is a convenient discourse to keep all of these powerful institutions impervious to criticism, as well as a necessary argument to uphold the myth of justice-making. The hierarchical juridical division of labor also impedes accountability even among legal professionals:

> But this judge, there was a prosecutor who fought a lot with him, she went to the Inspectorate. So, he has a procedure, there was a procedure and all, but it ended up coming to nothing, and he's still there, right? He continues at the domestic violence court (MP-4).

> After all, it's not our role to go there and say, "Hey, the judge isn't complying", you know? I think that's for the Judiciary's Inspectorate to handle, right? [...] Because, you see, if we start clashing with the Judiciary, we lose, that's obvious (PC-6).

The great latitude given to the most powerful professionals in heterojustice ends up negatively impacting the behavior of the less powerful operators in this division of labor. Many police chiefs have mentioned they bow to the interpretations of prosecutors and judges, even if those interpretations have no basis in the law:

> [...] I say, "Look, you'll have to go to your district, talk to the judge, talk to the prosecutor, and see what their interpretation is, so you can follow it [...]. Oh, does the judge in your town set a one-year period for the protective order? Then you need to figure it out and let the women know that after one year, they have to renew the request and go to the courthouse, whatever it takes". "Oh, but the law says..." Folks, the law says, but you'll see that in practice, the situation is quite different (PC-3).

> When I was at the [*specialized police station*] Elderly, I often took decisions from the prosecutor and the judge that were in the proceeding, took pictures, and sent them to a group we had to show them that it was useless to request a protective order for mother and daughter because the judge won't grant it, you understand? But anyway, there were some who kept asking and such... but I didn't request it (PC-7).

> This is my point of view. I know that other officers at DEAM have a different perspective than mine. Now, I am in direct contact with the judges' clerks, with the prosecutors, every day. That's not the case for the other officers. So I know that, on a massive scale, I will generate a lot of resistance (PC-2).

Especially since 2018, the CNJ and the CNMP have been leading efforts to incentivize (and sometimes impose) some kind of institutional guidance related to issues such as gender-based violence (the National Judiciary Policy to Combat Violence Against Women[45], the 2021 Protocol for Judging with a Gender Perspective, the adoption of the risk-assessment form FRIDA[46]); mandatory training for judges on domestic violence courts on gender, race, ethnicity, and human rights[47]; gender equity in the Judiciary (Committee for Encouraging Female

[45] CNJ, Resolution No. 254/2018.
[46] CNJ/CNMP, Resolution No. 5/2020.
[47] CNJ, Resolution No. 492/2023.

Institutional Participation in the Judiciary[48]); and victim's rights in the CJS (Institutional Policy of Comprehensive Protection and Promotion of Rights and Support for Victims[49]). However, even if these developments are important precedents, all of these initiatives are to no avail if they are not coupled with an institutional framework open to social control in each institution.

> Functional independence cannot be so absolute. It cannot suffer political interference, you know, favoritism. It can't! But every institution must have a guideline! There is no institution without a guideline. [...] How long has the CNMP been setting guidelines? How long has it been... How long has the CNJ been mandating [...]? Look! Look at how much is still missing (MP-6).

With authoritarian institutions, any advancement – whether in accountability or a gender-based perspective in case processing – will be enforced (if at all) only to the extent and at the pace that the local hegemony allows. However, as the fieldwork has shown, there is no indication that their members are open to willingly give up their power to define if, when and how our rights will be guaranteed.

[48] CNJ, Resolution No. 492/2023.
[49] CNMP, Resolution No. 243/2021.

2 THE "MESSING UP" OF THE MARIA DA PENHA LAW

2.1 De-fanging the law: the crash between feminist activism and the state

The[50-51] story of how domestic violence became part of a human rights agenda in Brazil is situated in time and space: it begins at the turn of the 1970s to the 1980s, particularly in São Paulo, Belo Horizonte, and Rio de Janeiro[52], influenced by transnational migrations in feminist theory and activism. Before this turning point, feminist literature highlights the specific challenges faced by emerging women's and/or feminist movements due to the existence of a dictatorial regime (1964-1985), which explains their tactical alliances with a broader left-wing field (especially Marxist activism and the more progressive wing of the Catholic Church) and the initial negotiations to define the relevance and prioritization of certain issues over others (Maria Filomena Gregori, 1993; Marlise Matos, 2010; Céli Regina Pinto; 2010; Maria Amélia Teles, 2017; Heloisa Hollanda, 2019).

Due to this delicate political conjuncture, the 1970s are characterized by a clash between so-called "general struggles" (more focused on the broad democratization of Brazilian society) and "specific struggles" for women's emancipation. The latter, for "tactical" reasons and fears of demobilization due to the introduction of topics considered "excessively controversial", initially chose to not prioritize issues such as sexuality, abortion, and violence against women (Maria Filomena Gregori, 1993, p. 27-28). This resistance ended up causing friction with other organized women, especially lesbians and Black women who began to establish their own autonomous spaces of struggle in the absence of an inclusive environment for their own agendas.

The introduction of the so-called "violence against women" as one of the main causes of Brazilian feminist movements is identified as a political response to certain feminicides that gained media visibility at the time, which spurred the creation of feminist organizations in the country (Maria Filomena Gregori, 1993; Maria Amélia Teles, 2017; Carmen de Campos; Fabiana Severi, 2019). Inspired by consciousness-raising groups from the United States and

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[50] Some excerpts of this chapter were previously published in *Revista Direito e Práxis* (v. 13, n. 2), under the title "*A mulher lésbica é mulher para a Lei Maria da Penha?*".

[51] Thank you to Bárbara Nascimento de Lima for reviewing a section of this chapter.

[52] I am not saying that Brazilian feminisms originated solely from these locations, but I am precisely naming and critiquing the geopolitics of knowledge that also intersects with feminist studies in Brazil. The dominant feminist explanation of domestic violence still portrays women from the South/Southeast as the protagonists of this cause, elevated to true guardians of our history, so this element of territory also deserves to be mentioned and calls for future research.

Europe, women in situation of violence found a safe space in domestic violence organizations to start voicing their experiences, including themes related to sexuality, and relating them to a collective condition of gender oppression. According to the literature, the work of these organizations in the early 1980s were decisive for other developments that followed, such as the establishment of the Women's Police Stations (DEAMs) and the MPL itself (Lourdes Maria Bandeira, 2019).

From the late 70s onwards, feminists were central to provide a new vocabulary to Brazilian society to give meaning to the violence within the confines of the home. Steady and organized feminist advocacy, including from human rights' organizations, set in motion a pathway to the enactment of MPL in 2006 (Leila Barsted, 2011). Through national campaigns like "*Quem ama não mata*" ("Those who love do not kill") and "*Toda mulher tem direito a uma vida livre de violência*" ("*All women have the right to a life free of violence*") during the 80s, as well as concerted action with international organizations like the United Nations (especially in the 1995 Fourth World Conference on Women, Beijing) and the OAS during the 90s and early 2000s, feminists were instrumental to keep pushing for the recognition of domestic violence as a public issue that demands public policy.

The woman who lends her name to the 2006 Brazilian law on domestic violence, Maria da Penha, is a pivotal character in the build-up for the assimilation of feminist demands by the state. With the assistance of two human rights organizations, the Center for Justice and International Law (CEJIL) and the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), Maria da Penha filed a petition to the Inter-American Commission of Human Rights (IACHR) in 1998 alleging that the Brazilian state condoned the domestic violence perpetrated by her husband at the time, which culminated in two attempted murders and a "irreversible paraplegia and other physical and psychological trauma". According to her, the state was permissive "since, for more than 15 years, it has failed to take the effective measures required to prosecute and punish the aggressor, despite repeated complaints". The Brazilian state, despite three requests from the Commission, failed to provide any response regarding the allegations. In its 2001 final report (Report No. 54/01 – Case 12.051), the IACHR concluded Brazil violated, among other provisions, the right to a fair trial and judicial protection guaranteed in the American Convention of Human Rights, which "forms a pattern of discrimination evidenced by the condoning of domestic violence against women in Brazil through ineffective judicial action", recommending that the state implement "the

appropriate administrative, legislative, and judicial measures" (Organization of American States, 2001).

This high-profile case was a game changer. Feminists, including academics, were levelling harsh criticism towards the justice system as a whole for a while, especially the banalization effects of the misdemeanor courts (Law No. 9.099/95) when adjudicating domestic violence cases –its decriminalizing measures, informality, and penchant for reconciliation all failed to challenge hierarchy within the family. It was common to not hold defendants accountable and make them pay symbolic sums to not face criminal proceedings, a type of proceeding usually carried out by mostly male judges with no prior training (Cecília dos Santos, 2010, p. 160; Rosane Lavigne, 2011, p. 76). Even though feminist movements were at first divided on which strategy to adopt – either reformulate the existing legislation or propose a new regulation altogether (Wânia Izumino, 2003, p. 277) – they coalesced in a rare moment of institutional opening from the federal government in the early 2000s.

Under the coordination of the national Secretariat of Women's Policies (SPM), a consortium of feminist NGOs (created in 2002) had a seat on the table in the working group tasked by the president with proposing a new legislation on domestic violence in the country (Fabiana Severi, 2017, p. 118). From the start, the feminist consortium decided to pressure the Executive and Legislative branches to rethink the judicial procedure outside the system provided by Law No. 9.099/95, affirming domestic violence as a matter of human rights and not as a petty crime (Myllena Calazans; Iáris Cortes, 2011, p. 43). Even though they did not manage to repeal the lobby from judges who wanted to regain the credibility of the misdemeanor courts in the presidency's working group, the consortium effectively managed to persuade the National Congress to provide new procedural rules for domestic violence cases in Brazil in the final draft of the MPL (Rosane Lavigne, 2011; Brasil, 2004b).

What I recounted so far is the "official" story – or the "origin myth", as called by Fabiana Severi (2017, p. 89) – about the birth of the MPL. However, I want to propose a counter-history that could help explain why is it still difficult to name and consider the lived experiences of other(ed) women with domestic violence in Brazil, particularly queer women. Considering the dynamic relationship between feminist/women's movements and the formulation and enactment of the MPL, my proposal has two parts: firstly, the lingering gender essentialism in

feminist praxis[53] on domestic violence; and secondly (and most importantly), the process of "de-fanging" a feminist reasoning inside the MPL by the everyday routines of the CJS.

The advocacy experiences I mentioned earlier and the target audience that benefited from them – mostly women in heterosexual relationships – ended up providing the framework for what is still considered thinkable about domestic violence. This occurred in a feedback loop with the feminist literature of the time, which characterized violent relationships as "violence against women", that is, "a radical expression of the hierarchical relationship between the sexes within the family nucleus", where women appear victimized by a structure of domination (Maria Filomena Gregori, 2004). During the 1980s, this perspective was mainly represented by two theoretical currents: *male domination* (violence is an expression of the domination of women by men, resulting in the nullification of women's autonomy, conceived as both a victim and an accomplice of this domination) and *patriarchal domination* (violence is an expression of patriarchy, in which the woman is seen as an autonomous subject, but historically victimized by male social control) (Cecília dos Santos; Wânia Izumino, 2005).

These explanations usually cater to a more structural-level kind of analysis, one that easily overlooks ambiguities and complexities of a diversity of violent experiences in daily life of concrete individuals. Even unidirectional male violence involves, at least, "two beings in interaction in time and space", so it is insufficient to focus only on the performance of gender roles of those involved, "unless we conceive patriarchal domination as an abstract, immutable, and ahistorical force, detached from the personal and social dynamics in which it is actualized" (Barbara Soares, 2012, p. 197)[54]. These perspectives, more linked to sociology and to Marxist and radical perspectives on violence, predominated among Brazilian feminist jurists, although later studies sought to deconstruct this dualistic view (Carmen de Campos; Fabiana Severi, 2019).

The first introduction of the category "gender" into the discussion about domestic violence in the late 1980s and early 1990s, inspired by the effervescent feminist debates in the United States and France, created a new approach that deepened the debate about victimization (though without abandoning it) and emphasized the social construction of sex and gender, preferring the term "gendered violence" (Cecília dos Santos; Wânia Izumino, 2005). This expression was seen as broader than "violence against women", potentially encompassing

[53] Here, I use the term "praxis" from a Freirian perspective, encompassing action and reflection on the world in order to transform it (Paulo Freire, 2005, p. 42).

[54] It should be noted that until the mid-1990s, theoretical production in Brazil in this area was still very incipient, with the vast majority of studies being produced within the scope of feminist activist actions, and few being empirical in nature (Miriam Grossi, 2006).

analyses that are beyond the dichotomous male/female relationship which had the potential of opening up space for investigating other violent relationships beyond the male aggressor/woman victim framework. However, this did not come into fruition within feminist explanations: today, it is still common to find both expressions in academic works, used as if they were synonymous. Most feminist research continue to limit the analytical potential of the term gender and define violence solely as an expression of the male/patriarchal domination, still privileging research on heterosexual conjugal violence against women (Cecília dos Santos, 2010, p. 156; Cecília dos Santos, 2017, p. 48).

The engagement of Brazilian feminist theory with the topic of domestic violence highlights some interesting aspects related to gender essentialism – that is, the rigid discussion of gender-related issues with little or no interrelation with other experiences of subordination related to race, disability, age, and so on. For instance, most feminist studies on gender-based violence disregard or merely mention the importance of the "knot" that constitutes the fundamental contradictions of Brazilian society (gender-race-class) (Heleieth Saffioti, 2019). Indeed, more recent studies on domestic violence have been demonstrating and problematizing these omissions. In a 2004 literature review, Heleieth Saffioti (2019, p. 144) noted not having found the "race/ethnicity dimension", highlighting that the "phenomenon is still very little studied, as researchers themselves ignore it or do not give it the deserved emphasis". The "almost complete absence of a racial discussion" in this field was still observed in another academic work seven years later, building upon prior findings that only 1% of the specialized literature between 1980 and 2006 acknowledged the experiences of Black women (Bruna Pereira, 2013). Fortunately, the last two decades has seen a proliferation of studies on the CJS that is more sensitive to racial violence, led mainly by Black feminists, including jurists (Ana Luiza Flauzina, 2006; Luanna Souza; Thula Pires, 2020; Soraia Mendes, 2020).

When it comes to sexuality, a review of Brazilian academic research on gender and violence between 1975 and 2005 concluded that there were no studies on queer couples (Juliana Losso et al., 2006, p. 24). This invisibility remains not only in academia, but also in lesbian social spaces, social activism, and in public policy: "the dimension of sexuality, as well as race, in intersectionality with gender, is not addressed in almost any research on violence against women, with a predominance of a heterocentric perspective" (Ana Cláudia Macedo, 2020, p. 144). Even with self-identified lesbians entering the universities in the last fifteen years, it is still common for them to not research *lesbianidades* nor be aware of lesbian authors (Érica Sarmet, 2018, p. 394). Research on the Brazilian lesbian movement is still a rarity, and

information is scattered in studies on the feminist and queer movements, demanding from the reader "the construction of a history inside the exposition of the history" (Tayane Lino, 2019, p. 13). This is a context shared in Latin America, exacerbated by the fact that access to lesbian thought, at least until the 1990s, is another obstacle to the development of research, as most of the production is found in writings scattered across magazines, pamphlets, booklets, and communiqués with little dissemination and that "do not tend to be counted as part of a body of knowledge production" (Yuderkys Miñoso, 2016, p. 253).

This historical lack of intersectionality explains, in part, the deep heterosexism that still marks theory and practice related to gender-based violence in general and domestic violence in particular. But this is not only a byproduct of a theoretical lack of insight. It is also a reflection of the fraught relationship between heterocentered feminisms and lesbian feminisms in Brazil over time. This state of affairs – which have been changing especially in the last ten years or so, with new hyper-connected social movements throughout the country – is a statement on the lingering difficulties of developing autonomous lesbian movements in Brazil, especially considering the internal tensions and frustrated alliances with more mainstream feminist and gay movements. The logic of the "single axis" identified by Kimberlé Crenshaw (1989, p. 140) in her analysis of dominant conceptions of discrimination in the United States in the 1980s can also be identified in Brazilian reality: in the case of LGBT+ movements, the demands of gay men always took priority; in the case of feminist movements, the agendas primarily addressed heterosexual needs.

Reflecting on lesbian feminism in the context of Latin America, Yuderkys Espinosa Miñoso (2007, p. 87-88) provides a bleak diagnosis: "Today more than ever, at least in Latin America, there is a heterosexual primacy installed in both academic and activist feminism". Miñoso, while recalling the vibrant lesbian feminist activism from the mid-1980s to the early 1990s, declares that this has practically disappeared today, and "lesbianism" merely enjoys visibility, which is why she asserts that the lesbian, once again condemned to silence, remains "the other of the Other". As I mentioned, alliances between activists have not always been smooth and peaceful, and the state of Brazilian lesbian feminism aligns with this broader Latin American context. However, more and more autonomous organizations and discussion spaces have been created and deepened in the country, especially since the late 1990s, and new alliances have been forged with both gay and feminist movements.

The Brazilian lesbian movement's trajectory may be characterized by a few main moments: activism based on identity-related claims, focusing on visibility and social action

(early 80s); professionalization through NGOs, open to participation in the formulation of public policy (90s and early 2000s); and the return of strong lesbian collectives, with intense use of social media, focusing on lesbian pride and previously overlooked agendas, such as fatphobia, racism, and transphobia (2015 onwards) (Patrícia Lessa, 2021, p. 268; Érica Sarmet, 2018, p. 384). The "origin myth" of lesbian feminist activism in Brazil states that it begun in 1979 within an organization mostly composed of gay men in São Paulo, called *Grupo de Afirmação Homossexual* (or SOMOS). The need for an autonomous space to discuss "double discrimination" (sexism and heterosexism) from a feminist perspective led to the creation of the *Grupo Lésbico-Feminista* (or LF), with only lesbian members from SOMOS. However, the entry and permanence of lesbian feminists in this organization was brief and tumultuous, marked by sexist and discriminatory attitudes and irreconcilable internal divisions that led to the departure of the women from LF in 1980 and the change of its name to *Grupo de Ação Lésbica Feminista* (or GALF) (Marisa Fernandes, 2018). This was not the case only in São Paulo: many other lesbian organizations were born during the 80s in other Brazilian states, like the *Grupo Libertário Homossexual* (Bahia) and the *Grupo Gaúcho de Lésbicas Feministas* (Rio Grande do Sul) (Glaucia de Almeida, 2005, p. 40-41).

Overall, the relationship with mainstream feminist movements, especially in the 70s and 80s, was also full of frictions. Lesbian presence was seen as a kind of contamination of feminists' image, which had the potential to ruin the category of women by the risk of losing femininity through masculinization (Gilberta Soares; Cecília Sardenberg, 2011, p. 2). As recalled by Leila Linhares Barsted, an important feminist leadership in gender-based violence who also participated in the formulation of the MPL, feminist mobilization was not very accepting of female homosexuality in the beginning: in an event on the role and behavior of women in Brazilian society in Rio de Janeiro (1975), some women wanted to censor this type of expression of sexuality in the final declaration of the seminar (Silvia Pimentel et al., 2019, p. 134). Moreover, in São Paulo, the participation of organized lesbians at the II and III *Congressos da Mulher Paulista* (1980-1981)[55], with their ideas of right to pleasure and denunciations of imposed heterosexuality, were also not well received by heterosexual women (including feminists) attending these events. At the II Congress, two LF panels were destroyed, and a document named "*Mulheres Violentadas*" ("Women Violated") distributed by the group – the first known feminist document to address rape, violence against women, and violence

[55] These events are considered by some as initiatives responsible for introducing the issue of violence into the Brazilian feminist agenda (Maria Amélia Teles, 2017).

against lesbians (Glaucia de Almeida, 2005, p. 41; Maria Amélia Teles, 2017) – was prevented from being read at the final session of the event[56]. These frictions led GALF to dissociate from heterosexual feminist movements in 1985 and to focus exclusively on developing specific lesbian agendas, while maintaining the possibility of occasional alliances.

In Brazilian lesbian feminist theory, the contention is that the historical treatment accorded by (hetero)feminisms to lesbian experiences (certainly less diverse at the time than it is today) effectively collaborated to upholding lesbian invisibility because "the questioning of compulsory heterosexuality did not have a place in the epistemological formulation and political agenda of the Brazilian feminist movement" (Gilberta Soares; Jussara Costa, 2012). The following statement from Yone Lindgren, founder of *Movimento D'Ellas* and *Articulação Brasileira de Lésbicas*, sheds light on how heterofeminism represented a stigmatizing space for "lesbian issues" for a long time:

> My involvement in lesbian activism dates back to the first group formed in Rio de Janeiro, Somos/RJ. I became involved in activism already through the student movement, but I could not participate in feminism because if I went to a feminist meeting, I could not talk about lesbians, because at that time – 1978 – people thought that all feminists were *sapatão* [*dykes*] and made it a correlated issue. So, I only started identifying as a feminist from 2003 onwards, when feminism not only opened itself up but also made space for trans women and *travestis* (Érica Sarmet, 2018, p. 381).

Throughout the 1990s and early 2000s, new lesbian organizations and autonomous national articulations were created, such as the *I Seminário Nacional de Lésbicas* (or SENALE) in 1996. This journey towards autonomy is a hallmark of Black lesbian activism, moved by their invisibility within the Black, feminist, and LGBT+ movements, and their need for accurate representation of the "triple oppression" (sexism, racism, and heterosexism) experienced by Black lesbians (Ana Cristina Santos, 2018). The critical body of knowledge against the White heterofeminist idea of a universal "Woman" was spearheaded by them: "Black feminism must be recognized as lesbian thought and lesbian thought as Black feminism" (Felipe Fernandes; Bárbara Alves, 2021, p. 38). Organizing was forged by creating new spaces for mobilization and theoretical construction of their demands, with a significant milestone being the *I Seminário Nacional de Lésbicas Negras* and the *I Seminário Regional de Articulação entre Movimento LGBTT e Juventude* in 2006, as well as the constitution of lesbian national networks in the early

[56] The backlash from other participant organizations during the preparatory meetings for the III Congress is very telling: the MR-8 stated that "The lesbian denies her own condition as a woman, she cannot be part of a women's movement", and the *Associação das Empregadas Domésticas* argued that "The free woman is the one who defines herself through work and not the one who wants to be a man" (Marisa Fernandes, 2018, p. 96).

2000s, such as the *Liga Brasileira de Lésbicas*, *Articulação Brasileira de Lésbicas*, *Rede Nacional de Lésbicas e Bissexuais Negras Feministas Autônomas*, *SAPATÁ,* and *Rede Afro LGBT* (Marisa Fernandes, 2018, p. 114). These initiatives were important moments of visibility of the lesbian presence for feminists and women's movements alike (Gilberta Soares; Cecília Sardenberg, 2011, p. 2).

The establishment of these autonomous spaces for struggle is probably the reason why the MPL acknowledged the occurrence of domestic violence within lesbian relationships in its Article 5, Sole Paragraph, which represented the first reference to same-gender unions in Brazilian federal law (Maria Berenice Dias; Thiele Reinheimer, 2011, p. 198; Fabiane Simioni; Rúbia da Cruz, 2011, p. 190). Notably, this version was not part of the original draft composed by the feminist consortium (Cecília dos Santos, 2010, p. 164), and was included by congresswoman Jandira Feghali in her own proposal to substitute the original version of the MPL under analysis in the National Congress[57]. Feghali's proposal – which ended up being approved and enacted into law with slight modifications after a series of public debates in many states with strong participation from civil society in 2004 and 2005 – justified the new text because of "discrimination in the reception and referral of women victims of violence in homosexual relationships" (Brasil, 2004b, p. 17).

Even though other important achievements were attained during the first half of the 2000s by feminist lesbian activism – especially in the field of public health, with the approval of inclusive national policies for women's health (2007) and LGBT health (2011) (Marisa Fernandes, 2018, p. 115; Nathalia Cordeiro, 2021, p. 266) – the literature points to a certain demobilization of lesbian activism in Brazil during this last decade, starting to regain its vigor from 2015 onwards, pushed by a growing conservatism and the worsening of Brazil's economic situation (Érica Sarmet, 2018, p. 383-384). The state of the relationship between feminist lesbian movements and mainstream feminist movements since the 2000s is said to be more open to lesbian claims – "Today, conflicts are still present, but these [*lesbian*] movements no longer seem to be the 'other', the adversary in the formation of a 'we'" (Tayane Lino, 2019, p. 18). They are, however, still "tenuous" (Gilberta Soares; Cecília Sardenberg, 2011, p. 6). Openness to these issues does not necessarily imply that they are treated with the same priority: even if today's feminisms nearly unanimously reject lesbophobia as a principle, efforts aimed

[57] The original text of Article 5, Sole Paragraph, was the following: "Gender relations are considered to be the unequal and asymmetric relations of value and power attributed to individuals based on their sex" (Brasil, 2004a). It brought a definition for gender relations instead, and did not mention sexual orientation. Feghali's proposal changed it to the following: "The provisions in the main clause and subsections apply regardless of sexual orientation" (Brasil, 2004b).

at addressing this issue have been still undertaken "almost exclusively by those who identify with lesbians" (Gilberta Soares; Jusssara Costa, 2012).

I am highlighting the history of approximations and tensions in these social movements for two reasons. Firstly, there is a mosaic of factors to explain a complex and dynamic process such as the prevailing social invisibility of violence between women until today. It is not a relation of causality, of course, but it provides context – why is it still so hard to consider violence in queer relationships, to have adequate services, nuanced theory, and proper adjudication of these cases. "To name is a political gesture, an initial way of apprehending hidden experiences or phenomena" (Débora Diniz; Bruna Costa; Sinara Gumieri, 2015, p. 225). Because Brazilian society, including its engaged social movements and academia – which were fundamental to transform this issue into a political issue in the first place – are commonly oblivious to this phenomenon, the possibility of naming it as violence becomes highly improbable. So, this is not an attempt to say that, in the end, feminists are to be blamed for these shortcomings. It is much more the identification of a silencing ecosystem, one that only may thrive with very efficient legal institutions. After all, heterojustice is not cutoff from this wider context – *rather, it carefully curates it.*

This leads to the second reason. Preserving the memory of feminist activism that led to the enactment of the MPL, in all its contradictions and diversity, is fundamental when we consider the anti-gender policies that have been holding a grip in Brazilian public discourse for more than ten years now. This is even more so when we consider that some legal professionals tasked with the enforcement of the law either do not know the feminist underpinnings of its rules and principles, or hold a distrust towards "collectivist movements" in general and feminism in particular:

> I don't, like, study, I'm not, like... I don't participate much in this feminism thing... There's no such thing as feminism for me, but... this doesn't interfere with me at all. I *think* [*emphasizes*] it doesn't interfere, I *think* [*emphasizes*], okay? (J-6).

> I prefer to act in an ideologically neutral way in this sense. Although my position also reflects an ideological stance, of not aligning myself with collectivist movements (PC-5).

> But what has really been worrying me is – how could I put it? Some positions that portray men as the enemy of women. [...] So, if activism now, feminism, is trendy, a lot of people who don't identify with it will say, "Oh, I'm here because I want to be cool, and only activist women..." right? Feminists are accepted in this niche. "Oh, I'm a man and I like to defend women, so I will have to behave in a more... less aggressive way" (PC-2).

"One of the first dimensions of the power of law [...] is the power to distort the history of social struggles for rights": subordinating the role of feminist organizing in the process of creating and implementing the MPL is a way to effectively domesticate it (Fabiana Severi, 2017, p. 80, 90). Effacing or downplaying this complex tapestry of struggles and interests works to hide the contradictions of some legal interpretations that marked the enforcement of this law in Belo Horizonte. Neutralizing its political commitment to social justice has many repercussions: it makes it easier to argue for a criminalizing perspective instead of an integrated approach; to fail to see intersectionality as a perspective *required* (and not merely allowed) by law (Article 2 of the MPL); to continue reinforcing gendered and heterosexist stereotypes against plaintiffs and defendants; and to deny protective orders to women whose relationships do not mirror a heteronormative framework (the conjugal relationship between a man and a woman).

As Maria da Penha herself put it, one must remember that the MPL was created on the basis of international treaties signed and ratified by the Brazilian state, as well as on the report made to the IACHR "exposing the negligence of the Judiciary related to the punishment of aggressors of women", and that changes to the law should include the participation of the feminist consortium that proposed its original draft in the first place (Maria da Penha; Wânia Pasinato, 2017, p. 102, 104). However, since the first implementations of policies for combatting domestic violence in the country, feminists have been losing their "power of interpretation" when their demands are "translated" by the state (Cecília dos Santos, 2010, p. 155, 159). Feminist activists are seldom invited to participate in institutional discussions in the CJS over the meanings of the MPL and the shortcomings of its enforcement.

As we will see throughout Chapters 2 and 3, this process of de-fanging the MPL – neutralizing its sharp edges that could cause real damage to heterojustice – has changed over time, employing many different strategies and excluding various people from the law's protection at different times. These variations, however, are all manifestations of the same rationale, which is part of a larger continuum of "domestication"/"translation" that the CJS has always employed when tasked with executing policies and laws originally intended to uphold women's human rights. The trivialization of domestic violence, usually said to characterize the bygone era of the misdemeanor courts, is still the era we live in – the question is just for *whom* it is the case.

2.2 "It's witchcraft!": protective orders, familistic ideology, and the distrust of women

Until 2012, many legal professionals routinely questioned and sometimes refused to enforce the MPL due to supposed concerns about its unconstitutionality. One case, which became somewhat exemplary of the judicial ideology of neutrality and formal equality in the Brazilian justice system, gained national headlines: a judge from Sete Lagoas, in Minas Gerais, declined legal enforcement in his decision, stating that "the world is masculine and should remain this way", that the MPL was a "group of diabolic rules", and that "the modern woman – independent, not even needing a father for her children anymore, except for his sperm – is as such because she is frustrated as a woman, as a female being" (Pedro Triginelli, 2011; Brasil, 2012a).

Unfortunately, attempts to undermine the law were not isolated incidents: the 1st Criminal Chamber of the TJMG, the 2nd Criminal Chamber of the TJMS, the 5th Criminal Chamber of the TJRS, the 8th Civil Chamber of the TJRJ, and judges from all over the country convened for the 2006 "*III Encontro dos Juízes de Juizados Especiais Criminais e de Turma Recursais*" (III EJJETR), all had argued for the law's unconstitutionality in some way or another (Brasil, 2012a). Their principal arguments were that it enshrined special treatment for women in situations of gender-based violence and prevented the enforcement of the decriminalizing measures of Law No. 9099/95 ("*Lei dos Juizados Especiais Cíveis e Criminais*"), such as the possibility of payment of fines or a basic food basket to circumvent a prison sentence, which are measures applicable to misdemeanor offenses. The legal resistance was so relentless that the Brazilian Supreme Court had to eventually rule on the constitutionality of the law in ADC No. 19 due to the "existence of a relevant judicial controversy" over the enforcement of the MPL (Brasil, 2012b)[58].

[58] In a study analyzing a non-random sample of 1,822 decisions from nine appellate courts across all regions of Brazil from 2006 to 2010, Marta Machado et al. (2012) concluded that only 15% of these cases involved legal controversies over the MPL's unconstitutionality. It did not appear that there was a "generalized resistance" in those appellate courts at the time, even though dissenting votes in favor of the unconstitutionality argument were present in all the courts under study. However, they caveat this conclusion by noting that this only reflects the discussions that reached a Court of Appeals and does not reflect the enforcement of the MPL by judges in lower courts, "where there is news of domestic violence cases being processed through the procedure of the *Juizado Especial Criminal* [Law No. 9099/95]". Since it is quite common for the parties not to appeal the lower court's decision in domestic violence cases, I agree that this study only captures a fraction of the Judiciary's processing patterns and would further argue that it misses important and subtle resistances not captured solely by the outcome of cases.

However, this decision did not represent total victory over the naysayers. The interpretation of the many innovative changes brought by the MPL[59] is still very much in dispute in the daily routines of the CJS across the country, despite the shift in tone (now generally more positive) accorded by legal professionals to the MPL's originality. In a heterojustice environment, legal interpretation is surreptitiously up for grabs with little accountability: "there, each head is a sentence" (PC-4). The apparently sophisticated and sometimes progressive language employed in the judicial archives, as well as the consensus myth around the law's enforcement – "There is a very strong alignment with what the protection of the law means" (J-4) and "The court of Minas [*Gerais*] is very open, very receptive, and at the forefront. I think Minas [*Gerais*] deserves congratulations" (J-6) –, actually functions as a mechanism to maintain the façade of a gender-attuned justice while obfuscating the constant resistance (although ever-changing) that this law faces since its inception in Belo Horizonte.

Considering this underlying sexist framework, here I want to emphasize one of MPL's legal innovations that attracted much controversy in Brazilian jurisprudence: the protective order ("*medida protetiva de urgência*"). Its legal nature, requirements, procedure, and objectives have been highly contested since the adoption of the law in 2006, and it represents an eloquent example of the consequences of the spectacular crash between feminist legal reasoning and heterojustice. Today, the protective order is simultaneously praised as an affirmative action and characterized as a "*bagunça*" – a mess that upends the formality of procedure, de-centers criminal punishment, introduces a foreign concept ("gender") into the legal lexicon, and opens up space for the wishes of a commonly "forgotten player" (Ian Edwards, 2004) in criminal process: the "victim".

> No one knew how to work with it [*the protective order*]. Of course, everyone knows how to handle a crime of bodily injury since 1940, there's no difficulty in that. The problem is that it brought in some different things we didn't know what to do with. [...] From a criminal standpoint, the mess was transitory, the ongoing mess that continues today is the protective order (MP-1).
>
> The greatest achievement of the Maria da Penha Law are the protective orders. [...] The number one point (J-3).
>
> Yes, it [*the protective order*] did disrupt: the sexist logic that existed (J-7).

[59] For a discussion on the innovations of the MPL in Brazilian law, see: Marília de Mello, 2010; Carmen de Campos, 2011; Carmen de Campos; Ela de Castilho, 2018; Maria Berenice Dias, 2018; Carmen de Campos; Isadora Machado, 2022.

Protective orders are enshrined in Chapter 2 of the MPL and constitute measures tailored for the urgent protection of women's (and their dependents') safety and well-being when they are facing domestic violence, according to Articles 5 and 7. They encompass measures for the plaintiff (Section III, Articles 23 and 24) and against the defendant (Section II, Article 22), and usually are requested at the woman's police station (or a district police when such specialized service is non-existent), where an EAMP will be opened and the request will be relayed to the JVDFM (or a criminal court where this service is non-existent). Since the MPL is organized in three axes of intervention – criminal, protective, and preventive/educational (Wânia Pasinato, 2010, p. 220) – the protective orders were originally tailored to be part of a multidisciplinary and intersectoral intervention to assist women in an integrated manner, addressing their psychological, legal, and social demands all at once. The design of the JVDFMs (Article 14) was imbued with this integral approach, concentrating both civil and criminal jurisdiction to avoid revictimization and facilitate access to assistance.

Processing a protective order is fundamentally different than processing a criminal proceeding: unlike the latter, the judge's decision on a protective order is constantly subject to adaptations to fit a situation of risk that is dynamic. "It's witchcraft! You issue a decision, you revoke it, extinguish everything. Then you start all over again, the proceeding reopens" (J-2). It is the opposite of the rigidity and formalism of a criminal proceeding, that only allows a single outcome (the penal sanction) that is previously enshrined in criminal law. Given these differences, MPL brought a few procedural rules in its text, but many questions related to processing arose when legal professionals started to enforce it. For instance, what type of appeal should one file in the face of a provisional court order? And what about the final judgment? Additionally, which procedure is applicable to the EAMP: the civil or the criminal code (or both)? Is there a deadline for the validity of a protective order?

But the biggest controversy of them all, the one that still lingers to this day, is the following: what is the "legal nature" of the protective order? Or: how do we define it legally? Is it a constitutional *writ* like the *habeas corpus*? Is it a "*cautelar*" (and therefore an accessory to a main proceeding, either civil or criminal)? Or rather a "*tutela inibitória*" (and therefore autonomous)? On the surface, this discussion may seem like a pointless intellectual exercise understandable only to jurists, but this technical discussion actually has had concrete repercussions on the accessibility of protective orders for women because its definition is linked to the extent of justice's criminal intervention when adjudicating domestic violence cases.

Even today, this debate is not definitely settled, even with the reform of the MPL's text in 2023 to affirm that "The emergency protective orders will be granted regardless of the criminal classification of the violence, the filing of criminal or civil action, the existence of a police investigation, or the filing of a police report" (Article 19, Paragraph 5). Despite all interviewees with whom I discussed this issue being favorable to the idea of an autonomous protective order, with some slight conceptual differences (civil, criminal, "*inibitória*", "*satisfativa*), we can still find recent decisions in lower courts (Case JVDFM1-11, from 2020, and Case JVDFM2-15, from 2021, for example) and in TJMG (Criminal Appeals No. 1.0231.19.005417-2/001, 1.0231.18.023015-4/001, and 1.0074.17.005389-1/002, all decided in 2019[60], for example) which did not grant protective orders due to the lack of criminal representation from the plaintiff.

Several interviewees shared the ongoing resistance in some quarters – especially in the countryside and in the court of appeals – to still condition access to protective orders with the willingness to press criminal charges. "Every now and then we take two steps forward, one step back" (MP-5). Due to the lack of consistency in sentencing throughout the country, the *Superior Tribunal de Justiça* (or STJ), a higher court tasked with standardizing the enforcement of Brazilian federal laws (including the MPL), also has inconsistent jurisprudence on the subject, despite a recent decision in 2023 overruling a TJMG decision and defining protective orders as an autonomous "*tutela inibitória*", independent from a criminal proceeding (*Recurso Especial* No. 2036072/MG). Because there are several ongoing cases on the same subject at the STJ, its 3rd Chamber is scheduled to adjudicate this matter to issue a qualified precedent on the nature of protective orders following the "repetitive appeals" procedure (Brasil, 2024b).

This debate was especially intense in the CJS of Belo Horizonte during the first six years of the MPL's enforcement. This stemmed from an erroneous understanding of the innovation brought by the protective orders, which were intended to assist women's vulnerabilities (economic, emotional, and safety-related) rather than the criminal investigation and punishment of the offender *per se*. Despite the fact that the MPL does not characterize the protective order as an accessory measure for safeguarding the utility of the outcome of a principal criminal proceeding ("*cautelar*")[61], the general judicial tendency was to condition access to protection

[60] The docket numbers and final decisions of these cases are publicly available in TJMG's website (https://www.tjmg.jus.br/portal-tjmg/).

[61] Notably, the original text of the MPL (PL No. 4559/2004) referred to the protective orders as "*medidas cautelares*" (Brasil, 2004a). However, this was intentionally modified by a subsequent proposal from congresswoman Jandira Feghali, adopting the new terminology "*medidas protetivas de urgência*" (or "emergency

on the plaintiff's willingness to proceed with a criminal case against the offender. Practically speaking, this meant systematically overlooking the plaintiff's wishes in favor of a state-sponsored default criminal response:

> If you don't understand the protective order as having an autonomous nature, you are creating a resistance to hearing what this woman wants. I believe so. Because then you are really... forcing her, for example, to file a complaint for a threat crime in order for her to obtain a protective order, yes. Because, in my opinion, as I have already told you, I believe that most women often want the protective order. She wants to live in peace (MP-5).
>
> But this EAMP has autonomy, the logic is different, the questions posed to the justice system are different, the actions of the justice system are different, the social demand is different, so it is autonomous, it has to be autonomous! (MP-1).
>
> They usually say: "Oh, I don't want him to... to be prosecuted. I just want the protective order because, with it, he will already stay away from me" (PC-4).
>
> When a woman knocks on the door of the justice system, at the police station, to request a protective order, many times she does not want a criminal action against the alleged aggressor. She wants protection, to get rid of the violence, so having a criminal proceeding is not justified (J-3).
>
> The majority of women, predominantly, I can say all of them, want to be free from that situation of violence. So, the vast majority is already satisfied through protective orders. [...] many choose not to pursue criminal charges (PC-5).
>
> The law was created for this, to give her [*the woman*] a voice (MP-6).

This line of interpretation (protective orders as accessories to a criminal proceeding) gained ground in Belo Horizonte and became the hegemonic discourse despite the legal battles between the two criminal courts at the time and the MPMG. The systematic use of this legal argument was the result of a few factors that complemented each other: firstly, the gravitational force of criminal procedure that pulled the intervention in protective orders into a criminalizing orbit; secondly, the mere pragmatism of legal processing, which favored interpretations that would reduce the court's caseload; and thirdly, the *machismo* of certain legal professionals, particularly judges at the time, who avoided granting these orders in a systematic manner using an array of apparently "technical-legal" reasons.

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protective orders"), stating that the orders could be granted immediately and maintain their efficacy "until a decision on the subject in a *civil* proceeding" (emphasis my own) (Brasil, 2004b).

Even though a 2008 state law (*Lei Complementar Estadual* No. 105/2008) had already determined the creation of a JVDFM, Belo Horizonte started enforcing the MPL through criminal courts from 2007 to 2017. This was a possibility conceded by the MPL itself, while the JVDFMs were not yet in place (Article 33). This choice – perhaps due to the criminal nature of some of the language in the law[62] and/or a misunderstanding of the phenomenon of domestic violence in general and the protective order in particular[63]– greatly impacted the functioning logic of these courts. "The criminal court cannot understand that within its jurisdiction there can be something autonomous from criminal matters. Something like that doesn't make sense" (MP-1). Securing the punitive powers of the state – instead of assisting women facing domestic violence – became the center of judicial intervention: "So, indeed, it was difficult and it became stigmatized as purely criminal" (J-7). The judge of the 14th Criminal Court, by the way, was very straightforward about the lesser importance of protective orders, as evident from an article he published in 2009:

> [...] the primary focus of the 14th Criminal Court is the criminal jurisdictional protection, because the purpose of Law No. 11.340/06 is to prevent, punish, and eradicate Violence against Women, as stated in Article 1 of the governing law.
> Civil protection, which is instrumental and therefore secondary, is restricted to the peculiar conditions of women in situations of domestic and family violence. In this context, the role of the 14th Criminal Court in the civil field should be limited only to emergency protective orders within its jurisdiction, as long as the behavior of the aggressor fits some offense provided for in criminal law.
> [...]
> With these considerations in mind, we understand that the focus of Law No. 11.340/06, once the criminal conduct leading to domestic and family violence against women is proven, is the sanction, aiming to prevent, punish, and eradicate domestic and family violence against women. After all, "(...) The man of violent temper pays the penalty; even if you rescue him, you will have it to do again" (Proverbs 19:19) (Nilseu de Lima, 2009, p. 171, 180).

This criminal perspective fit like a glove with judges who came from a background in criminal law, accustomed to very formal and stigmatizing[64] proceedings. The first domestic

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[62] MP-1: "'Oh, I have no idea what a protective order is, but since the law also includes criminal procedural norms, oh, then these are criminal courts', which is why the courts became criminal courts".

[63] MP-5: "But I don't think the way this was done is related to the judicial organization law. I think that... this interpretation is what led to it being established as a criminal court. [...] But I don't think so, I think it's really a tendency to... to view it as criminal and to not really understand the issue of domestic and family violence against women. Not understanding the *importance* [*emphasis*] of the [*protective*] order".

[64] In an interview with the press in 2013 (Juliana Cipriani, 2013), the then judge of the 14th Criminal Court commented on light sentences in domestic violence cases: "It is an educational penalty, but a stigmatizing process tarnishes the guy's record, preventing him from taking a civil service exam, for example, and he might miss out

violence courts in Belo Horizonte, by the way, did not have proper training for their personnel (including judges) before they started handling cases, and did not integrate the courts with other state agencies and services who provided assistance to women in the capital at the time (Wânia Pasinato, 2010, p. 228). Along with a pervasive institutional culture of "law and order" that places maximizing criminal intervention as one of, if not *the* most important feature of the CJS (Vera Regina de Andrade, 2003, p. 28), privileging persecution and punishment was the more obvious way of "translating" the "*bagunça*" of the MPL. The integral protection framework, the core of this new law, remained "eternally lying on splendid cradle"[65] (J-5) for a while.

> I am very connected to the criminal field. It's a place, too, that I like to be in, [...] actually, I think it's the flagship of the Public Prosecutor's Office, you know? (MP-6).
>
> [...] the Public Prosecutor's Office, you know, [*we*] highly value the issue of criminal punishment. Of aiming to seek imprisonment in the end, to seek the sentence, the conviction (MP-4).
>
> I had issues because you have some prosecutors who are *very* [*emphasis*] focused on criminal law (MP-1).
>
> I confess to you that [..] when I started, I also had my doubts about this [*the nature of the protective order*] [...], I didn't understand it very well because I interpreted it through the lens of criminal procedure. [...] But it took me a while to come around because my mind was influenced, you know, from [*redacted*] years of working in criminal law (J-1).

Of course, pragmatic concerns about the size of the caseload were also on the mind of legal professionals when interpreting the law. This size was far from insignificant: from 2006 to 2011, Minas Gerais had 64,034 ongoing proceedings (police investigations, criminal proceedings, and protective orders) in all its domestic violence courts, the third highest caseload in the country and the 2nd in total proceedings per judge at the time (Brasil, 2013, p. 36-37, 48). The meager infrastructure and the insufficient human resources at the time, including of judges, clerks, secretariat and multidisciplinary teams (Wânia Pasinato, 2010, p. 228; Elisa Oliveira, 2013, p. 10), led the CNJ to propose in 2013 the creation of four more courts in Minas Gerais to adjudicate domestic violence cases (Brasil, 2013, p. 48, 83).

Considering this context, it became convenient to find "technical" solutions to deal with the great input of new proceedings into the system: requiring a criminal representation from the

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on getting a job because of his criminal history". To be clear: he was not criticizing the stigmatizing effects of being impacted by the CJS – he was praising it.

[65] This is a reference to a passage of the Brazilian national anthem.

plaintiff as a condition to get access to protective orders; subverting the purpose of the justification hearing (Article 16) to pressure the plaintiff to retract from her criminal representation; trying to enforce decriminalizing measures catered to misdemeanor offenses, such as the conditional suspension of the proceeding (or "*sursis*", enshrined in Law No. 9099/95)[66], despite its prohibition by Article 41 of the MPL; establishing a deadline for the effects of granted protective orders without legal permission... all functioned as pragmatic strategies to diminish caseload and keep the "assembly line" going.

> What's the judge's idea? I need to reduce. I reduce by setting agile agendas and such, but I need to reduce. I can't reduce the input. It keeps coming. [...] I need, if possible, to kill it in Article 16, terminate it, to demand a representation where there isn't one [*to demand*]. That's how I'm eliminating it. That's the idea, got it? (MP-1).

These termination strategies were adopted by many legal professionals across the country, with some becoming informal guidelines in national public forums for judges (Fonavid[67]) and prosecutors (Copevid[68]) handling domestic violence cases in their respective jurisdictions. At Copevid, some interviewees noted that it took some convincing before prosecutors from other states would move beyond their pragmatism and enforce the protective intentionality enshrined in the MPL:

> "Is conditional suspension of the process applicable?" Then the pragmatic colleagues: "Yes, it is!", because they are remembering the open front door, the large number of cases, right? (MP-1).
>
> And then, [...] a precedent had just been set by the STJ stating this [*autonomous protective order*]. All my colleagues from other states were advocating the opposite. And then I said, "No, but I have an appeal, we defend this in Minas [*Gerais*], exactly this position". Then everyone was like this [*distrustful*], and I said, "I have an appeal, I'll send everything to you". And

[66] In an interview to the press in 2013 (Juliana Cipriani, 2013), the judge of the 13th Criminal Court stated the following: "For Chinaidre, it is still necessary to amend the law on the conditional suspension of proceedings to include specific articles for the Maria da Penha Law. 'We started doing this, and women were monitoring, and they [*the defendants*] behaved, but the Supreme Court ruled that this instrument cannot be used, so we are waiting for the approval of a specific legislation', he said".

[67] Statement No. 5 (revoked in 2016): "The jurisdiction of the Domestic and Family Violence against Women Courts [*JVDFMs*] is conditioned upon the existence of a crime report or a criminal complaint filed by the woman in a situation of violence". Statement No. 10 (revoked in 2014): "The Law No. 11.340/06 does not prevent the application of conditional suspension of the legal process [*"sursis"*] in cases where applicable". Statement No. 12 (revoked in 2014): "In case of the defendant's acquittal or the extinction of the perpetrator's criminal liability for the violence, the interest in pursuing emergency protective orders shall cease" (Fonavid, 2023).

[68] Statement No. 4 (altered in 2013): "[...] Regarding the duration, it was decided that the order can last throughout the entire criminal process, including during the serving of the sentence. In cases where the woman does not wish to file a criminal complaint, it was decided that the protective order may last for up to 6 months" (Rúbian Coutinho, 2011, p. 85).

> then it started to resonate in all the states, this started like this, it was a pioneering stance of ours [*referring to the MPMG*] (MP-6).

But all of this (lack of a proper infrastructure, the persistence of a criminal logic, and the assembly line kind of justice) is just part of the "why" the CJS in Belo Horizonte persisted for years in binding the protective order with a criminal investigation/punishment. There was a hidden premise in decisions of this nature: the familistic perspective in domestic violence courts. As stated by one of the judges adjudicating domestic violence cases in 2014, "If I were to comply 100% (one hundred percent), I would empty the households of Belo Horizonte, because they all request the removal [*of the defendant from home*]"[69]. This is compatible with the findings of a qualitative study conducted in Belo Horizonte's CJS in 2010:

> However, it is necessary to have clarity that this is not just a structural problem. The establishment of the *Juizados* is important if they are managed by teams committed to Law 11.340/2006 and are available for dialogue with organizations and services that provide specialized assistance to women in situations of violence.
> [...]
> Consequently, even though it sometimes appears to take on a new guise, what is observed is the practice of a criminal policy that prioritizes the defense of the family over the defense of individual rights (Wânia Pasinato, 2010, p. 229, 231).

In several proceedings this ideology – which maintains, either intentionally or indirectly, the nuclear family intact despite the violence – became evident. This "minimal state" perspective, taking on the guise of protecting citizens' fundamental rights from the excesses of a penal state, actually denied safety for hundreds of women in Belo Horizonte for years. Case CC1-14 (from 2011) is a good example of this, as it involved the participation of both judges of the two criminal courts adjudicating domestic violence cases in Belo Horizonte at the time. This was one of the oldest cases involving queer women that I could find in my sample, which involved threats between former partners. Because it was annexed to the EAMP, I could access the criminal proceeding regarding the facts of the case, including the formal criminal charges brought by the MPMG against the defendant.

The 14th Criminal Court had the practice of automatically scheduling the justification hearing under Article 16 of the MPL, even when the "victim" did not indicate her intention to

[69] Interview conducted by the *Grupo de Pesquisa em Políticas Públicas de Segurança e Administração da Justiça Penal* (PUCRS), in partnership with UFPE and UFMG, for a 2014 research called "*A aplicação de medidas protetivas para mulheres em situação de violência nas cidades de Porto Alegre-RS, Belo Horizonte-MG e Recife-PE*" (Project BRA/04/029). *Obrigada* Ludmila Ribeiro, who kindly relayed this material to me.

reverse her decision to press criminal charges. This rule was originally designed to minimize the risk of undue external pressures (including from the defendant) on the woman's decision to retract her criminal representation, requiring that she does so in front of the judge and the prosecutor in a court session. However, this automated process effectively turned a woman's right into an obligation, pressuring her to reaffirm her decision in the very formal and intimidating setting of a courtroom. This had a direct impact on the request for protective orders, since these were seen as accessory to a criminal investigation. In the abovementioned case, after a first unsuccessful attempt to hold the hearing (the "victim" was not found), the judge rescheduled the session and ruled that she should be located again, including via compulsory attendance (which can be enforced with the assistance of police officers). Again, she was not found. Subsequently, the MPMG informed the court that the "victim at no time expressed interest in retracting the representation, thus there is no need to hold the hearing provided for in Article 16 of Law 11.340". Notably, the prosecutor also argued that "it is not appropriate to hold a hearing to *induce* the victim to renounce or *discourage* them from proceeding with the criminal action" (emphasis added), and called this insistence on the hearing "unnecessary and procrastinatory".

Substituting for his colleague, the presiding judge of the 13th Criminal Court denied the MPMG's request and, citing some precedents from TJMG's appeals court, ruled for the "indispensability" of the hearing, stating that "the objective of the Maria da Penha Law is social pacification, so neither the legislator nor the enforcer of the law can take away the *victim's right to restore peace in the home and reestablish common and family unity*" (emphasis added). In the third attempt at a hearing, the woman (finally found after incessant searches by the court) ultimately decided to withdraw both her criminal representation and her request for protective orders. The presiding judge of the 14th Criminal Court echoed the prior decision from his colleague ("the objective of the law is social pacification") and surprisingly argued for the empowerment of the woman and the need to respect her wishes of not pressing charges anymore – the same woman the court sought to bother three times in four months, irrespective of her own wishes.

This type of performance was far from unanimous even at that time, especially within MPMG's specialized office handling domestic violence cases in the capital. Early on, a few prosecutors had the insight that the autonomous protective order was key to the integral protection approach enshrined in the law, and began to relentlessly counter-argue these rulings via massive appeals (usually with no success). For them, the courts were innovating when

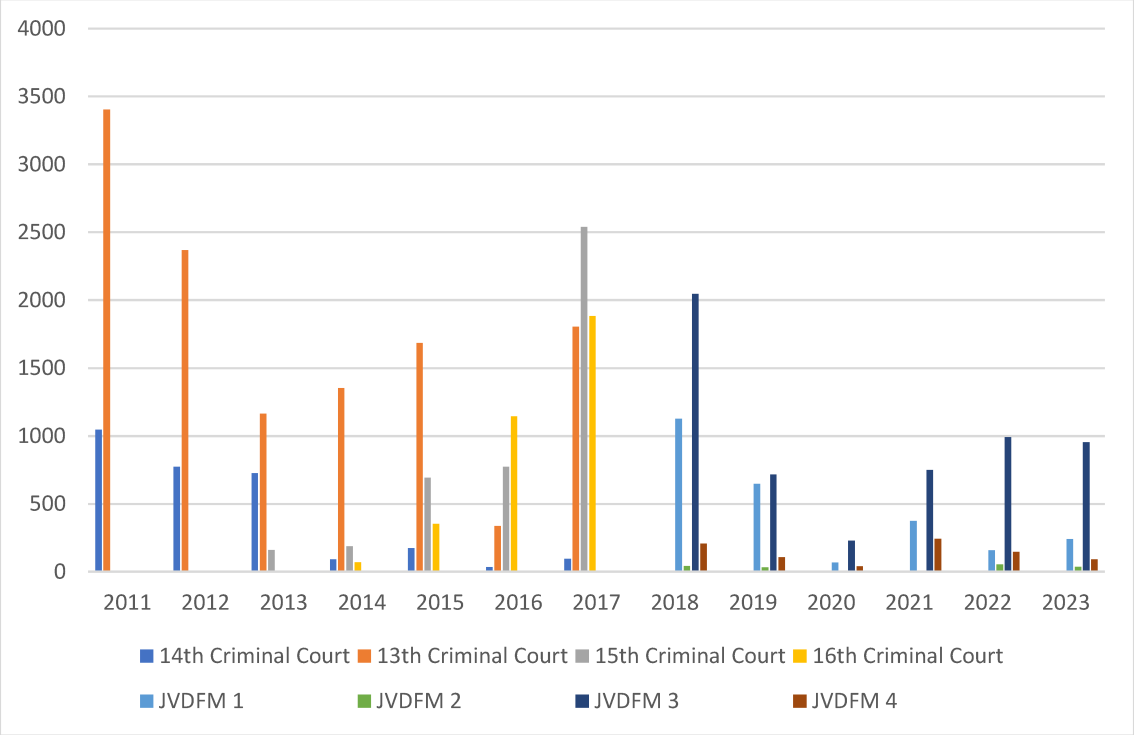
interpreting the law, putting up hurdles that were nowhere to be found in the law's text. I could find prosecutors' complaints of the criminal courts' disorganization and lack of efficiency when adjudicating urgent matters, alongside many pleas for "procedural readjustments", in several proceedings. Complaints about delays in processing leading to the expiration of the statute of limitations ("*prescrição*"); paralyzed proceedings under the pretext of getting the plaintiff's criminal representation at the police station; failure to notify defendants of the courts' decisions on granted protective orders; the court's refusal to immediately decide on the protective orders, conditioning it to hearing the MPMG and the parties before any protection is granted, unduly delaying the proceedings; excessive requirement of evidence to grant protective orders; decisions refusing to grant protective orders because the violence is not habitual, with no certification on the plaintiff's current state through the court's multidisciplinary team (Cases CC1-9 and CC1-5, both from 2009; Cases CC1-13 and CC1-11, both from 2010; CC1-15, from 2011; CC1-10, from 2012).

This lack of efficiency in deciding requests for protective orders by the first two criminal courts in Belo Horizonte – also a finding in prior research[70] – reflects the great resistance overall in granting protective orders in state's courts: in 2011, only 18% of cases in Minas Gerais had protective orders granted by the courts (Consultor Jurídico, 2012; Brasil, 2013, p. 459). Additionally, the recurrent expiration of the statute of limitations in Belo Horizonte's criminal courts was also significant, which also indicates the lack of urgency and care given to the criminal proceedings and, consequently, to the protective orders. When we zoom in in the performance of judges in Belo Horizonte using TJMG's SIJUD database, the frequency of

[70] Wânia Pasinato (2010, p. 228, 229): "The protective orders take up to one year to be granted" and "In an interview with the coordinator of the Special Prosecutor's Office, she did not venture to estimate the duration of a case, but stated that many of them expired shortly after receiving the court's decision, rendering any ruling ineffective". Elisa Oliveira (2013, p. 11): "A multitude of requests overwhelms the criminal courts, causing a considerable delay in the analysis of protective measures and, consequently, in the granting of these provisions". CNJ (Brasil, 2013, p. 49): Minas Gerais' domestic violence courts decided only 20% of their caseloads at the time, a very low rate compared to the other two tribunals with the highest caseloads in the country – Rio de Janeiro (71%, with seven specialized courts and three times more proceedings per 100,000 women) and Rio Grande do Sul (76%, with only one specialized court and 2.3 more proceedings per 100,000 women).

issued decisions declaring the extinction of criminal liability ("*extinção da punibilidade*") is also noteworthy[71-72]:

Figure 2. Frequency of decisions on extinction of criminal liability per most productive judge and per court (2011-2023)



Source: SIJUD/TJMG, compiled by the author.

In absolute numbers, the series above show a significant frequency of extinguished criminal proceedings due to the expiration of the criminal liability of the defendant at the 13th and 14th Criminal Courts, especially in 2011 and 2012. Considering relative numbers, Judge B from the 13th Criminal Court (2011-2016, in Figure 2) has the most consistently high frequency of all judges presented in the graph, with an astounding **87.06%** of their sentences (or 3,404 cases) in 2011 consisting of archivals due to expired criminal liability, 2.4 times higher than

[71] The Brazilian Penal Code (Article 107) defines various hypotheses for the extinction of criminal liability: expiration of the statute of limitations (especially "*prescrição*" and "*decadência*"), retroactivity of a law that no longer considers the act as criminal, death of the accused, pardon, amnesty, renunciation of the right to complain ("*renúncia ao direito de queixa*"), withdrawal of the complaint ("*perdão do ofendido*"), and rehabilitation. Since most of these hypotheses are not common in domestic violence contexts, except for the expiration of the statute of limitations and the renunciation of the right to complain, it is safe to say that the SIJUD data might be interpreted as a proxy for these two common hypotheses.

[72] To compile Figure 2, when the court did not have a principal judge ("*titular*"), I considered the judge with the biggest amount of issued decisions in that court and for that respective year. The JVDFMs were installed in April 2018, but in this graph I considered all proceedings from that year as part of the *Juizados*.

Judge A from the 14th Criminal Court (2011-2016, in Figure 2) (**35.33%** or 1,045 cases). *This is the highest (absolute and relative) number of archived cases due to extinction of criminal liability in Belo Horizonte's CJS until today.* When the 15th Criminal Court became a domestic violence court in 2013, the gap between Judges A/B and the new Judge C (2013-2015, in Figure 2) became evident: **24.13%** (Judge B), **19.4%** (Judge A), and **2.76%** (Judge C). Except for a spike in 2015 (44.91% or 692 cases), Judge C had the lowest rates of the three while he was working at the 15th Criminal Court. These numbers are shockingly high when we compare them to the most recent years of the enforcement of the MPL in Belo Horizonte. Except for Judge E (15th Criminal Court and 3rd JVDFM, 2015-2023), who has the highest relative numbers of archived criminal proceedings since they started adjudicating domestic violence cases (varying from 20.8% to 69.32%), all other judges had rates under 1% in 2023: 0.91% (Judge J, 1st JVDFM), 0.18% (Judge H, 2nd JVDFM), and 0.44% (Judge I, 4th JVDFM).

These numbers tell us a few things. Firstly, they highlight the enormous gap between the beginning (2011) and the end (2023) of adjudication patterns in Belo Horizonte's CJS, reflecting the development of its infrastructure and case management. Today, the police and the courts are much more prepared to process new domestic violence cases than ten years ago, now being better equipped to avoid the recurrent extinction of proceedings due to inefficiency and lack of care. Secondly, the data also shows that who is deciding matters: considering that cases are randomly assigned to the courts, and that the infrastructure varies little from one to the other, these numbers capture the different impacts from each judge's sentencing patterns. This aligns with what the fieldwork indicated: the pervasive use of a range of delaying tactics by the 13th and 14th Criminal Courts led to high numbers of archived cases without a decision on the defendant's culpability and/or on the requested protective orders.

Remarkably, the judges from the first two criminal courts came under scrutiny in 2012 for mixing religion with their legal practice. Both of them were Evangelical pastors, and several interviewees recounted that their familistic and/or religious sensibilities impacted how they interpreted and enforced the MPL. Very few were willing to mention these facts on the record:

> Well, girl, complaints started coming in that they didn't want women to separate, they didn't put much effort into making things move forward, and then, from time to time, they would organize something like a prayer group inside [*the courts*] (J-7).

> Yes. Yes. [*agreeing with my question about familism in the criminal courts*] Especially because both judges were Evangelical. I don't need to tell you anything more, right? One of them wasn't like that... At least in the hearings, he didn't have that bias towards conciliation. But the other one... we struggled.

> We struggled. That one, yes. And sometimes, we had to intervene, you know? Because that wasn't a conciliation hearing, it wasn't about going to church. Yes. Later, a third judge, who I think was crucial, came into the Maria da Penha court, another division was created, the third, the third court, and he had the same perception as we did, and convinced the other two to change, in other words, issue the order! Then, if necessary, revoke it, but issue the order! Because they had difficulty issuing the protective order. [...] And it [*not granting protective orders*] also found support in the higher court as well! (MP-6).

> What I've heard, also just hearsay, is that this judge, at the time, discouraged the victim from... you know, pursuing the... complaint with the argument of family forgiveness, the need to maintain the family, that sort of thing. But not an Evangelical service (J-5).

This state of affairs spilled over the confines of the TJMG. The 2012 Joint Parliamentary Committee of Inquiry's (or CPMI) final report – the result of an inquiry led by both houses of the Brazilian National Congress to investigate allegations of omission by public authorities regarding the application of the MPL –, stated the following in its section on the TJMG:

> Another aspect that deserves the attention of the Judiciary is the fact that requirements not provided for in the Maria da Penha Law are being made for the granting of protective measures, or the understanding that removal from the home is a "drastic measure" and therefore not granted. This has led to the deaths of women who are left unprotected in their homes.
> Regarding the TJMG, a noteworthy point is the complaint made at the public hearing on April 27th, according to which "weekly services are held in the judge's offices in the two domestic violence courts, and many women seeking justice are referred to the church". To investigate this, an Inquiry ["*sindicância*"] was initiated by the General Court Inspectorate ["*Corregedoria Geral de Justiça*"]. However, according to the inquiry records, no irregularities were found regarding the judges' actions, and the investigative process was archived. The conclusion was stated as follows: "What was observed was a deficient work system in which judges have often denied protective measures due to a lack of evidence in the case files, evidence that is absent precisely due to a lack of material and human resources. Thus, the work environment is extremely tense and intense" (Brasil, 2013, p. 459)[73].

As I have demonstrated so far, it is not true that protective orders were denied only due to a supposedly lack of minimal evidence in case files, as the judges claimed[74]. This "lack of evidence" argument was only one of the delaying or termination strategies used by the courts to deny protection. Moreover, the records from the TJMG's internal inquiry mentions both judges confirmed performing weekly services in their offices at the tribunal, under the pretext

[73] Thank you to Carmen Hein de Campos, who pointed this out to me during my second qualifying exam.
[74] One interviewee (MP-5), by the way, confirmed that one of the judges actually required the presence of a witness to issue a protective order for the removal of the defendant from home.

that they were moved by a "charitable purpose" due to the tension that permeated the work environment "considering the painful and tragic events that usually unfold there daily" (Brasil, 2012c)[75]. Paradoxically, they also stated that they did not promote their religion internally – despite confirming engagement in religious activities with court personnel – or externally – despite the inquiry decision confirming that a partnership between the TJMG and the church where one of the judges belonged to was considered to "fill gaps in the structure for the prevention and monitoring of violence against women", an idea that was subsequently "buried" without further explanation. *The judges denied referring women victims and participants in crimes related to the MPL to religious events of any kind*[76]. Their statements, along with those from court personnel who worked with them, were deemed as sufficient by the court oversight body ("*Corregedoria*") to dismiss the internal inquiry.

"Previously, the Inspectorates were also more... lenient, let's say [...] so the Inspectorates must have overlooked that and considered the rest of their careers and so on", said J-7. Indeed, the corporativism and lack of accountability in heterojustice is hard to miss. For peers (unlike most defendants), prior records may be overlooked to maintain career prospects. One of these judges, by his own account in an online interview, had already faced a lawsuit from MPMG in another jurisdiction because, after raising funds with an Evangelical association for a local prison, he distributed Bibles to the incarcerated on the day of the prison's reopening. "The argument for this lawsuit was that we had violated the prisoners' freedom of belief; in other words, violated the Federal Constitution. But that wasn't true. We were just fulfilling our role as citizens", said the judge (Guiame, 2014). His prior lack of secularity while discharging his duties did not seem to matter to the internal oversight body in the face of another complaint of this nature.

The 2012 CPMI was not convinced either by the TJMG's decision to archive the case, referring to the "cultural tendency to mediation" in domestic violence services in Minas Gerais as an "immense challenge to be overcome". It specifically recommended the following to the TJMG, among other topics: "19. Ongoing training of judges and staff on violence against women, correct application of the Maria da Penha Law, granting protective measures without requirements not provided for by the Law, and the separation between state and religion" (Brasil, 2013, p. 468, 470). *The real mess was, in fact, a product of judicial resistance.*

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[75] This decision is publicly available on the Senate's website as part of the documentation annexed to the proceedings of the 2012 CPMI. Available at: https://www.senado.gov.br/comissoes/documentos/sscepi/DOC%20VCM%20270.pdf. Accessed: June 18, 2024.

[76] It is important to note that I tried to reach both judges and asked for an interview for this research, but none of them responded my requests.

There is something to be said about "time as a currency" in the CJS: making people in a situation of violence wait indefinitely for a decision (and frequently waiting for their requests to simply be denied using a wide array of ever-changing and off-book justifications) is to, through a game of procedural chess, effectively let things (and persons) die with the passage of time. Waiting is not just a nuisance; it is an "exercise in subservience and power", one that is wielded constantly by legal professionals (Nicole Van Cleve, 2016, p. 31). In a social science account of the politics of waiting in Argentina, Javier Auyero (2012, p. 21) explains how interactions with a capricious state that mandates vulnerable people to wait indefinitely to access fundamental services have the subjective effect of making them silently comply with authorities: "the destitute come to be defined and treated not as citizens but as patients of the state". According to him, waiting (re)creates subordination by producing *uncertainty* and *arbitrariness*. It normalizes waiting as something that simply happens, as a harmless byproduct of bureaucracy. "When interacting with a state that publicly presents itself as 'concerned' about them, vulnerable residents should not be anxiously dreading the future" (Javier Auyero, 2012, p. 20).

In the EAMPs that I could access, this politics of waiting was evident. It is a game of procedural deception that (re)produces the "subject of law" in its double meaning: a holder of rights, all the while subjected to the capriciousness of the state. The judge from the 14th Criminal Court was not blunt in the archives about the court's penchant to uphold the family at all costs, including in cases involving queer women, because *they did not need to be*. "Technical" language was already at their disposal to justify not granting protective orders: lack of interest from the plaintiff (Case CC1-7, from 2011); lack of criminal representation (Case CC1-17, from 2010); lack of minimal evidence (Cases CC1-2, CC1-8, both from 2011, and Case CC1-3, from 2012). All this legal language is curated by the judicial authority as a way of self-preservation: *it effectively transforms familistic ideology into law.* Under the pretext of a lack of infrastructure, it depoliticizes a powerful maneuver into a simple request for vulnerable others to wait.

However, stereotyping is not only enforced through coded language – it can also be explicit and justified for alleged "legal" reasons. In the process of upholding the heteronormative framework of the nuclear family, heterojustice perceives the woman as either weak and submissive to the "*chefe de família*" ("the family's boss"), or as a cunning and vengeful person who wants to take advantage of the defendant and/or the system. The diversity of complaints about domestic violence is seen as disruptive to this hierarchical social order, and

therefore women's speech must be systematically controlled and undermined. From the beginning of the adjudication of the MPL in Belo Horizonte until today, a typology of subversive women is (re)produced by judicial discourse incessantly, constantly updating its terms but always naturalizing the acceptable limits for femininity according to the heterojustice gaze.

The past and present are woven perfectly according to this *machista* ideology: it is a continuum of various tactics to portray women as crazy, vengeful, and irresponsible. If heterojurists were more honest about the real historic mission of their institutions, this is what they would dare to disclose in published articles and public talks:

"HOW TO DEAL WITH WOMEN PLANTIFFS IN A DOMESTIC VIOLENCE COURT: A PRACTICAL MANUAL FOR LEGAL PROFESSIONALS

The Unstable

A woman's speech, on its own, holds no water because women are emotional. This is particularly evident when they provide statements to the police or even to the court's technical body as an "alleged victim" of domestic violence, making their statements insufficient to grant a provisional protective order (Case CC1-21, from 2009, and Case CC1-22, from 2010). As stated by the former judge of the 14th Criminal Court, especially in the context of "couples' quarrels", giving credence to someone who turns to the Judiciary to "seek a personal satisfaction, which often resolves itself once that rage and desire for revenge against their aggressor subsides", could transform police stations and courtrooms into a "couch of professionals in the field of psychology, where the offended party vents their deepest feelings in search of a solution to internal conflicts that they were unable to resolve in their domestic and family relationship" (Nilseu de Lima, 2009, p. 172, 180). Therefore, lacking corroborating evidence, the order shall be denied.

The Irresponsible and the Corrupt

If the court cannot locate the plaintiff to serve her with the decision granting the protective order, it shall be revoked (Case CC2-3, from 2020). If she is not found to be interviewed by the court's technical body as ordered, it shall not be granted (Cases CC2-4 and

CC1-6, both from 2014). After all, "if the victim were truly in a situation of risk, she would have approached the police or even this registry". Also, it is certain that she would have updated her address to be found by the court if she was still interested in the protective order. Deciding otherwise would be to reward her for her negligent behavior, "burdening the public coffers with her inaction" (Case CC1-20, from 2011).

The Liar and the Cunning

Legal practice has repeatedly demonstrated that when women "who say they are victims of domestic violence" provide their statements to the police, they often declare that they do not desire to pursue criminal charges against the aggressor, "but still insist on the request for protective orders" (Case CC1-17 from 2010; Cases CC1-2 and CC1-15, both from 2011). Granting a provisional protective order only based on the plaintiff's account is to incur on the risk of "violation of third parties' rights" (Case CC1-3, from 2012) because a woman's right to her physical, psychic, moral, and patrimonial integrity, as enshrined in the law, still "does not take away from the man the guarantee of his basic rights as a citizen" (Case CC1-19, from 2013)[77]. There is precedent to allow these arguments regardless of the severity of the facts of the case – for example, in a case involving a cycle of violence against a 15-year-old teenager (Case CC1-10, from 2012), and another involving a possible rape against a 12-year-old teenager[78] (Case CC1-18, from 2014).

Distrust is always advised, especially with reports of patrimonial violence and requests for removal of the defendant from home, since experienced legal professionals confirm that some women, sometimes, make up stories to seek personal interests:

> *Sometimes women use the Maria da Penha Law to achieve certain objectives. [...] They make things up! They make up stories. They make things up! They make up that they were threatened, they make up, for example, that they want... not in this case, but it could be that in this case she wants to keep the apartment and so she says... because there are no elements... (J-3).*
>
> *[...] because they want* [the protective order]*, sometimes for... for other reasons, sometimes because it's easier to remove that person from the house, sometimes they want to... have a dispute with others, like in family court, it's*

[77] *For efficiency purposes, the "men's rights" template is warranted for cases with a woman defendant; there is no need to adjust the language or the arguments.*

[78] [*Switching back to my own voice*] In this case, the protective order was eventually granted only after the court's technical body studied the case, two months after the request.

> *common, right. [...] And the protective order is much easier and much quicker, right? (PC-4).*
>
> *[...] when a woman... acts to be troublesome, bad, vengeful, she didn't really want to separate at all, or she wanted revenge, women could also be terrible! (J-7).*

Therefore, it is absolutely crucial that trained legal professionals are capable of differentiating a deceitful woman who manipulates the legal proceedings from the woman who "just wants peace" (PC-7). Only the latter is the "victim victim", or the real victim, the one who "truly needs" the justice system's protection – otherwise, the woman genuinely in need will "end up at the back of the line waiting for the others" (PC-4)."

2.3 "A justice made for women – am I going to prosecute every woman?": gendered subjugation and heteroframing

The ritualization of the victim's suffering has to be spoken in the "language of unequal, stigmatizing, and illegitimate punishment" to be well-read and heard by legal professionals (Fernanda Martins, 2021, p. 195). Defendant/aggressor/offender, on one side; plaintiff/victim/offended, on the other. Few interviewees have a critical view of the dichotomy "aggressor/victim" as a stigmatizing language (or at least are aware of this view):

> In domestic violence, the man is stigmatized with the figure of "aggressor". The woman, she is stigmatized with the figure of "victim". This is in the legislation (J-1).
>
> These are terms that I don't use, the "aggressor" and the "victim". These are words that I hate in the context of protective orders (MP-1).
>
> One can't use the word "aggressor" anymore, and I have some difficulty with this issue, because as a police chief, I really have a view of the "aggressor", but well, we learn daily, right? (PC-2).

Despite a varying awareness by some, the dichotomous and heteronormative discourse continues to be the official parlance in court records. The gendered language in legal documents follows the new times hesitantly: recent rulings (between 2020 and 2022) still use male pronouns when referring to women defendants, although the female gender is increasingly appearing in some parts of the documents and, in smaller quantities, throughout the entire text. I do not disregard the fact that the volume of cases is significant, even distressing to some

agents, and that the routine use of almost-ready-made and easy-to-adapt templates ends up being necessary for the efficiency of judicial activity. But the slow and gradual change in legal discourse highlights an interesting aspect that symbolizes the great resistance to the entry of the unintelligible into the entrails of state bureaucracy. In particular, I remember some cases where the gendered language was improvised after the document was printed, pulling, with a pen, the "little leg" of the "a" at the end of the word "*requerida*" (or "woman defendant"): a small and makeshift recognition of a presence that was not expected to be there.

Despite the provision in the MPL that personal relationships under the law "do not depend on the sexual orientation [*of the involved parties*]" (Article 5, Sole Paragraph), domestic violence courts in Belo Horizonte have a long history of denying protective orders for LBP+ women, including based on the argument of a "lack of gender-based motivation". This rationale appears in **10.84%** of cases involving queer relationships (N = 83): one case from 2011 (CC1-12), six cases from 2019 (JVDFM2-6, JVDFM2-7, JVDFM2-8, JVDFM2-9, JVDFM2-10, JVDFM1-4), and two cases from 2021 (JVDFM1-6, JVDFM1-7). It represents the second most frequent reason to deny protective orders (**14.06%**), only behind voluntary dismissals by the plaintiffs (**25%**). Although judges who issued most of these decisions have changed their stance in more recent cases to ensure the enforcement of the MPL in those situations, it is still noteworthy the long learning curve taken by the CJS to start enforcing the law to queer relationships. As we will see, this important (albeit late and ongoing) change did not occur due to an intersectional understanding of the dynamics of violence experienced by LBP+ women, but rather to a mechanical subsumption that mimics the typical heterosexual relationship that incorporates the (male) aggressor and the (female) victim dichotomy.

The so-called "lack of gender-based motivation" (or "lack of gendered subjugation") comes from a supposedly "teleological" interpretation performed by some legal professionals that combines two articles of the MPL: Article 5 (which defines what is "domestic and family violence against women") and Article 7 (which enshrines the different forms of violence that are recognized by law, such as physical, sexual, and psychological). Under the justification that the former defines domestic violence as "any action or omission *based on gender* that causes the woman's death, injury, physical, sexual or psychological suffering and moral or patrimonial damage" (emphasis my own), Belo Horizonte's CJS routinely restricts women's access to specialized courts under the pretext that not all cases of violence within the home, the family, or intimate relationships, are actually deserving of the special protection afforded by the MPL – rather, only *gender-based violence* would be protected by this law.

But what is "gender-based violence"? And how do we define it on a case-by-case analysis? I could sense hesitancy from some interviewees, apparently not familiarized with this discussion in an abstract manner:

> I can't really put it into words right now, but I look at each case individually, we discuss it here, and usually, when we see that there isn't gender violence, we don't grant it. You understand? That's the thing (J-6).
>
> It's hard to explain, you know, but... that was it, I tried to see, to look at the situation and say, "Did she suffer this because she is a woman? Does it have anything to do with it? Or not? Was it a fight like, 'oh, you took my hair clip and didn't give it back!'" Man, it's not because she's a woman! It's a fight between two... you know? Two people living in the same place, you get it? It has nothing to do with being a woman (PC-6).
>
> Yeah, good question. Oh Samantha, look, I never stopped to think about it, I just did it automatically (PC-7).

The responses I found had important variations, but they all had a common denominator: the need for the existence of a relation of power and control against a woman. A distorted view of the feminist patriarchal/domination framework I mentioned in sub-section 2.1 underlies the hegemonic comprehension of gender-based violence by Belo Horizonte's CJS, even if this theoretical influence is seldom recognized by most legal professionals. For some, the existence of a male aggressor (or someone performing the role of the male aggressor) is fundamental to the configuration of this asymmetric power relation: "it is imperative that the victim be a woman and be under the power and control of the MALE GENDER" (prosecutor in Case JVDFM2-16, from 2021); "submission of the woman before a man" (judge in Case JVDFM2-17, from 2022); "superimposition of one gender over the other" (J-1); "always a relationship of male superiority and female inferiority" (PC-1); "vulnerability that exists between genders" (PC-3), and other variations of the same argument (Case CC1-25, from 2013; Case CC3-1, from 2015; Case JVDFM2-20, from 2018; Case JVDFM2-18, from 2019). For others, the presence of a masculine component was not seen as a requirement: "power asymmetry between the aggressor and the victim" (J-5); "a position of subjugation in relation to the offender, due to a gender issue" (JVDFM2-18, from 2019); "a violence that occurs due to a position of sexual discrimination" (prosecutor in Case CC1-23, from 2012); and whether the plaintiff suffered control/domination/diminishment "because she is a woman" (PC-4, PC-5, and PC-6).

Both interpretations coexist in a broader context of inconsistency in Brazilian case law. The STJ has decade-long precedents stating that same-gender unions are family entities for the

purposes of the MPL (REsp 1.026.981/RJ, from 2010; REsp 827.962/RS, from 2011), that women can also commit domestic violence (HC 181246/RS and HC 250.435/RJ, both from 2013), and that the plaintiff's "hyposufficiency" (meaning a woman's vulnerability or fragility) is presumed in situations of domestic violence, making the demonstration of female subjugation unnecessary to enforce the MPL (REsp 1.416.580/RJ, from 2014; AgRg MPUMP No. 6/DF, from 2022). At the same time, however, on this latter issue, the same tribunal harbors decisions stating the opposite, requiring evidence of a gender-based motivation in the violence committed by the defendant to enforce the MPL (CC 88.027/MG, from 2008; AgRg REsp 1.430.724/RJ, from 2015; AgRg no REsp 1.900.484/GO, from 2021). The lack of fragility or physical/economic inferiority has become a common argument in jurisprudence to restrict women's access to rights provided by the MPL, under the pretext that their cases fall outside the limits of gender-based violence.

In the face of this legal insecurity, the MPL was amended in 2023 (Law No. 14.550/23) to add Article 40-A to its text, which says that it "shall apply to all situations provided for in its Article 5, regardless of the cause or motivation of the acts of violence and the condition of the offender or the victim". Again, with the participation of the feminist consortium that was instrumental to the approval of the MPL in the first place (Brasil, 2023a), this was a response to many decisions throughout the country, but especially to STJ's jurisprudence, which influenced many jurisdictions to systematically exclude women from legal protection according to various extra-legal reasons, including the "lack of hyposufficiency" of the plaintiff. As the proponent of Bill No. 1604/2022 (which eventually became Law No. 14.550/23), then senator Simone Tebet, argued:

> Everything has been used as a reason not to enforce the MPL: family or domestic conflicts, conflicts over child visitation, patrimonial disputes, use of alcohol or drugs by the offender or victim, alleged absence of vulnerability or hyposufficiency of the victim, mental disorders, disability, absence of cohabitation, financial or hierarchical dependence, young or advanced age of the victim, or concurrent violence against the man, among others (Brasil, 2022c).

Both the proponent in the Senate and the rapporteur in the House ("*Câmara dos Deputados*"), congresswoman Jandira Feghali (who also served as the rapporteur of the bill that became the MPL in 2006), emphasized how these judicial decisions were "grave", "unusual", "nefarious", "catastrophic", and a "distortion" of the original spirit of the MPL, emptying the intended law's reach to protect women's lives. "It is a matter of justice for women to preserve

the ideals that founded the Maria da Penha Law: the protection of women and their right to a life free from violence" (Brasil, 2023a). Indeed, nowhere in the official presentation of the first draft of the MPL to the National Congress in 2004 can we find mentions to a so-called woman's "fragility" or "hyposufficiency", or even to the other abovementioned caveats to enforce the law. Rather, the presentation of the spirit of the MPL emphasized the "power hierarchy logic" in Brazilian society that finds no justification in supposedly "biological differences given by nature", praising it as an "affirmative action" to a "historically discriminated" social group with the aim of providing *all* women in a situation of domestic and family violence with "greater citizenship and awareness of the recognized resources to act and take a stand within the family and in society" (Brasil, 2004a).

But heterojustice is persistent – even with this latest modification to the law, the hermeneutical gymnastics are already at work. "The tendency of a [*criminal justice*] system to erase [...] the critical element called 'gendered violence' is very strong" (MP-1). In effect, some recognized the legislative intent in Article 40-A as stated in its justification, even if they were insecure with the broadening of the MPL's enforcement in everyday practice. Others, however, have already begun to turn this new article on its head, unfazed by its repercussions as originally intended, and cherry-picking some of its motivations to keep the CJS's doors only half open:

> The new provision refers to cases such as arguing that alcohol is a motivation for violence, for example (J-1).
>
> I think this only reinforces our argument. [...] This specific article is meant to prevent unnecessary questioning when the application of the law is compulsory, mandatory. [...] An example: if the victim was drunk, if she had consumed alcohol, if she was on drugs, why did she come home at that hour of the night (PC-5).
>
> **Samantha:** So, your interpretation is that this new article, in the end, in practice, will continue as it's being done, right? One will evaluate whether there's actually gender-based violence happening there; what mustn't happen is a lack of protection.
> **PC-3:** Exactly! Exactly.

In national forums, divergent interpretations abound. In the latest Copevid's annual event (2023), prosecutors convened for the occasion signaled deference to the legislative innovation (Statement 61: "For the application of Law 11.340/06, it is sufficient that the facts fit the scenarios provided in Article 5, in accordance with Article 40-A introduced by Law 14.550/2023"). At Fonavid (2023), however, judges signaled their defiance: "The jurisdiction of the Court of Domestic and Family Violence against Women is restricted to gender-based

violence, in accordance with Articles 5 and 7 of the Maria da Penha Law and Article 1 of the Belém do Pará Convention. It is not sufficient for the woman in a situation of violence to simply be female" (Statement 24). Again, there is a pragmatism underlying this stance: reducing the caseload.

> The request for protective measures has become trivialized. Everyone thinks that, just because she's a woman, she can request a protective order. And it's not like that! It's not like that! (PC-4).
>
> This was something the police chiefs always emphasized: "Look, if we really have to handle all of this here, we will stop being specialized" (PC-3).
>
> There's a need for a real filter in our actions, precisely to meet what the law requires of us, especially considering the large volume of incidents that come into specialized police stations (PC-5).
>
> But then, with all these issues of assignment and jurisdiction within the prosecutor's office and the court, if you open that up, you're afraid of starting to attract these other cases (MP-4).
>
> I think we have to be careful not to turn the Maria da Penha Law into a misdemeanor court again. Making the law too general (MP-6).
>
> I think you can't open the door to everything (MP-5).

To whom should we open the door, then? The responses are also varied and sometimes contradict each other. At times using the same examples, interviewees still came up with paradoxical conclusions. For instance:

<u>Mother-daughter</u>

> I already see this issue of gendered subjugation as more difficult to determine, you know? [...] It could be that the mother is exceeding her educational or corrective role, okay, but if this is domestic violence protected by Law 11.340, the Maria da Penha Law, I think it's quite difficult [...] it could be a case of mistreatment, and not a crime of domestic violence per se, as a gender issue (J-2).
>
> **MP-3:** It depends, because I've had cases where an older sister, who took on the role of the mother, would abuse the younger sister, so for me, there was gender-based violence there.
> **Samantha:** Because she was fulfilling a maternal role that is more hierarchical?
> **MP-3:** Exactly. That's the challenge. To see the superiority, right? And the power to abuse in the name of that superiority.

But when it's two women, for example, mother and daughter, it is to be analyzed. [...] In the analyses I've done so far of these mother-daughter situations, I haven't seen any gender-based motivation! (J-4).

It was very case by case, you know, where you looked at it like... when it was a mother-daughter quarrel, I didn't see... Unless it could be, depending on the nature of the quarrel, the insult, [...] it could actually constitute domestic violence, so it's not solely because they are mother and daughter that it will never qualify, but, like, 90% of the time, it doesn't (PC-6).

Mother and daughter, I wouldn't request a protective order because, in my understanding, the Maria da Penha Law is for gender-based violence (PC-7).

Daughter-elderly mother

Another thing, an elderly woman abused by her daughter. I don't request a protective order under Law 11.340. I don't request it. To me, it has nothing to do with gender. Actually, there may be situations that are related to gender, but as a rule, I don't request it, because they are usually mother-daughter quarrels over money, or... (PC-2).

The judges here sometimes [*grant the protective order*], especially when it's an elderly woman, you know? (MP-5).

An elderly woman in relation to a daughter who is not elderly, I think there is an issue of vulnerability due to age (PC-3).

When I went to the elderly precinct [*"delegacia do idoso"*], I saw that my stance was the same as that of domestic violence judges and prosecutors. They also don't agree with a protective order based on the Maria da Penha Law for an elderly woman victim of domestic violence by her daughter. By her son, yes! By her daughter, no! (PC-7).

Generally, if it's an elderly woman, they grant it. If she's not elderly, they don't grant it (PC-4).

Sisters

Sister is a bit complex. Sometimes, sister, I don't think so. It depends on the context (MP-3).

It's not that it can't happen, we know that... a gender issue between women. Even thinking about a sister who has taken on the role of head of the family and who also behaves in a... patriarchal way, in that system. So, she puts herself in a position of superiority over the women – the sister, mother, of the family – and that is still a gender issue as well (MP-6).

Now... when the violence is between sisters, especially sisters, there's never, usually they're fighting over inheritance, or... I don't know, something trivial. Sometimes some household item, TV remote, you know? There's no gender-

> based violence! There's no way there can be gender-based violence there (PC-7).

Because evidence of a gender-based motivation is a *judicial* requirement not defined by law and is knowingly difficult to prove (as acknowledged by some interviewees), subjectivist understanding will dictate its meaning in each case, causing the CJS to be extremely arbitrary. "The analysis is quite difficult, in the field, you know, in day-to-day situations" (PC-4), and "we sometimes have difficulty analyzing what is and what isn't a gendered issue when we have two women" (MP-5). Instead of protecting all women facing domestic/family violence according to law, the system tries to protect itself through discretionary gatekeeping. Even though these gatekeepers have different strategies, they all coalesce to keep specialized justice as an exclusive justice.

For instance, some believe to be possible to extend the protective orders to other family/domestic conflicts that are supposedly not gender-based, as long as the processing happens outside the specialized courts and prosecutors' offices (prosecutor in Case CC1-23, from 2012). Some argue that legal instruments (like a regular "*cautelar*" following criminal procedure), other than the protective order *per se*, can be requested to regular courts, so supposedly nobody will be unprotected because of a lack of gendered subjugation (PC-2 and PC-5). And others are even stricter, believing that not even all gender-based violence deserves the attention of specialized jurisdiction, even less via criminal justice, so some of these cases should be processed outside the JVDFMs as well (J-2).

There is an unreasonable burden of proof required of some plaintiffs: to demonstrate, through evidence, a *structural* hierarchy of power in a *specific* event of violence. "When the individuals involved are of the female gender, we believe it is necessary to provide more conclusive evidence that one exerts a certain level of control over the other", said an appellate prosecutor (Case CC1-24, from 2013). How do you show that that particular insult, that slap in the face, that day she gaslighted you, that time you did not want to have sexual intercourse but did it anyway, actually were the precise manifestation of female subjugation in your family or intimate relationship? To be sure, incidents that became "canonical" examples of gender-based violence are easier to recognize and, therefore, are usually presumed to be gendered in proceedings: controlling someone's decisions, whereabouts, and relationships with others; sexual objectification; undermining someone's self-worth to keep them in a relationship. These examples, all taken from a conjugal violence framework, are easier to be read as violence and are not usually barred by the gatekeepers *when they involve persons deemed legitimate by the*

CJS. In these situations, the parties are exempted from demonstrating gender-based motivation. However, every relationship and incident that deviates from this framework – non-conjugal relationships, women aggressors[79], victims who fight back, quarrels about money – face different levels of scrutiny. For them, the burden of proof is higher and sometimes impractical to be proven, since "it's very difficult to get inside the mind of the aggressor to know what motivated that violence" (PC-1).

This is yet another manifestation of the gravitational pull of criminal procedure in EAMPs, highlighting the significant difficulty in moving beyond the normative logic of protecting legal goods ("*bem jurídico*") – the most important social values supposedly safeguarded by criminal law – towards the concrete protection of the human dignity of often silenced subjects.

> "Gendered violence". It seems that the moment you bring it into a criminal justice system, it was clear that there would be trouble, some trouble would arise, because it is a term that is extremely complicated for the criminal justice system of 41 [*referring to 1941, the year of publication of the final version of the Brazilian Penal Code before the beginning of its enforcement in 1942*]. *Extremely complicated*, *extremely complicated* [*emphasis*], right? Thinking about social markers of difference, in a logic of 41, a logic that works with legal goods (MP-1).

As stated by criminologist Soraia da Rosa Mendes (2020), criminal procedure is understood to be the necessary pathway to legitimate punishment. This logic, which pretends to be objective and neutral while conceiving the purposes of a criminal process in an *a priori* manner, often invites unconditional and unreflective adherence to only normative inferences. This quickly turns into an authoritarian exercise of power, because this epistemological stance effectively blocks the emergence of voices and experiences embodied by subjects not even considered by the norm. Therefore, she says, it is no wonder that criminal procedure experts have such difficulty understanding laws like the MPL, which focuses on acknowledging a structural imbalance of power based on gender and shifts the emphasis from punishment to protection. Building on this critique, demanding proof of a broader social context totally misses

[79] For instance, in a case in which the plaintiff's son watched her being assaulted by her daughter-in-law and did nothing to stop the violence, the protective order was only granted against the son without further debate. The MPL was not enforced against the daughter-in-law, the person who actually assaulted the plaintiff, due to a lack of gender-based motivation (Case JVDFM2-21, from 2019). In Case JVDFM2-22, also from 2019, protective orders requested against three family members (two women and one man) for threatening the plaintiff's daughters if they reported their rape by a family member were only granted for the male defendant. For the women, who allegedly were trying to silence two survivors of rape, the judge did not see a gender-based motivation to enforce the law.

the point, transforming a political assessment of patriarchy/male domination that provides context to interpretation into a subjective element of a *quasi*-crime that needs to be proven by verifiable evidence. As with racism, *machismo* is part of the social structure, and therefore does not need intentionality to be able to manifest itself (Adilson José Moreira, 2017, p. 102).

As an exception to the rule in the proceedings I analyzed, in Case JVDFM2-19 (from 2020) I could find this structural-level analysis of gender-based violence. The Public Defender's Office, representing the plaintiff, appealed a decision not granting protective orders to a woman with a history of physical and psychological violence by her mother (the defendant). Even though the plaintiff stated that she left home because of the recurrent violence (including sexist insults such as "*vagabunda*", or "tramp"), and that her mother was also violent to her 5-year-old sister who still lived with her, the decision did not find a gender-based motivation in this case. In the appeal, the public defender counter-argued as such:

> The *mens legis* [*the legal intent*] of the Maria da Penha Law was to protect women in a historical context of suffering violence, within the context of the female collective. Therefore, gender-based subordination should be considered for all women, not according to individual cases. Moreover, if we were to analyze the necessity of proving gender-based violence, it would also be necessary to produce such proof in cases involving affective relationships and male aggressors as well.

The same appeal brought other damning information: the defendant had stated that the aggressions committed were due to the fact that the plaintiff is a woman, that the defendant had the habit of pitting her two brothers against both sisters, instigating them to also commit violence, and that a new physical aggression was committed by the defendant after the decision to not grant the protective orders (this assault actually led to the plaintiff sustaining a nose fracture, as shown by medical records). The appellate prosecutor still agreed with the judge ("on that occasion, the appellant was not in a position of vulnerability or hyposufficiency because she is a woman"), and the protective order was only granted two years after the first report, by a collegiate decision from the TJMG.

This is the type of miscarriage of justice that Article 40-A was created to avoid. As the proponent of the bill argued in her justification to the Senate: "gender is an objective fact, always underlying domestic and family violence". Whether it functions as the main motive, a pretext, or only a facilitating contextual element, "the issue of gender is always present in violence against women, explicitly or implicitly, consciously or unconsciously, in the behavior of both the aggressor and the victim, as well as in the institutions" (Brasil, 2022c). The intent

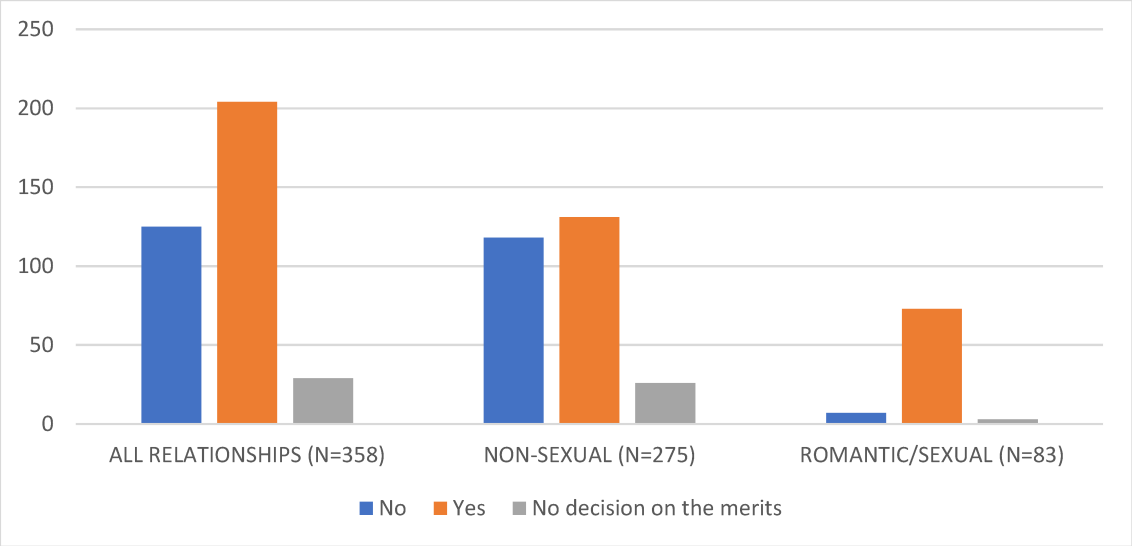
of integral protection in the MPL is thus based on the higher risk that Brazilian women – albeit in different ways – have of suffering violence in their domestic and family relations. No woman, even the most privileged one, is immune from this broader context. The crash between this feminist sensibility and heterojustice creates an unnecessary conflation between a structural-level of analysis of gender-based social division (common to the male domination/patriarchy feminist framework, as discussed earlier in sub-section 2.1) and the intersubjective/individual analysis that is more routinely carried out by CJS's institutions, making it seem that both levels are the same, rather than parts of a complex technology of power relations that operate across different domains of power (Patricia Collins; Sirma Bilge, 2016; Nira Yuval-Davis, 2006).

Rather, there is a movement that involves "combinations, ambiguities, and therefore diversities" between gender patterns and violent behavior itself. "Identity is forged in the trajectory", Maria Filomena Gregori (2004) asserts, amid relationships and a process of "mirroring and contrasts that never exhausts". This relational perspective of violence, in which gender markers are articulated with other fundamental axes of oppression (such as class, race, and sexual orientation), without overlooking particular experiences at the relationship-level, becomes much more potent in addressing domestic and family violence in all its diversity. It is capable of explaining how, for example, homophobia intersects with *machismo* to produce differentiated situations of domestic violence for different individuals (Cecília dos Santos, 2017, p. 51). Thus, expecting the production of evidence for a "typical relationship" (active male aggressor and passive female victim) (Maria Filomena Gregori, 1993, p. 130) achieves the opposite effect of this nuanced understanding.

Setting aside, for now, a much-needed discussion on a multilevel analysis of domestic violence that employs intersectionality as its framework (see conclusion), here I want to focus on three negative repercussions of keeping the gender-based motivation as a pre-requisite of enforcement of the MPL. Firstly, the divide that is built and constantly reinforced between non-romantic/non-sexual and romantic/sexual relationships as a criterion for granting protective orders for women. Secondly, the naturalization of violence as male and the "aggressive woman" as a surrogate, visible only insofar as she serves as a referent to hegemonic masculinity. Thirdly, the consolidation of the stereotype of legitimate victims as weak and vulnerable. All of this, I will argue, is part of a *heteroframing* process that sets the written and unwritten rules of intelligibility according to the heteronormative gaze of legal professionals.

Considering the larger dataset I gathered[80], the MPL was enforced in **57%** of the cases, with denials comprising **34.92%** of the sample. This first "funnel", as I call it, except for a few cases[81], is substantially related to the perceived lack of a gender-based motivation in the defendant's violent behavior. When we segregate the data on the nature of the relationship – whether romantic/sexual (relationships between queer women) or non-romantic/non-sexual (mothers/daughters, sisters, grandmothers/granddaughters etc.) – an interesting pattern arises. Despite my differing intuition before the completion of the fieldwork, *non-sexual/non-romantic relationships have a five times higher rate of non-enforcement than queer relationships*: for LBP+ women (N = 83), only **8.43%** (or 7 cases); for all other women (N = 275), **42.91%** (or 118 cases). See Figure 3 below:

Figure 3. Frequency of MPL's enforcement per nature of relationship (only women)

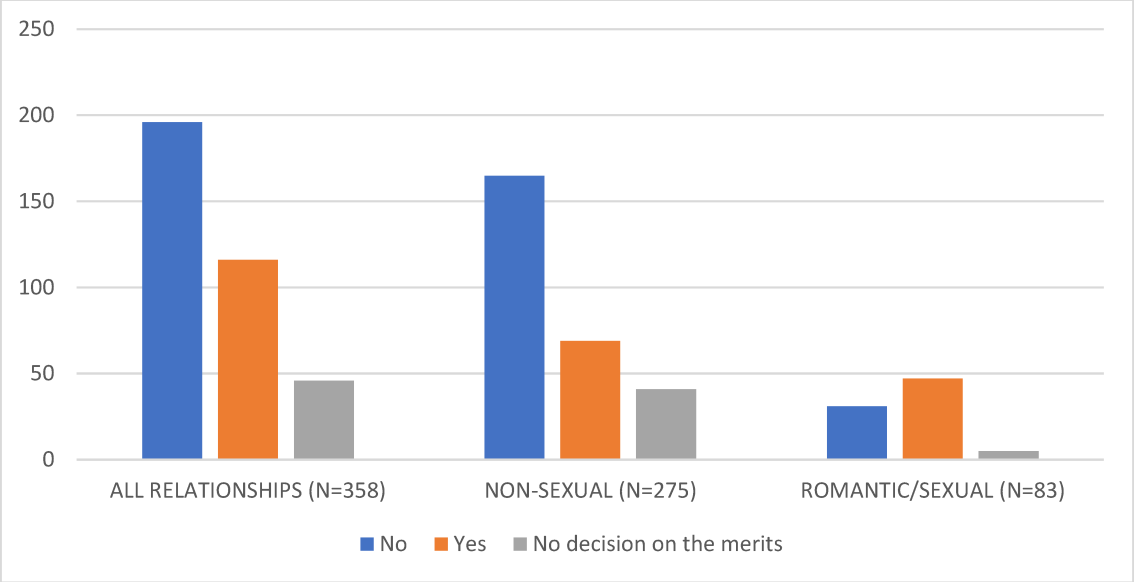


Source: author.

A similar pattern can also be found when we look into the frequency of granted protective orders. Overall, they were granted (totally or partially) in **32.4%** of cases and denied totally **54.75%** of the time. As we can see from Figure 4, this high frequency of decisions refusing to grant protective orders is driven by the non-sexual/non-romantic relationships: for them, the protective order was denied **60%** (or 165 cases) of the time; for queer women, this rate was **37.35%** (or 31 cases).

[80] Due to missing data on the enforcement and granting rates variables, the sample size here is N = 358.
[81] For instance, very few of these cases did not enforce the MPL because it was considered a mere "family conflict", not serious enough for the law's protection.

Figure 4. Frequency of granted protective orders per nature of relationship (only women)



Source: author.

To be clear, these patterns above are not explained by a greater understanding of the nuances of the relationship between violence and sexual orientation. “The queer woman’s gender identity is tenuous and can be stripped away from her at any moment should it suit some straight party or another” (Carmen Maria Machado, 2021, p. 204). Depending on who interprets the case – from the police station until the execution of a judge’s final sentence – queer women may or may not be considered fully entitled women. This is why we can still find recent decisions that do not enforce the MPL for these relationships: enforcement is inconsistent at best because female homosexuality is seen as an element of disorder in the desired systematicity of legal interpretation. *This disorder must be controlled either by invisibility (not enforcing) or by confining it to the normative limits of heterosexuality (enforcing by emulation).*

Nowadays, it seems that enforcement by emulation is the new dominant interpretation of the MPL in Belo Horizonte when it comes to queer women. It is expressed by a mechanic subsumption stemming from jurisprudence, especially from the STJ, stating that the agent of violence might be a man or a woman as long as the victim is a woman. Consensus/functionalist notions of the law – as if legal rules reflect the common interests of society as a whole and functions for the greater public welfare (Ronald Akers, 2000, p. 169, 170) – may be what is behind transforming the historical inconsistency of enforcement into a self-evident consensus free from conflict:

> That understanding is already well-established, both in case law and through Fonavid statements. So, I think there is no longer any dissonance in this interpretation, which is applied in cases of same-sex relationships between two women [...] (PC-1).
>
> [...] the law allows it, especially since it clearly states that the victim is a woman [...] (J-2).
>
> It's in the law, period, there's no need to... discuss it (MP-6).
>
> We never discussed this [*in the TJMG*] (J-3).
>
> There has never been a problem with [*enforcement related to*] relationships between two women (PC-4).

As we will see in Chapter 3, the supposed consensus does not translate into a sexuality-sensitive approach in the proceedings. The common lack of awareness of legal professionals on the specificities of domestic violence in relationships with LGBT+ people, such as the occurrence of outing (see sub-section 3.3), leads to generic decisions catered to the same (heterosexual) people as before. Important nuances are left unanswered, and protective orders start to be granted without much problematization. As stated by an interviewee, this silence is also a political gesture: "when [*the CJS*] does not say anything about this [*same-gender relationships*] and grants the same protective order [*as in heterosexual relationships*], there is something there, there is something there!" (MP-1). What comes through is that, *as one moves away from the heteronormative framework (heterosexual and male conjugal violence), it becomes harder (or rather the CJS gets increasingly less willing) to see gender-based violence in a given case*.

The mechanic enforcement of the law for queer women largely mimics the violent patterns commonly seen in heterosexual couples: the behaviors of control and possessiveness that are also common in these queer relationships are more easily intelligible to a system built upon the punishment of the heterosexual male that objectifies his wife/partner. Through heteroframing, queer relationships are more easily accommodated into the "gendered subjugation" framework: "in a good part of the romantic relationships we encountered here, both gay and lesbian, it was quite clear which individuals identified more with the male gender and which with the female gender, even when both were women" (J-1). On the other hand, for women in a non-sexual/non-romantic relationship, emulation functions as a gatekeeping device. While virtue-signaling a broader understanding of the reach of the MPL by extending it to LBP+ women, the CJS uses them as fodder to keep hundreds of other(ed) women outside of its

purview. Consequently, another extra-legal prerequisite arises: only affective relationships with a romantic/sexual nature should be protected by specialized justice.

> The sound jurisprudential guidance only allows a woman to be in the active role of gender-based violence when a same-sex relationship with the victim is established (prosecutor in CC1-23, from 2012).
>
> If Law 11.340 were applied to any and all women who have suffered a crime by another woman in a domestic and/or family setting, without a same-sex relationship, completely disregarding the law, it would lead to a conceptual emptying of the grave stain of gender-based violence (decision by the appellate court in JVDFM2-18, from 2019).
>
> Now, homoaffective violence usually stemmed from jealousy between the two, you know? It involved an affectionate relationship... it wasn't a familial relationship like mother and daughter, sisters, cousins, no. It was an affectionate relationship... like a couple, you know? It wasn't a simple family relationship. It involved sexuality, affection between them. So, I understand that it would be more appropriate because they constituted a couple, even though they are of the same sex, right? (PC-7).
>
> Gender motivation has an entire context of affection. It is this context that will be evaluated (J-4).
>
> In the capital [*referring to Belo Horizonte*], we understand that the victim must be a woman and the aggressor must be a man and... or we must be within a homoaffective union (MP-5).
>
> Is it possible to apply it in these relationships between a mother and daughter? It could be, but only if I see that there is a homoaffective relationship, where I perceive in these relationships, even though they are of the same gender, [...] that one of them exhibits masculine behavior (J-1).

So, today, despite some scattered decisions stating the contrary in Belo Horizonte, having a sexual/romantic relationship with the offender (even if that person is of the same-gender) guarantees a higher probability of the law being enforced and the protective order being granted. However, there is still a price to pay: *the confinement of one's experience through a heteroframing process that firmly attaches violence to masculinity and reinforces fragility as synonymous with the female experience*. This is the "straight mind" at work, as it keeps the heterosexual relationship as the obligatory social relationship between man and woman, both defined according to a heterosexual system of thinking: "These discourses of heterosexuality oppress us in the sense that they prevent us from speaking unless we speak in their terms" (Monique Wittig, 1992, p. 25).

Several legal professionals maintain a strong binary sense of gender as two discrete and incommensurate realities (male/female) when they enforce the MPL. It is rooted in some form

of biological essentialism: “There is a difference in mentality because here we... are still viewing things through the lens of biological gender” (J-4). Therefore, one looks for evidence of who performs the male role in the relationship to label her as the aggressor: “regarding the active subject [*of violence*], the law elected the man or the woman (who chooses to understand their personality as masculine)” (JVDFM1-4 and JVDFM1-12, both from 2019). How they dress, speak, their body language, the tone of voice, which responsibilities in the home are taken up by them (either provider or caretaker), are all made-up criteria to actualize normative masculinity/femininity in a violent interaction.

> You identify that person who relates more to the male gender: dressing, speaking, body language, tone of voice... who stays more in the masculine universe. These behaviors identify or signal that the female gender has masculine influences. That is why you apply it in this [*same-sex*] relationship” (J-1).
>
> I think it can also happen that one of the people suddenly takes on the role of the male gender, right? (PC-1).
>
> There’s one who dresses more similarly, more masculinized, and the other more femininely. But it’s not always like that! (PC-7).
>
> Sometimes I see – I don’t know if it’s right – but sometimes I see which one is more feminine, right?
> [...]
> The other was in a submissive role because she stayed home to take care of the children and the house, while the author was the one who brought home the income (PC-4).

The CJS has no penchant to provide meaning without de-centering the figure of the lesbian in its epistemology. Heteroframing caters to phallocentrism as the expression of a culture structured to meet the needs of the “masculine imperative”: sexuality is referenced to male experiences and meanings, which, although not turning homosexuality impossible, certainly has the effect of making it incomprehensible and pathological, as it is disconnected from serving the pleasure of the “Phallus” (Carol Smart, 1989, p. 27-28). The lack of a man in a romantic/sexual interaction, according to this model, makes affective/sexual experiences between women invisible or unintelligible, placing them outside the “tacit sexual ontology” of the law (Ngaire Naffine, 2002, p. 86). Moreover, gendered expectations shape the interpretation of violent behavior by formal social control agencies: crime is something expected of men because they are men, making the socially constructed triad of crime-men-masculinity so intimate that it becomes naturalized (Ngaire Naffine, 1997). Thus, the convenient way to offer

an explanation for the aggressiveness of women while maintaining the "macho ideal" intact (Salo de Carvalho; Evandro Duarte, 2017, p. 13) is to make them more masculinized: they are, in fact, acting as an "invert".

The idea of "inversion" is part of the emergence of female homosexuality and the female offender as inter-related discursive identities, carefully constructed by 19th-century sexology and criminology. Its main hallmark is her aggressiveness, her unrestrained passion, and not just the sex of her object of desire (Lynda Hart, 1994, p. 9). As the Brazilian jurist Viveiros de Castro (1934, p. 191) once said, the so-called "tribades" (or sapphists) are marked by a "psychic inversion of tastes and tendencies": they prefer men's toys, love masculine clothing, acquire "male vices" such as smoking cigars and drinking, cannot stand "needlework", and aspire to "the free existence of the student, the adventurous life of the soldier". Lesbians have a "masculine soul, enclosed in a woman's chest", which "gives expression to their courage and virile feelings in these violent pursuits". The invert's deeply masculine characteristics is what makes her deviant and dangerous, demanding identification and control by authorized subjects such as the psychologist and the judge.

Sexual inversion, therefore, serves to preserve active desire within masculinity. Along with Cesare Lombroso's "female born criminal" (the one who resembles a man more than a normal woman), the "congenital invert" operates to mark the boundaries of accepted femininity (Lynda Hart, 1994, p. 12). Therefore, the universal "Woman", with all its internal contradictions, is, paradoxically, both violent and incapable of aggression at the same time. When they do fight, they all "look like a man" (military policeman in Case JVDFM2-23, from 2019). This is absolutely the case with Belo Horizonte's CJS: the "homoaffective" is sometimes seen as hyper-violent, and sometimes seen as capable of only minor violence when compared to the universal "Man's" essential aggressivity.

Some express awe with the possibility of women's brutality, which is seen as an outlier:

> I've seen women with their faces disfigured by the other [*woman*], grabbing her face and slamming it into a wall. And sometimes the brutality surprises me, you know? Because... it might be prejudice, but we imagine that a woman would be a bit more delicate with one another. I don't always see that (PC-2).

> They are very aggressive. They are very aggressive. [...] Why are they so aggressive like that, right? Like, in the fights? They always end up, you know, really hurt (PC-4).

For others, the "homoaffective" violent behavior is more cunning and psychological, and even if she may be physically violent, her violence is still of a different nature, never amounting to the cruelty of masculine aggressiveness:

> Look, I think that when it's a man, physical violence predominates more. When it's a woman, she doesn't use physical violence as much. It's more about disturbing... harassing, and also psychological violence, like insulting, using crude language, labeling the other person, belittling her, putting her down, and stalking. She stalks at work, stalks elsewhere, sees where the person is, calls, changes phone numbers, and annoys. It's more like that. I think that men's violence involves more physical violence, in my opinion (J-5).

> There isn't as much of a disparity in strength, physical strength, as there is in the case between a man and a woman, where the woman sustains very significant bodily injuries due to this disparity in body size (PC-5).

> [...] normally, the aggression was somewhat disproportionate between them. Between a man and a woman too, it's always like that... [*for heterosexual couples*] 99% of the time it's disproportionate, the man is more aggressive, right? (PC-7).

> [...] the judge is used to seeing a man, a defendant, in the judicial proceeding. Suddenly, when he sees a woman, he may be led to believe that this is a mitigating factor, that this is a situation of lesser importance. [...] the judge's mindset is that the male aggressor is more powerful. But this is also a stereotypical view of who the aggressor is. Going back again to the so-called testosterone (J-4).

Evidence of violence by queer women can also be de-fanged, tying it to the domestic world and making it look more like a "catfight" motivated by jealousy and organization within the home:

> Intrigues are typical of female individuals. [...] [*They are*] very much linked to jealousy, to the way of organizing themselves at home. Often it is linked to jealousy, many, many times, to the way of... organizing. [...] I perceive that there is this difference in brutality [...]. I see more control on the part of a couple where the aggressor is biologically male. [...] In some cases, I said there are very aggressive behaviors, but it's not the rule, you know? (PC-2).

Exclusion is not the exception in the enforcement of the MPL since its enactment; it is rather the normal functioning of the CJS. As we have seen so far, the system is subject to many changes over time, but is consistently arbitrary and uncertain when defining who gets to be a legitimate party in its proceedings. It is not only the labeling of the "criminal" that is selective; being a "victim", in the eyes of the CJS, is also for a few. In the fine print of the penal-social contract, the ideal victim is female, White, heterosexual, and in need of state protection. The

place of the "victim" is the expected role of women in criminal or criminalizing proceedings: she must perform her pain in a normalizing manner, by which she will truly become a legal subject; the repetitive ritualization produces both subjectivity as a "Woman" and subjection to the state's punitive power. Law (in the broadest sense) becomes a "technology of gender" (Teresa de Lauretis, 1987). In this scheme of things, the presence of the "inverted" is a potential menace to be managed so as to uphold a rigid and binary social order divided along gender lines.

Up until the MPL, when it comes to women, Brazilian law was more verbose in civil matters, especially when it comes to their civil capacity, the exercise of property rights, access to education, and, in general, their decision-making power both in the family and in society (Marília de Mello, 2010, p. 137-138). Criminal law, in fact, assigned a secondary role to this "Woman", focusing on her as the passive subject of sexual crimes. The criminal discourse helped to consolidate the "Woman" as the quintessential victim, and the "Man" as the presumed criminal – the active, dominating, and dangerous subject by definition. Her victimization is the flip side of men's criminalization, functioning as the true guarantor of the stability of "Man" as a category (which is not named, because it does not need to be). His definition is by contrast, as everything that is not feminine – that is, everything that is not domestic, modest, passive, rape-able, violable... in short, everything that is not a victim.

Every time the criminal logic presents itself, it tends to monopolize the energy of the justice system: "it is growing, it is significant, especially because it is formal; so, it tends to become the *center* of the justice system" (MP-1). No wonder, then, that the gendered subjugation framework heavily relies on notions of fragility, passivity, submissiveness, inferiority, and incapacity. The victim of domestic violence is viewed in the same way as the female victim of a crime. Therefore, the "Victim" becomes the "fragile sex" (Cases CC1-5, from 2009, CC1-26, from 2010, and CC1-12, from 2011); she lacks virility – "the man will always be stronger than her! Always!" (PC-7). She is "inferior" – physically and/or economically – to her male counterpart (Cases CC3-1, from 2015, and JVDFM2-18, from 2019), and needs protection because she is "vulnerable" to all kinds of physical, moral, and psychological violence (JVDFM1-13, from 2020), making her the "weakest link" in the relationship (J-6). She is powerless: "deprived of income, deprived of professional work, and deprived of the power of speech" (J-4), she is a "submissive person", an "incapable woman, a woman who often does not have autonomy over her own life, her own body, or her decisions" (PC-1). She "endures" her aggressor's offending (J-6). One "presumes her fragility because she

is a woman", which is why it has been easier to get protective orders between women than between men[82] (MP-4). The lack of evidence of any "subjugation, subordination relationship or any indication of the plaintiff's fragility in the face of her aggressor" means the lack of enforcement of the MPL (Case JVDFM2-24, from 2022). Consequently, cases of "mutual aggression" are very difficult to disentangle: "which one is in the role of submission to the other? Which one is, in fact, the victim and which one is the perpetrator?" (PC-4).

Although I recognize the need for replacing the pervasive idea of an autonomous and independent subject in legal theory/practice with a more nuanced understanding of vulnerability as a shared human condition – which could be defined as an embodied condition reflecting the "ever-present possibility of harm, injury, and misfortune" that we all face, though experienced uniquely (Martha Fineman, 2008, p. 9) – heterojustice's conception of vulnerability is intertwined with a vision of humanity that labels some as fragile and incapable (and, therefore, others as strong and capable):

> Vulnerable, a term of Latin origin, *vulnerabilis*, originally means injury, cut, or exposed wound, without healing, bloody wounds with serious risks of infection. Houaiss, in turn, defines it as: "capable of being physically wounded; subject to being attacked, defeated, harmed, or offended". It always demonstrates someone's incapacity or fragility, motivated by special circumstances (prosecutor in Case CC1-24, from 2013, citing an excerpt from an article by Eudes Quintino de Oliveira Júnior to justify not enforcing the MPL to a daughter-mother case).

"Any theory or methodology needs to account for its historicity, the power relations that enable its circulation and translation, how it is translated, and the specificities of each social context in which the theory is used" (Cecília dos Santos, 2017, p. 54). Considering the "de-fanging" process advanced by the CJS, "vulnerability theory" may not translate well into Brazilian reality. For some, the lack of scope and political meaning of the term "vulnerable" ("*vulnerável*") fails to encompass "the expropriation of bodies, minds, culture, and epistemology, especially when we are talking about Black people in Brazil, and even more so about Black Brazilian women" – instead, "harming" ("*vulnerar*") would allow for the identification of responsibilities and the call for social transformation (Soraia Mendes, 2020, local. 172). Indeed, in a domestic violence context, "vulnerability" allows for all the aforementioned infantilizing adjectives used by legal professionals in the proceedings. Under

[82] Note: men are not protected by the MPL, according to the law and almost unanimous jurisprudence. The interviewee was hypothesizing about the possibility of the fragility of men related to domestic violence.

the pretext of protection, all the discursive paraphernalia related to the so-called “gender-based motivation” actually serves to convert women *en masse* into “Victims”: suffering and silent, with the knowledge they produce about their own realities being transmuted into an instrument of their own objectification.

3 THE "DOUBLE CLOSET": A FIRST LOOK INTO THE ARCHIVE

3.1 Violence against queer women through a sexuality-sensitive lens

Heterojustice[83-84] has always crushed knowledge from the bottom up: it has systematically wielded its epistemic power to tell the story of queer women in their place, denying them their "testimonial authority" – or their ability to speak and to be heard (Patricia Collins, 2019, p. 132). Through this epistemic violence, offending women have been accorded a "statistically élite status" from legal professionals, for which they have been assessed, judged, treated, and punished – "not because they are understood, but because they are not", rendering them "always and already invisible, inaccessible, and unknowable (yet forever known)" (Anne Worrall, 1990, p. 2, 52). As I mentioned in sub-section 2.1, a silencing ecosystem provides the necessary context for legal institutions to assert their dominant gaze. The generally low value placed on queer women's speech helps maintain the manipulation of their lives and pain by those in position of authority.

Considering the scope of this research's methodological design (which does not encompass interviewing plaintiffs and defendants), at this time, I will counter-argue heteroframing by wielding the epistemic power of scientific knowledge – especially the one produced by and/or with LGBT+ people. Most studies I could find on domestic violence among same-gender individuals come from the United States (Claire Renzetti, 1988; Gregory Merrill, 1996; Leslie Burke; Diane Follingstad, 1999; Lori Girshick, 2002; Janice Ristock, 2011; Adam Messinger, 2014; Danielle Slakoff; Stacie Merken, 2024). Even though this type of research in Canada, the U.S., the United Kingdom, and Australia dates back to the 1980s, most scholarship still emphasize on *victimization* experiences, still overlooking the experiences of *offending* by LGBT+ people in their intimate relationships. Because of this, Janice Ristock (2011, p. 4) argues that the field still represents, at best, an "'add on' to the field of heterosexual domestic violence". In a more recent publication on queer victimology (Shelly Clevenger; Shamika Kelley; Kathleen Ratajczak, 2024, p. 4), the authors also acknowledge growing research with queer people within criminology in the global North (even if still limited in size and scope), but lament that they are frequently included as "static variables in an 'add Queer and stir' approach,

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[83] Some excerpts of this section were previously published in *Revista Direito e Práxis* (v. 13, n. 2), under the title "*A mulher lésbica é mulher para a Lei Maria da Penha?*".

[84] *Muchas gracias* to my dear friend Daniel Fredes García, who carefully reviewed an earlier version of this chapter. All possible mistakes, of course, are my own.

much as women were considered in criminological research prior to the emergence of feminist criminology".

In Latin America, academia (especially psychologists) started paying attention in the beginning of the 2000s: 48 (forty-eight) studies (mostly journal articles) on same-gender intimate partner violence (including lesbian relationships) were published from 2002 and 2019, the majority in Brazil (fourteen), Mexico (twelve), and Chile (eight) – although only 22 (twenty-two) of them focused solely on intimate relationships between women (Ana Cláudia Macedo, 2020, p. 145-146). Since then, studies on the subject in Brazil are still few and exploratory or theoretical (Daniella Avena, 2010; Rafael Luz; Hebe Gonçalves, 2014), with very few exceptions that uses qualitative data (Francisco Nascimento; Suely Chacon, 2009; Ana Cláudia Macedo, 2020), and even less using (mostly non-official) quantitative data (Lilia Schraiber; Ana Flávia D'Oliveira; Ivan Junior, 2008; Tatiana dos Santos; Bruna de Araujo; Luiza Rabello, 2014; Grazielle Tagliamento; Dayana Brunetto; Raquel Almeida, 2022; Marcelo Ramos et al., 2023). Only in recent years, a few studies in Brazil started to analyze police records and higher courts' sentencing with a focus on lesbian domestic violence (Thaís Durães; Isadora Machado, 2017; Renata Alencar; Edson Ramos; Maely Ramos, 2018; Samantha Nagle de Moura; Marcelo Ramos, 2022; Maria Beatriz da Silva; Jalusa de Arruda, 2023). However, I could not find any mixed-methods research that deeply addresses this issue in Brazil, especially when it comes to the co-construction of primary data on what is being notified to the CJS and the judicial ideology behind MPL's enforcement by legal professionals.

Building upon this literature review, I want to emphasize some "findings" that I deem necessary to have in mind before I progress with this chapter. The most important of them all is that relationships between queer women, like those between heterosexual individuals, are also marked by asymmetric power and control dynamics, especially when one partner possesses more resources than the other (such as formal education and income) (Claire Renzetti, 1988; Leslie Burke; Diane Follingstad, 1999). Similarly, these violent relationships are characterized by the partner's diminished self-esteem ("I will find someone, but you won't"), the use of derogatory terms ("slut", "crazy"), monitoring of social media, humiliations, and fear that leads to self-censorship and vigilance over their own actions (Ana Cláudia Macedo, 2020, p. 167-168).

There are, however, particular aspects that only an intersectional analysis – one that is sensitive to sexuality-based oppression – can reveal, especially when considering that heterosexism helps create an environment of impunity by isolating the individual and

preventing them from accessing their families, friends, public services, religious institutions, and even the CJS (Gregory Merrill, 1996). Because of this, part of the literature refers to these experiences as a kind of "double closet" (Lee Vickers, 1996, *passim*): manifestations of violence that are unique to queer relationships and are connected to a sexist and homophobic social context. Within this double closet, we can find: a) self-blame due to internalized homophobia; b) fear of double stigmatization from society and the CJS if they report the abuse; c) fear of "outing", that is, the use of sexual orientation as a mechanism of manipulation and bargaining to keep the individual silent; d) "lesbian fusion" and social isolation, because it is common for the individual and her partner to share the same support systems (friends and chosen family), which can lead to fear of losing these bonds if the relationship ends; e) reluctance from the LGBT+ communities and family members to help; and f) persistence of myths about lesbian relationships that hinder or prevent the recognition of violence, such as egalitarianism and mutual violence (Lee Vickers, 1996; Lori Girshick, 2002; Mailiz Lusa, 2008; Cátia Fernandes, 2016; Ana Cláudia Macedo, 2020).

As in heterosexual relationships, power and control are also present in queer relationships, but this does not occur because one partner necessarily assumes a masculine identity: power circulates in interpersonal relationships and is also an effect of social institutions (Kierrynn Davis; Nel Glass, 2011). Assuming that violence in these relationships is practically impossible or rare (and that when it occurs, it is mutual or perpetrated by more masculinized women, emulating a pattern of the male aggressor) actually fails to consider the various possible configurations of power and simplifies this complexity into gendered binaries of the (female) powerless victim *vs.* the (male) powerful aggressor (Nicola Brown, 2011). This worldview perpetuates an incomplete narrative that these relationships are idyllically detached from society's heteronormative gendered order.

The fieldwork confirmed some of the insights from these foreign studies: indeed, stereotypes of egalitarianism and mutual/psychological violence do not seem to have a basis in reality. Common sense notions that women are fragile and do not exert physical violence significantly, as well as the utopian perception of LGBT+ intimate relationships as always horizontal, actually do not hold water. It is a harsh reality to acknowledge, for valid reasons, but this awareness can be liberating: as stated by Carmen Maria Machado (2021, p. 78), the idea that queer is not synonymous with goodness, purity, or righteousness allows the representation of the entire spectrum of humanity for these individuals – from the "possibility of transgression" to their "heroism".

In the rest of this chapter, I will focus on the sample of cases involving queer women and provide an overview of the most important data regarding the socioeconomic profile of the parties involved, characteristics of their relationships, most notable instances of violence, help-seeking behaviors by plaintiffs, and patterns of sentencing. When useful for interpreting patterns of decision-making by legal professionals, I will interweave the analysis of these cases with proceedings involving women in non-sexual/non-romantic relationships as well. Note: as theoretical sampling was my methodological choice throughout the fieldwork, and court records are known for underreporting, *the descriptive statistics presented in this section only account for the given sample, and have absolutely no intention of making any population inferences whatsoever. This is a push for theoretical development, so that others can test it in the future, including quantitatively*[85].

As I said earlier in the introduction, a total of **83 (eighty-three)** EAMPs involving queer women were found from 2009 and December 1st 2022 (Table 3), dispersed as shown in Figure 5.

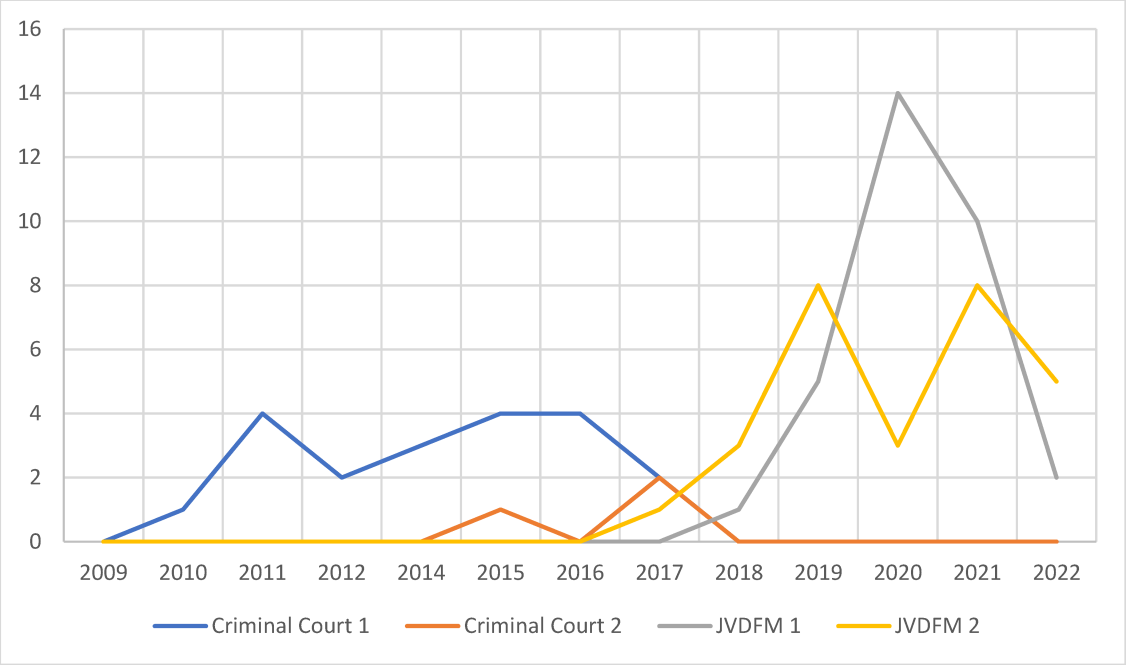
Table 3. Sampled cases involving queer women per tribunal (2009-2022)

TRIBUNAL	FREQUENCY	PERCENTAGES (%)
CRIMINAL COURT 1	20	24.10
CRIMINAL COURT 2	3	3.61
JVDFM 1	32	38.55
JVDFM 2	28	33.73
TOTAL	**83**	**100.00**

Source: author.

[85] Thank you to Min Xie for this insight.

Figure 5. Frequency of EAMPs (queer women) per tribunal and per year of initiation of proceeding (2009-2022)

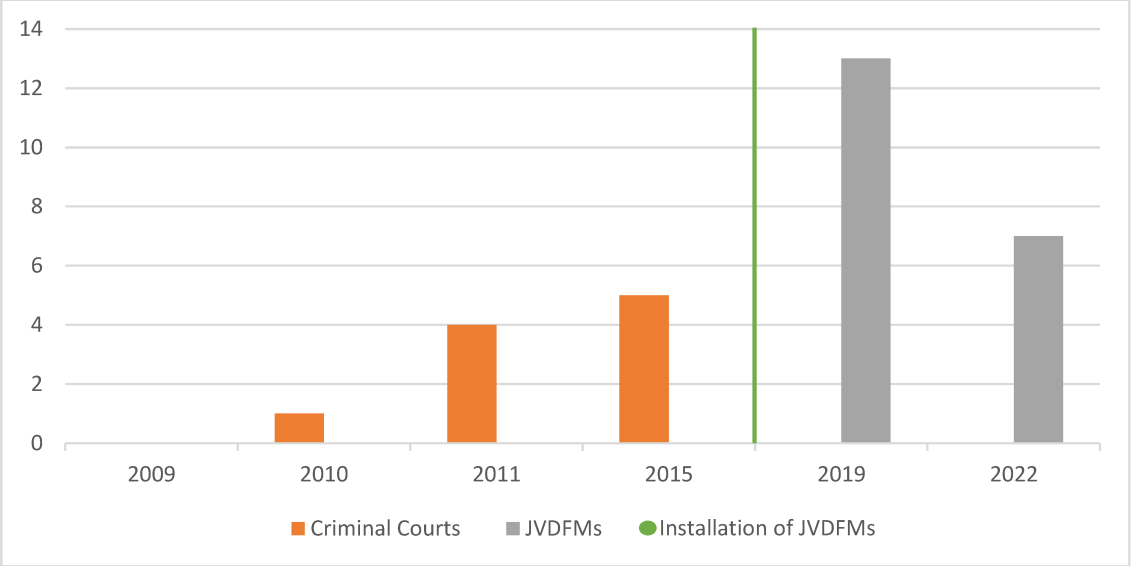


Source: author.

To obtain this sample, I analyzed **38.54%** of all proceedings involving women defendants (regardless of their relationship with the plaintiff) from Criminal Court 1, **25.28%** from Criminal Court 2, **69.89%** from JVDFM 1, and **56.75%** from JVDFM 2[86]. Several factors contribute to the Criminal Courts having a smaller number of cases involving homosexual women compared to JVDFMs. Firstly, Criminal Court 2 had the shortest lifespan among all four tribunals, lasting approximately four years until it was replaced by JVDFM 2 in 2018, which continues to operate[87]. Secondly, there appears to be a significant increase in reporting by queer plaintiffs following the establishment of the JVDFMs. This trend becomes evident when we examine the benchmark years – those in which I analyzed nearly all proceedings[88]:

[86] As stated in the introduction, I was allowed to request access to a smaller number of proceedings from Criminal Court 2 and JVDFM 2 per round (forty proceedings each time), which of course impacted the sample size.
[87] On the other hand, Criminal Court 1 was an older court, lasting for approximately 10 (ten) years.
[88] Here are the sampling fractions of these years: 92.31% (2009-2011); 91.15% (2015); 95.21% (2019); 100% (2022).

Figure 6. Frequency of EAMPs (queer women) per type of court (2009-2011, 2015, 2019, and 2022)



Source: author.

The upward trend observed from 2011 onwards may have some connection with a series of landmark decisions by the Brazilian Supreme Court concerning LGBT+ and women's rights. These include the legal recognition of same-gender civil unions in 2011, the constitutionality of the MPL in 2012, the establishment of inheritance rights for same-gender civil unions in 2017, the affirmation of the right to change one's name and gender in public records for transgender individuals in 2018, and the criminalization of homotransphobia in 2019 (Brasil, 2022d). This national context, coupled with a change of judges in both Criminal Courts between 2015 and 2018, are probably associated with this positive trend. On the other hand, the downward trend after 2018, although exhibiting higher numbers than the pre-JVDFMs era, could be associated with the major shifts in public discourse regarding minority rights in the country during Bolsonaro's administration (2019-2022) and the profound impacts of the Covid-19 pandemic on LGBT+ individuals in Brazil (#VOTELGBT; BOX1824, 2020).

The inaugural document in these EAMPs is the "*Registro de Eventos de Defesa Social*" (or REDS), an administrative report linked to the SIDS database and usually filled out by the military police (PMMG) when responding to an incident. It includes information such as the origin of the report (by phone, in-person at the unit, caught in the act, etc.), details of the incident (criminal classification, date/time of the event, whether attempted or consummated, description of the location, presumed cause, etc.), the identification of those involved (sexual orientation, gender identity, full name, race, occupation, education level, address etc.), description of the

circumstances of the alleged crime, and the identification of the officers who provided initial assistance. Since 2021 (Law No. 14.149/21), it also must include the risk assessment form (or FRIDA) that contains more information about the nature of the relationship, prior history of violence, financial dependence, and other circumstances that may help assess the risk of new episodes of violence in that particular relationship.

The lack of uniformity when filling out important data is a problem throughout the proceedings. It is not infrequent to see inconsistencies between the REDS and other documents filled out by the civil police (PCMG) and linked to the PCNet database, like the plaintiff's request form ("*Termo de Requerimento da Ofendida*") and the plaintiff's statement ("*Termo de Declaração*"). These two documents also bring information about the identification of the parties involved (age, occupation, address, civil status, education level, race, occupation, type of relationship between the parties etc.) but they commonly show different data compared to the REDS, especially when it comes to occupation, education level and race. For the analysis, I gave priority to documents from the PCMG, the agency responsible for conducting the investigation and that officially files the request for protective orders to the Judiciary. Because the PCMG takes the plaintiff's first statements, it is more likely that their data are more up-to-date compared to the PMMG's database.

3.2 Plaintiffs' and defendants' sociodemographic variables and their relationships

When I began to analyze the proceedings, I was greatly influenced by the impression given by some of the interviewees I had spoken to. I started to think I would find very few cases over time, which would render a quantitative analysis completely useless. We were wrong. There *are* cases, although in a smaller scale (which, in and of itself, is also a valuable piece of information). While most interviewees acknowledged having dealt with cases involving LBP+ women, proper knowledge about the specific issues discussed here is the exception rather than the rule. Perceptions vary and sometimes contradict each other:

> It's routine. Always, always, really. [...] Trans women [*we*] hardly have any [*cases*]. Homosexual women, quite a few (PC-2).

> [...] it's very limited! There aren't many cases, it's quite limited. We've had instances. But it's very few. [...] There are a few proceedings [*in which the MPL*] gets applied, and in general, we can say it's more or less the same type of violence as a man against a woman, [*the violence*] of a woman against a woman in a same-sex relationship... (J-3).

> [...] I've seen the presentation of the difference in this dynamic, but I haven't seen a state response that can handle this dynamic (MP-1).
>
> [...] I've never stopped and thought about it, and there aren't that many cases that we deal with (PC-1).
>
> I would need to be more prepared, you know? [...] we don't have a separate number for this violence, right? The statistical data doesn't make this distinction (MP-3).

In their minds, the topic of "domestic violence between LBP+ women" is elusive and the scarcity of their presence in judicial processing is evidence of the rarity of these events (and of these people). However, this process of "self-disqualification" (Anne Worrall, 1990, p. 52, 56) helps to conceal the fact that, despite their denials, legal professionals routinely generalize about the women who appear before them. As we have seen in sub-section 2.3, it was not uncommon for interviewees to describe women's violent behaviors as something exotic or surprising, which, by itself, already says a lot about gendered expectations on criminality. Moreover, the stated lack of statistics also seems a neutral, matter-of-fact reality, and not the product of a deliberate decision: the system does not provide reliable data because it does not want to know (or only wants to know whatever it produces as "expert" knowledge on the subject).

Who are they, then? The plaintiffs' sociodemographic characteristics reflect the same pattern of the everyday clientele of the CJS: most of them are people of color (**60.24%**), hold no more than a high school degree (**56%**), and either perform precarious/undervalued work (such as telemarketing, cleaning, shelf stocker, hairdresser, cashier, driver, dog groomer, homemaker etc.) or have no job at all (**67.47%**). However, when it comes to defendants, the reliability of the data is much lower: in **26.5%** of the cases there is no information about race and **32.53%** of proceedings did not provide information on the defendant's education level. Taking this missing data into account, their characteristics are similar, except for race: they are either people of color (**37.35%**) or White (**36.14%**), hold no more than a high school degree (**55.43%**)[89], and also perform precarious/undervalued work or were jobless at the time of reporting (**55.42%**) (see Table 04).

This seems to confirm the literature that points to different help-seeking patterns for different women: White and wealthy women have more access to private healthcare providers

[89] I estimate that this percentage is likely as high as 81.94%, as only one observation in the group of defendants with no information about education level (N = 27) was engaged in work that requires more than a high school diploma. In this estimation, I am not taking into account four observations involving unemployed defendants.

and more financial means to leave home and hire private lawyers to guide them in family courts; Black and poor women, on the other hand, rely much more on the police for the violence to stop (Maria Filomena Gregori, 1993; Manuela Valença; Marília de Mello, 2020). Women with no racial or class privilege are more likely to call upon the state to help manage the conflict – not necessarily because they trust in the effectiveness of its services, but because they see no other solution to move away from the violence (Fórum Brasileiro de Segurança Pública; Instituto Datafolha, 2023, p. 36). This is true for heterosexual women, and it seems to be the same for the women in this sample as well.

For both plaintiffs and defendants, there is a significant amount of missing data when it comes to sexual orientation and gender identity. Up until 2016, no proceeding brings any information about the sexual orientation of neither parties. Moreover, the term "heterosexual" is used to characterize plaintiffs and defendants in some cases, despite the plaintiff's description of the facts portraying the relationship with the woman defendant as romantic/sexual[90] (Table 04). When it comes to gender identity, missing data is even more significant: for the plaintiffs, no information until 2017 and between 2021 and 2022; for defendants, no indication in all of the years, except for 2018. Interestingly, a new category begins to appear in 2016, called "Does not apply". This seems to reflect a lack of understanding among law enforcement authorities regarding the concept of "gender identity", assuming that this category does not apply to cisgender (or passing as cisgender) individuals, who supposedly would not need to be identified in this manner.

This sample consists of a younger demographic compared to measurements of heterosexual plaintiffs and defendants in previous research. Among plaintiffs, the most common age group is 30 to 39 years old (**27.71%**), which is smaller than the sample drawn from another major Brazilian court in Recife (31 to 40 years old = 35.4%) (Marília de Mello et al., 2018). However, what sets this sample apart is that **51.8%** of plaintiffs are either children or young people[91], representing a much younger clientele compared to Recife's courthouse (31 to 50 years old = 56%), and the latest nationwide victimization against women survey (25 to 34 years old = 48.9%) (Fórum Brasileiro da Segurança Pública; Instituto Datafolha, 2023). The most notable difference lies in the defendants: although the 30 to 39 years old group is the largest in the sample, **42.16%** of defendants are young people. In Recife, for example, 43% of male

[90] Since the plaintiff's statement typically does not specify one's sexual orientation but rather focuses on the nature of the relationship with the defendant, the only way to definitely confirm that it is, in fact, inaccurate data would be to directly inquire with the plaintiffs.

[91] According to the Brazilian Youth Statute (Law No. 12.852/13), individuals between the ages of 15 and 29 years old are considered part of the youth.

defendants were 40 years or older. This disparity likely contributes to the significant number of students in the sample[92]: **73.33%** of plaintiffs who were students at the time of reporting were young (N = 15); for defendants, **75%** of students (N = 16) were young people.

Table 4. Sociodemographic variables (plaintiffs and defendants)

Variables	Plaintiffs (N = 83)		Defendants (N = 83)	
	FREQUENCY	PERCENTAGES (%)	FREQUENCY	PERCENTAGES (%)
SEXUAL ORIENTATION				
Heterosexual	3	3.61	1	1.20
Homosexual	28	33.73	19	22.89
Bisexual	8	9.64	0	0.00
No information in proceedings	44	53.01	63	75.90
GENDER IDENTITY				
Cisgender woman	2	2.41	0	0.00
Transgender woman	3	3.61	2	2.41
Transgender man[93]	0	0.00	1	1.20
"Does not apply"	39	46.99	35	42.17
No information in proceedings	39	46.99	45	54.22
RACE				
Multiracial ("*Parda*")	39	46.99	25	30.12
White	25	30.12	30	36.14
Black	11	13.25	6	7.23
Asian	3	3.61	0	0.00
No information in proceedings	5	6.02	22	26.51
AGE GROUPS				
10 to 13 years old	1	1.20	0	0.00
14 to 17 years old	0	0.00	0	0.00
18 to 19 years old	5	6.02	5	6.02
20 to 24 years old	16	19.28	13	15.66
25 to 29 years old	21	25.30	17	20.48
30 to 39 years old	23	27.71	31	37.35
40 to 49 years old	15	18.07	13	15.66
50 to 59 years old	2	2.41	3	3.61

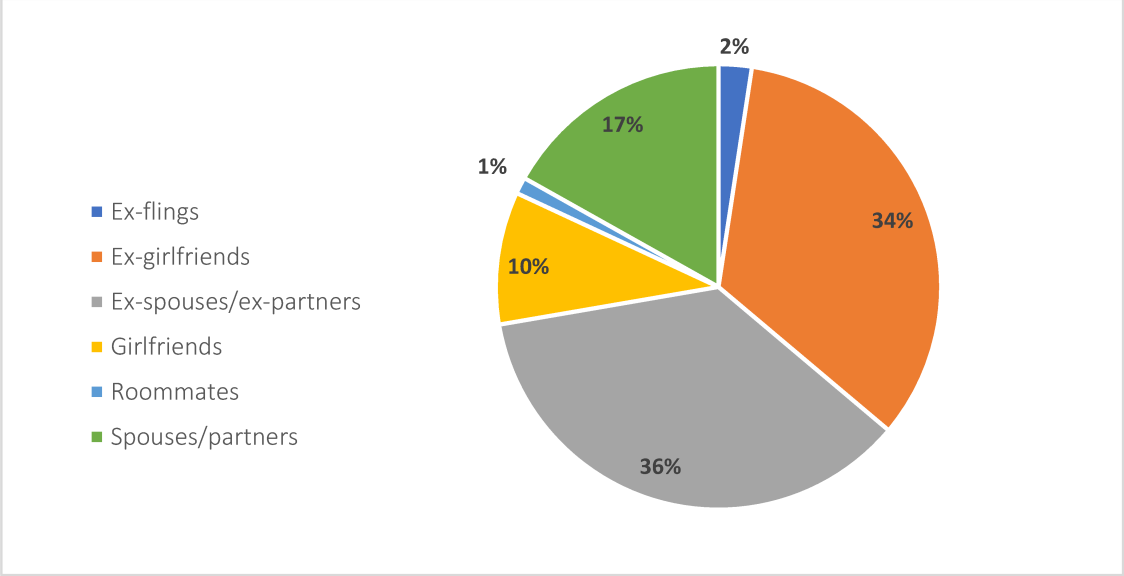
[92] Considering all education levels, 18.07% of plaintiffs are students; for defendants, this percentage is 19.28%.
[93] Even though this research focuses on women involved with the impact of domestic violence, I chose to include this case where the offender is allegedly a trans man because he (or she) was not heard to speak on the alleged facts brought by the plaintiffs and also because there is no other indication to a social name or trans identity throughout the proceedings other than the police report. Since the police records show a lot of inconsistencies and I was not able to confirm this information with other documents from the proceedings, I believe the cautious thing to do is to not exclude this case from the data.

60 to 64 years old	0	0.00	1	1.20
EDUCATION LEVELS				
< High school degree	28	33.73	24	28.92
High school degree	28	33.73	22	26.51
Some college but no bachelor's degree	11	13.25	5	6.02
Bachelor's degree	9	10.84	4	4.82
Graduate degree	2	2.41	1	1.20
No information in proceedings	5	6.02	27	32.53

Source: author.

In most cases, the violence that led to reporting occurred after the couple's separation, following a similar trend observed in heterosexual couples (Marília de Mello et al., 2018). **72% (seventy-two percent)** of the proceedings involved ex-spouses, ex-partners, ex-girlfriends, or former casual partners (Figure 7). Unlike heterosexual couples, however, I did not find records of rekindled relationships during the processing of EAMPs.

Figure 7. Types of relationship (N = 83)

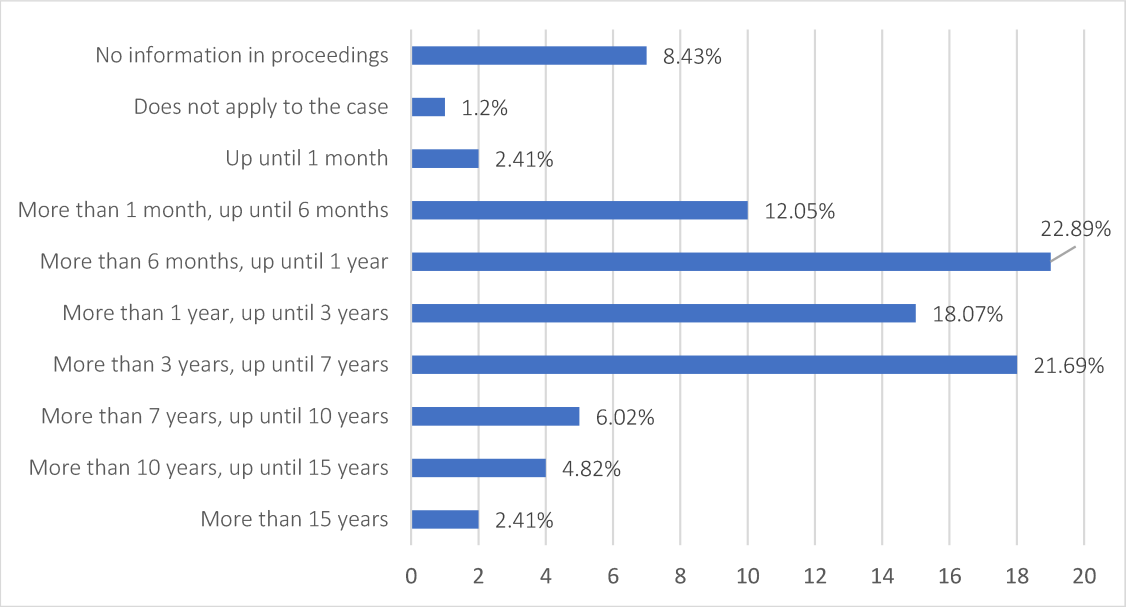


Source: author.

The frequency of cases where the defendant is older than the plaintiff (**38.55%**) is similar in frequency to those where they belong to the same age group (**37.35%**). Less common is the scenario where the defendant is younger than the plaintiff, accounting for **24.10%** of the cases. Compared to measurements in other Brazilian large cities (Recife and Belém do Pará), the relationships represented in this sample are also way shorter than heterosexual couples interacting with the CJS (Figure 8). Here, **37.35%** of relationships were less than a year in

length at the time of reporting, **39.76%** of relationships were between one and seven years (similar to Belém, with 39.3%), but relationships with more than seven years of duration were significantly less common (**13.25%**, compared to 54.4% in Recife and 40.2% in Belém). Overall, **55.42%** of relationships depicted here had up to three years of duration at the time of reporting. No relationship in this sample had children in common, distinguishing it from the typical profile of heterosexual women experiencing intimate partner violence (Marília de Mello et al., 2018; Fórum Brasileiro da Segurança Pública; Instituto Datafolha, 2023).

Figure 8. Length of relationship (at the time of reporting) (N = 83)



Source: author.

Besides the fact that the parties are younger, my hypothesis for the shorter length of these relationships maybe related to the common lack of other avenues for help-seeking other than the CJS. Family, friends, the church – they all may be not there or not willing to do anything when a queer woman searches for assistance. For these women, it is not infrequent to have severed or frail relationships with the biological family, to feel completely stigmatized in mainstream Christian institutions, or to have the same support systems as the defendant's (such as the chosen family). If one feels there will be no understanding and no care from all these other fronts and that they run into serious risks, it may push them to go sooner to the police than heterosexual women – who do seek out these other avenues, as previous research has shown (Fórum Brasileiro de Segurança Pública; Instituto Datafolha, 2023).

Finally, I could not quantify class-based vulnerabilities between the parties due to the lack of careful data management. As with sexual orientation and gender identity variables, the frequency of missing data when it comes to financial dependency hinders any useful interpretation: in **56.63%** of the EAMPs, this information was not sought after by law enforcement authorities, the prosecutor, or the judge. Consistent collection of this data only began when the FRIDA form became mandated by law in 2021, a very recent development. In all remaining cases in this sample (**43.37%**), the plaintiffs stated that there was no financial dependency in the relationship.

3.3 Reported violence(s) and help-seeking behaviors

In terms of reported criminal offenses, Figure 9 presents comparative measures between offenses reported by the plaintiffs in their statements to the police and those officially filed by the police. This helps to highlight the translation (and simplification) of the plaintiff's demands into the legal lexicon. In order to establish the legal classification of the behaviors reported by the plaintiffs, I gave priority to the details provided in their statements over the legal terminology found in other police documents within the case file (REDS, "*Termo de Representação*", "*Termo de Desinteresse*", and decisions by the police chief, as indicated by the columns "Filed by police") because these documents often do not encompass all criminal behaviors mentioned in the plaintiff's statements. Once I identified all these behaviors, I undertook the process of subsuming facts under legal norms using my legal training and previous experience as a legal assistant at a Prosecutor's Office.

Notably, the most reported types of offenses are similar to those we commonly associate with heterosexual relationships[94]: threat (reported: **66.27%**; filed: **57.83%**), bodily injury (reported: **32.53%**; filed: **26.51%**) and *vias de fato* (reported: **14.46%**; filed: **19.28%**). This ranking slightly changes when we consider the plaintiff's sexual orientation: for "homosexual" plaintiffs, the top filed crimes are threat (15 cases), bodily injury (10 cases), and *vias de fato* (6 cases); for bisexual plaintiffs, the ranking is threat (6 cases), followed by bodily injury and insult ("*injúria*") (2 cases each). Considering the entire sample and the top three crimes filed by the police (threat, bodily injury, and *vias de fato*), most of the plaintiffs are young (18 to 29

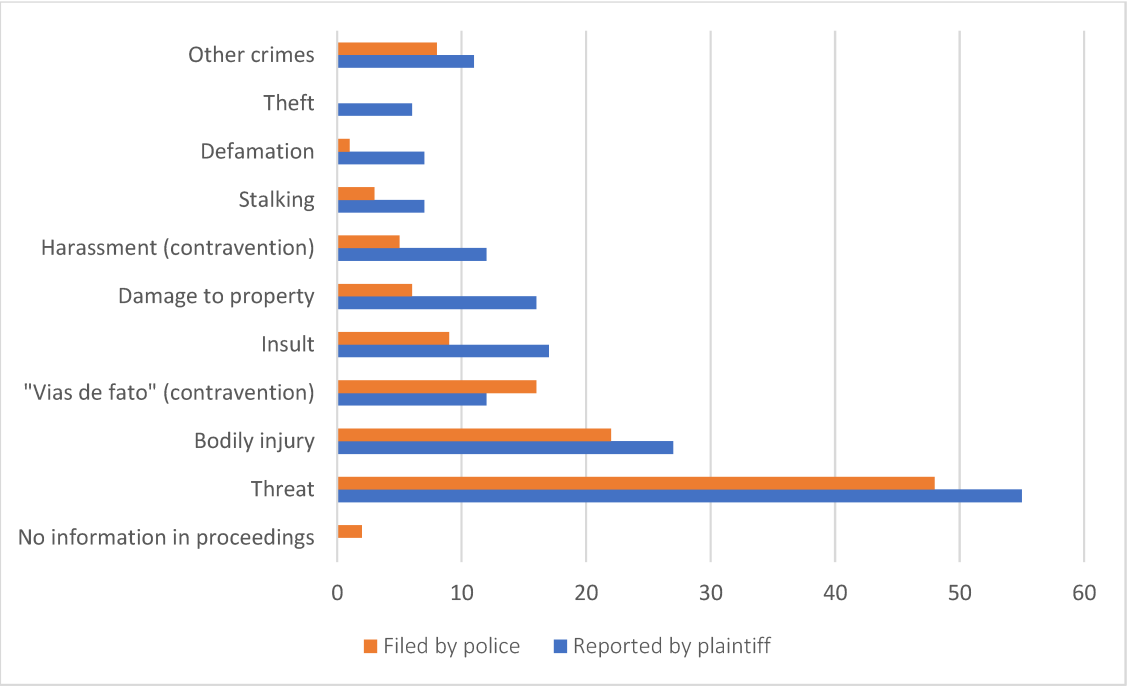
[94] Recife: threat, insult ("injúria") and bodily injury, in this order. Maceió: threat, bodily injury, and insult. Belém do Pará: threat, bodily injury, and *vias de fato*. Brasília: threat, insult, and bodily injury. São Paulo: bodily injury, threat, and insult. Porto Alegre: bodily injury, threat, and criminal trespass/harassment (Marília de Mello et al., 2018).

years old) and are people of color. For defendants, they are mostly young when committing *vias de fato* but tend to be older (30 to 49 years old) in cases of threats and bodily injury. The race of defendants varies more across these types of crimes, but the frequency of missing data complicates analysis: for threats[95] and *vias de fato*[96], they are mostly White; for bodily injury, defendants are mostly people of color[97].

"*Vias de fato*", a misdemeanor for aggressive acts that do not leave visible sequelae on the victim's body (as opposed to bodily injury or "*lesão corporal*", a more serious crime), is the only offense that surpasses reporting. This is due to the fact that many plaintiffs do not want to undergo a physical examination by a forensic professional to determine the characteristics of the injury and, therefore, establish the criminal-legal qualification of the incident. When that exam does not happen or does not determine any visible vestige of the injury on the plaintiff's body, the classification becomes a misdemeanor (hence, *vias de fato*). For all other types of offenses though, the police usually underreport the criminal incidents shared by the plaintiffs. There is a process of streamlining the complexities brought by plaintiffs with a privileging eye for physical violence (*vias de fato* or bodily injury), and some forms of psychological violence (threat) and moral violence (verbal insults or "*injúria*") – the types of offenses most frequently associated with domestic violence in the Brazilian CJS.

[95] Missing data: around 31%.
[96] Missing data: around 18%.
[97] Missing data: around 45%.

Figure 9. Frequency of criminal offenses (reported to and filed by the police) (N = 83)



Source: author.

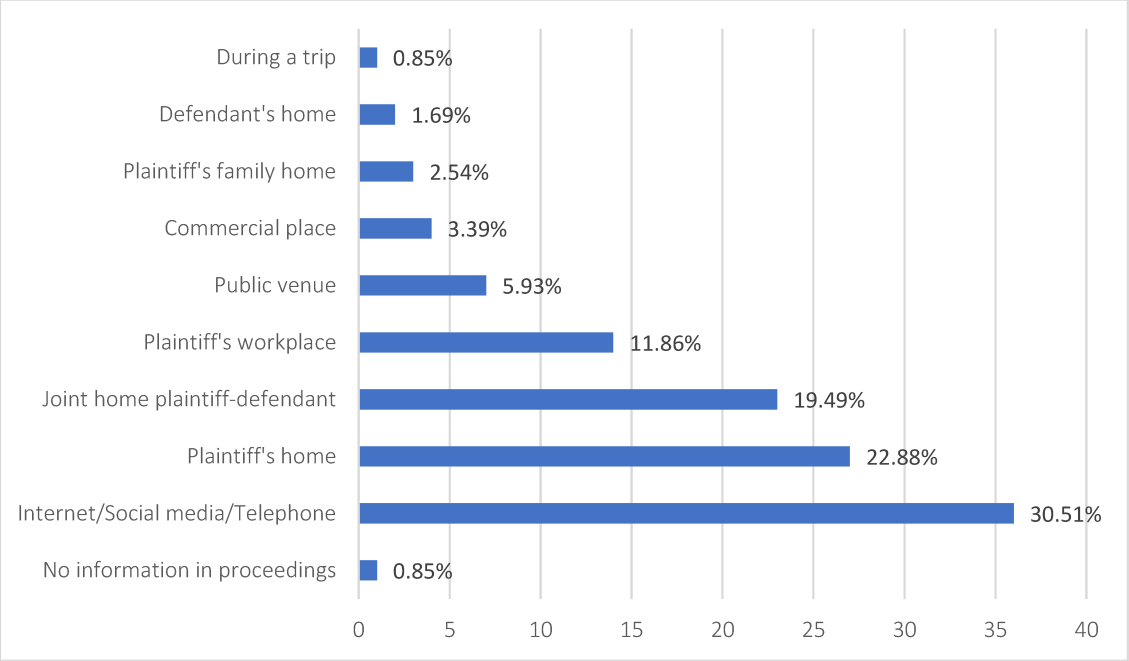
Taking into account the incidents reported by the plaintiffs, the overview in Figure 9 does not support the myth of a "more psychological" violence committed by queer women that still lingers in society at large, including academia (Bruna Pinto, 2021, p. 259-260), as well as among legal professionals. The behaviors are diverse, much like in heterosexual relationships, and do not indicate a lesser inclination for physically violent conduct based on one's gender identity or sexual orientation. The lack of solid data – although there is a space available in the REDS for recording the parties' sexual orientation and gender identity since 2016, as I have mentioned – also contributes to solidifying a stereotyped view of domestic violence in these relationships as somewhat less physical and more emotional. The perception of some legal professionals who worked in a few of these cases remains anecdotal:

> [...] it was much more psychological violence than physical, but then I also can't say that for all cases, you know, I think it would be... a very strong statement, I think we would need to analyze several cases, conduct more scientific research to say that it's more psychological (PC-1).
>
> It's psychological violence. There is physical violence too, okay? But I see more of the psychological kind (MP-6).

Regarding the location of the incident(s), the plaintiff's home emerged as a common setting for the violence, similar to what occurs among heterosexual couples (Marília de Mello

et al., 2018; Fórum Brasileiro da Segurança Pública; Instituto Datafolha, 2023). Here, however, several findings are noteworthy: a) online victimization or via telephone were the primary ways in which violent incidents occurred in this sample; b) as a significant portion of the sample consists of already broken relationships – in **66.27%** of cases, there was no cohabitation at the time of the incidents – the couple's residence (which tends to be the most frequent site of domestic violence for heterosexual women) holds only third place in the ranking; c) violence in public spaces (except the workplace, which ranks fourth) did not prove to be significant for this sample.

Figure 10. Locations of criminal incidents (N = 83)



Source: author.

One of the most important findings of this research is the confirmation of the practice of *outing* as a way of perpetuating a violent relationship, which is a profoundly heterosexist dimension of violence. This involves the threat of making someone else's sexual orientation public to their family, friends, and/or work colleagues with the purpose of keeping them silent and fearful of ending the relationship, or even to pressure them to reverse the decision to break up. This practice of emotional distress is a clear manipulation of homophobia as a means of exerting power in a relationship, representing a compelling example of how sexual orientation is a system of power that must be accounted for in all public policy related to domestic violence.

In the presented sample, in **7.23%** of cases (N = 6) there is news of such practice in the reported incidents.

Notably, this type of violent behavior is not named and properly analyzed in none of these proceedings and usually is lumped together with the more generic offense of "threat"[98]. I was only able to measure the frequency of outing by carefully reading the plaintiffs' statements with a sexuality-sensitive lens. However, the legal common sense is still oblivious to this sexuality-impacted kind of violence, which prompts inadequate responses from the CJS. For instance, one of the six cases in this sample (Case CC1-3, from 2012) did not have a positive outcome for the plaintiff: the protective order was not granted due to an alleged lack of minimal evidence. This was the judge's decision despite the defendant reportedly threatening the plaintiff with physical violence ("you need a beating") and with outing her at her workplace ("the author [*of the facts*] said for many times that she would go to the declarant's [*plaintiff's*] workplace to report that she is homosexual, the declarant felt threatened and for that reason she continued the relationship").

In Case JVDFM1-8 (from 2020), on the other hand, the protective order was granted, but the inefficiency and lack of a sexuality-sensitive approach emptied the promised protection. The plaintiff, a therapist, was threatened by her former girlfriend of ending her professional career by making false accusations to their coworkers that they had a relationship while she was her patient. Note: they both worked in the same establishment, but in different departments. The decision, using the same template used *en masse* for all cases, ignored this important piece of information and mandated the prohibition to frequent the plaintiff's workplace – in other words, mandated, in practical terms, that the defendant quit her job during the height of the pandemic. To make things worse, the court did not manage to subpoena the defendant of this decision. Less than one month after the court order, the plaintiff sought the police again, reporting that she ended up being fired from her job because of the ongoing harassment from the defendant in her workplace. Only then the defendant was subpoenaed of the first decision, which was confirmed by another judge without any modifications whatsoever. The damage to the plaintiff's reputation and livelihood, however, was already done.

In the interviews, only two informants (MP-1 and MP-5) showed some kind of awareness of this issue. One of them described the common perspective among legal professionals as "the logic of the normal". In their own words (note the gendered language throughout, still referring to a male counterpart):

[98] It is important to note that outing is not a criminal offense in Brazil.

> [...] "she's threatening to tell everything, to talk to my parents about it". This phrase that is here sometimes reverberates in the request for an order. "I wanted him to be prohibited from contacting my mother", yada yada. And it doesn't appear in the decision because this kind of thing is read in the logic of the "heteronomous", [*the logic of*] the normal, where, no, I'm not going to determine that he will not approach your mother for a very simple reason: [...] your mother is not a victim, he didn't hit her, didn't assault her, didn't do anything, why am I going to determine that it will be prohibited, understand? Which is our normal logic, right? (MP-1).

This typical relationship in the criminal procedure (plaintiff *vs.* defendant) flattens reality into a dichotomy that constrains all perspectives that may be represented in the proceedings (witnesses, prosecution, defense, judges, and the parties themselves). This adversarial scheme of producing the so called "real truth" ("*verdade real*"), which is heightened in criminal procedure due to its potential impact on someone's liberty, also seeps into the protective order proceeding. This makes it harder to implement responses better-suited to the specificities of domestic violence against LBP+ women due to the infiltration of a criminal way of thinking (what I have been calling the gravitational pull of criminal procedure). Only the "real victim" is entitled to protection, which, through a heteroframing lens, means failing to recognize the absolute need to not only restrict the defendant's access to the "victim" but also to their loved ones and coworkers when necessary. Not broadening our understanding of who may be impacted by the violence (with the "victim" seen as the only target) may lead to revictimization and, consequently, underreporting:

> Because sometimes these people live and work in environments where this is not open, because society is still very homophobic and sexist, right? And sometimes, can you imagine, within a context of violence, they end up being threatened with having their entire life exposed. I've had cases here too where the victim preferred not to report to avoid having their homosexual relationship exposed. That's very sad (MP-5).

This avoidance to report because of the fear of the consequences of outing was also concrete for other plaintiffs in the sample: despite a prior history of physical and psychological violence during her ten-year relationship with the defendant, in Case JVDFM2-5 the plaintiff stated that she "never sought the police by fear of the threats that the author [*of the facts*] made of defaming her in front of her family and friends". A ten-year relationship!

Despite the various particularities related to the sexual orientation of the parties involved, as pointed out so far, an important similarity emerged in the analysis of court records:

the frequency of behaviors indicating possessiveness and control in the relationship. In **62.65%** of the cases in the sample, the termination of the relationship was the factor that precipitated violence. In the majority of cases, therefore, violence was committed due to the former partners' dissatisfaction with the end of the relationship. In statements provided by the plaintiffs, the reported threats were laden with objectification:

> If you break up with me, I will kill you or commit suicide. First, I'll kill you, then I'll commit suicide […] (Case JVDFM2-1).
>
> […] if I find you with another girl, I'll kill both of you […] (Case CC1-4).
>
> […] I did this [*referring to a rape*] to show you that the world is not rosy, and you liked it; you almost enjoyed it […] (Case JVDFM1-4).
>
> It's nothing for me to kill you. Now, if you live in my turf, I'll get you […] (Case JVDFM1-3).
>
> […] either you talk to me, or I'll beat you […] (Case JVDFM1-2).
>
> […] I'm not leaving here; I don't want to separate from you […] (Case JVDFM1-1).
>
> […] I'll get revenge on you. Think well, because I have nothing to lose, but you have three children and three grandchildren. One of us will end up in the grave, and the other in jail […] (Case CC1-1).
>
> […] if you don't stay with me, you won't be with anyone else because I'll kill you […] (Case CC1-2).

These statements are familiar because they share the same ideal of romantic love that we learn to uphold as the only desirable and acceptable form of constituting and maintaining the nuclear family. Sustained by compulsory monogamy and heterosexuality, this form of social organization demands a type of selfless, sublime, and idyllic affection that often encourages possessive behaviors and normalizes pain as a fundamental part of the romantic relationship. For lesbian relationships, for instance, this ideal takes on additional layers of complexity imposed by the double social control of women sexuality *and* homosexuality, creating a "cocktail in which sexuality is exponentially romanticized" (Brigitte Vasallo, 2022, p. 30)[99]. As women, violence is minimized in the face of gendered expectations of female sensitivity and emotiveness:

[99] *Obrigada* Jailane Pereira Matos, who introduced me to this key interpretation for the research.

> So when she [*the violent partner*] comes saying that dating a woman is like this, you believe her. And why wouldn't you believe her? You trust her, and you don't have any other reference. You spent your whole life hearing your father talk about the emotion, the sensitivity of women (Carmen Maria Machado, 2021, p. 73).

The extra need for a stable refuge in the face of a homophobic society makes the decision to end the relationship even more burdensome:

> Seeing oneself in the other, as your mirror, finding there your possibility of identification and partnership, also contains in itself the extreme fear of losing this relationship and facing oneself once again alone in front of a heteronormative society and its social and institutional violence (Ana Cláudia Macedo, 2020, p. 128).

> In the midst of so many demands and invisibility, being in a relationship with another woman, romantic love – the kind that guides relationships by eternity, sacrifice, symbiosis, the kind that forgives and overcomes everything –, is compounded by the feeling of "us against the world", which arises from the sensation of loneliness and the impossibility of being loved. Thus, upon finding another woman willing to engage in a relationship, the lesbian feels indebted, being compelled to accept all kinds of behavior, violent or not, from this partner (Nathalia Cordeiro, 2021, p. 264-265).

I want to emphasize the profound difference between this feminist explanation and the more commonly found heteronormative "explanations" of violence in queer relationships. It is not about determining who plays the role of the "man" and who performs the role of the "woman" in the relationship, as I heard in the speech of some legal professionals I interviewed and also read in some sentences. This kind of metaphysical exercise actually has the negative effect of confining violence within the limits of masculinity, making the woman who breaks the social expectation of docility (in the case of White women) and subservience (in the case of Black women)[100] profoundly unintelligible and, ultimately, monstrous. Women navigate and update the constraints of structural sexism and homophobia in their own way in their relationships, and when they choose to do so through violence, they also do it as women.

[100] Docility and subservience, in my perspective, express subordinations of profoundly distinct natures and are on opposite sides of the human/non-human binary. While docility translates into the expected obedience of a second-class citizen, subservience (from the Latin "subservĭo", meaning "to be a slave to") represents the bovine submission demanded from those outside the realm of the human, reduced to an animalistic condition. For a discussion about this dichotomy human/non-human as the central core of the coloniality of gender (the social and historical process in which the colonized of the Global South are conceived as beasts without gender), see the Argentine sociologist María Lugones (2018).

It is essential to keep in mind that women mobilize the anti-politics of care[101] of the CJS by prioritizing their interests and needs, not necessarily conforming to the principles that govern the rule of law, nor to the theoretical assumptions that we, feminist academics, consider desirable (Cecília dos Santos, 2005). Help-seeking is a dynamic process: it may change as a function of many factors (related to the victimization/harm itself, the external environment, and the person/household characteristics) and is subject to transformation over time when conditions that shape help-seeking behaviors also change (changes in legal norms, in service availability/delivery, public infrastructure, etc.) (Min Xie; Eric Baumer, 2019). Therefore, it is simply not possible to pin down a single reason to explain the decision to report to the police, to seek informal helping systems, or even to do nothing.

Against my own expectations, I confess I was surprised by the rate of criminal representation ("*representação criminal*"): **56.63%** of plaintiffs expressed the desire to take criminal actions against the woman identified as the "aggressor". Given that I am not analyzing criminal proceedings, I could not observe whether this desire persisted until the end of such legal procedures. Nevertheless, the frequency of a desire for criminal punishment in one's statements to the police is noteworthy. It seems to me that this inclination towards mobilizing the repressive apparatus of the state (even if only for a moment) does not necessarily mean a desire for incarceration or even punishment, but above all *a need to gain access to the violent power of the CJS as a stabilizing mechanism for the decision to end their relationship*.

In addition to the fact that the majority of cases are linked to the ending of the relationship, this strategic use of the CJS is supported by the following reasons. Firstly, in **51.81%** of cases[102], there is an indication, according to the plaintiffs' statements, of a history of previous violence in the same relationship, but only in **4.82%** of the sample there is recidivism in the defendant's criminal record, indicating a significant resistance from plaintiffs to involve the CJS in these matters. Secondly, the primary justification given by judges for not granting protective orders and dismissing these cases without resolving the merits is the voluntary dismissal by plaintiffs (indicating that continuous punitive control is often not the predominant interest, but rather the perceived menacing effect of involving the legal system at the time of reporting) (see Figure 11). Thirdly, the fear of revictimization and the lack of

[101] The anthropologist Miriam Ticktin (2011) discusses the violent nature of designating certain women as deserving care and protection through their racialization and the fetishization of their suffering through state practices. According to her theory, this type of "armed love" represents an "anti-politics of care" by portraying these violent practices as separate from power and politics. This helps solidify the benevolent image of the state while leaving structural inequalities unchallenged.

[102] For the recidivism variable, the missing data amounts to seven (N = 76).

confidence from Brazilian LGBT+ individuals with the CJS, including in Belo Horizonte, has been widely demonstrated by previous empirical research studies with this population (Grazielle Tagliamento; Dayana Brunetto; Raquel Almeida, 2022; Marcelo Ramos et al., 2023), making it unlikely that this piece of data is a demonstration of legitimacy/approval of a system commonly seen as violent by this population.

The decision to seek criminal prosecution against a former partner, also marginalized by legal institutions, needs to be understood with consideration of these particular nuances. When queer women from this sample decide to report, they seem to seek the rebalancing of power within the relationship rather than requesting greater repression and imprisonment against the other party (although these detrimental results are acknowledged as possible by the decision to report). Although I cannot conclude that any sense of revenge is not part of the reasoning behind this decision (this would only be possible by asking them directly), what I interpret from the dataset, the interviews, and other research with this population is that, faced with the dissatisfaction of ex-partners with the end of the relationship, plaintiffs seek the state to help them to definitively end the violence *and* the relationship itself. This strategic move to gain power through the CJS is not new: we have long known that heterosexual women also do the same in their relationships (Cecília dos Santos, 2005), although for them, the demand is often to stop the violence, but not necessarily the relationship they have with their male counterparts (IPEA, 2015; Marília de Mello et al., 2018; CNJ, IPEA, 2019). This is also the reality in Belo Horizonte, from the perspective of some interviewees: it is a “wake-up call” (MP-1) or a way of “giving a scare” (PC-1) to the former partner.

3.4. Processing of the cases by the Criminal Justice System

Differently from ten years ago, as discussed in sub-section 2.2, protective orders nowadays are decided with more efficiency: in this sample, decisions were issued in the same month the request was filed. The filing process has been improved and is now conducted electronically, which speeds up the interinstitutional flux between the police and the Judiciary. The proceedings are very similar to one another; usually, they are processed in the following order: documents from the police (police report, victim’s statement, request of protective orders, risk-assessment form for more recent proceedings, criminal representation form, etc.); defendant’s criminal record; provisional decision granting or refusing the requested orders (either by the on-duty judge or the principal judge from that court); subpoenas (for the plaintiff,

the defendant, and the MPMG, which is tasked with overseeing the rightful enforcement of the law in the proceeding); and the final decision (either confirming the provisional order or revoking it). Processing resembles an assembly line: witnesses are rarely heard (which is understandable, since most of incidents occur inside the home), evidence is seldom presented (and when it is, it is rarely pursued by the police authority, at least in the EAMP), defendants rarely present any defense in the proceedings or appeal decisions, and decisions are always taken using templates, usually updating only the docket number, and the names of the parties.

The widespread use of templates in judicial decisions can sometimes be problematic. Along with the lack of attention to using the correct gender markers to refer to women defendants, as I mentioned in sub-section 2.3, the indiscriminate use of templates often results in insensitive language when addressing severe cases. For example, in Case CC2-5 (from 2014), which involved the sexual abuse of two sisters by their father (one of whom had an intellectual disability), and in Case CC2-6 (from 2017), which involved revenge porn and sexual abuse by an ex-girlfriend, different judges used the same template stating, "as this is not a matter of greater seriousness, there is nothing for this Court to provide" when revoking the protective orders following the plaintiffs' voluntary dismissal. As seen in Case JVDFM1-8 (from 2020), discussed in sub-section 3.3, this reflects a work ethic that prioritizes speed over sensitivity:

> Because for us judges, the case is just one more among many, but for the person with that demand, it is *the* [*emphasis*] case, so we must look at every case with the same attention. We can't think, "Oh, it's just another number" (J-3).
>
> It becomes automatic; there's a very large volume. I used to conduct an average of 10 to 12 hearings per day. It was a huge volume at first, just to get things organized. So, I didn't think too much about it (J-2).
>
> Because sometimes the legislator, the jurist, the Brazilian judge, becomes very attached to doing things the same way, the same way, the same way, and doesn't think that things need to change (J-5).
>
> And I have a large team that helps me – interns, advisors, outsourced staff – they help me. I use my templates, they keep improving them, they keep working on them, and I correct them. I have hearings to conduct. I preside over hearings every day, so I'm here presiding over hearings, and during breaks, I go there, review, sign off, and when I finish the hearings, I review and sign off (J-6).

Even if the decisions are issued more efficiently today, this speed is often offset by an outdated system of subpoenas, which is still heavily dependent on the availability and efficiency of court officials to serve the parties with the court's decision. In Case JVDFM2-25, from 2020,

for instance, the court official refused to serve the emergency order to the defendant during nighttime, because they resided in a "region of high-risk ["*aglomerados*"]" that, according to them, are "difficult to access, where even the PMMG rarely enters at night". Moreover, the lack of an integrated database with updated information on the parties' addresses makes the process longer than it should be: frequently, parties are difficult to locate, taking several attempts until the court is able to finally notify them of its decisions. Thus, it was not uncommon for the courts to take several months to serve issued decisions to defendants – which hinders the court's ability to undertake dissuasion tactics to enforce the protective order in case of resistance on the part of the defendant (if the defendant was unaware of the court order, they cannot be held liable for disobeying it).

For the women who chose to report the violent incident(s) to the State and seek a protective order, the most frequently requested orders since the oldest proceeding of the sample (from 2010) are: prohibition of contact with the plaintiff, her family members, and witnesses (**28.27%**); prohibition of approximation with the plaintiff, her family members and witnesses (**28.27%**); prohibition of attending certain places (plaintiff's home, workplace, etc.) (**26.50%**) (Table 05). Overall, the lower courts granted protective orders, either in full or in part, in **55.42%** of cases.

Table 5. Protective orders (filed by the police and granted by the lower courts)

Types	Filed (N = 283)		Granted (N = 155)	
	FREQUENCY	PERCENTAGES (%)	FREQUENCY	PERCENTAGES (%)
Prohibition of contact with the plaintiff, her family members, and witnesses	80	28.27	45	29.03
Prohibition of approximation with the plaintiff, her family members, and witnesses	80	28.27	43	27.74
Prohibition of attending certain places (plaintiff's home, workplace, etc.)	75	26.50	38	24.52
Prohibition of revenge porn	0	0.00	16	10.32
Referral of plaintiff to protection/assistance program	1	0.35	8	5.16
Removal of defendant from home, residence, or place of cohabitation	19	6.71	4	2.58
Compulsory participation in a "reflective group" for the defendant	6	2.12	0	0.00
Restitution of unlawfully taken property	5	1.77	0	0.00

Relocation of plaintiff and her dependents to their residence after removal of defendant	4	1.41	0	0.00
Other protective orders	11	3.89	0	0.00
Plaintiff did not ask for a protective order	2	0.71	N/A	N/A
No judicial decision[103]	N/A	N/A	1	0.65

Source: author.

In this sample, only Black plaintiffs (N = 11) have been granted protective orders exclusively, either totally or partially. For multiracial ("*parda*") plaintiffs (N = 39), the rate of granted protective orders is **48.71%**, and for White plaintiffs (N = 25), this rate is **52%**. For bisexual plaintiffs (N = 8), the rate is **50%**; for "homosexual" plaintiffs (N = 28), this rate increases to **67.85%**. However, given the significant amount of missing data for the sexual orientation variable, I would caution against drawing any conclusions about the relationship between this variable and sentencing. Furthermore, when analyzing the EAMPs qualitatively, I could not assess a relation between the plaintiff's race and the judge's predisposition to grant protective orders. I hypothesize that this variable, in and of itself, is not strongly associated with variation in sentencing, given that these decisions are made provisionally ("*liminar*"), usually based solely on the documentation sent by the civil police and without an in-person hearing with the parties. What seems to matter more are the reported incidents and the nature of the relationship (if romantic/sexual or not). However, this does not mean there is no association whatsoever between the plaintiff's race and sentencing: if incidents of racist violence are not seen by the judges as violence, the protection will be denied (see the discussion on Case CC2-2 in section 3.5).

In this sample, the type of relationship does not seem to have an impact in sentencing, according to my qualitative analysis. Moreover, even though variation is present, I could not identify any meaningful pattern related to the stability of the plaintiff-defendant relationship in the judge's willingness to grant protective orders. For spouses/partners (N = 14), the order was not granted in half of the cases. For ex-spouses/ex-partners (N = 30), protective orders were not granted in **60%** of the cases. For girlfriends (N = 8), orders were denied in **50%** of the cases. For ex-girlfriends (N = 28), this rate is **25%**. The less frequent types of relationships, ex-flings (N = 2) and roommates (N = 1), had only protective orders granted and only denied orders,

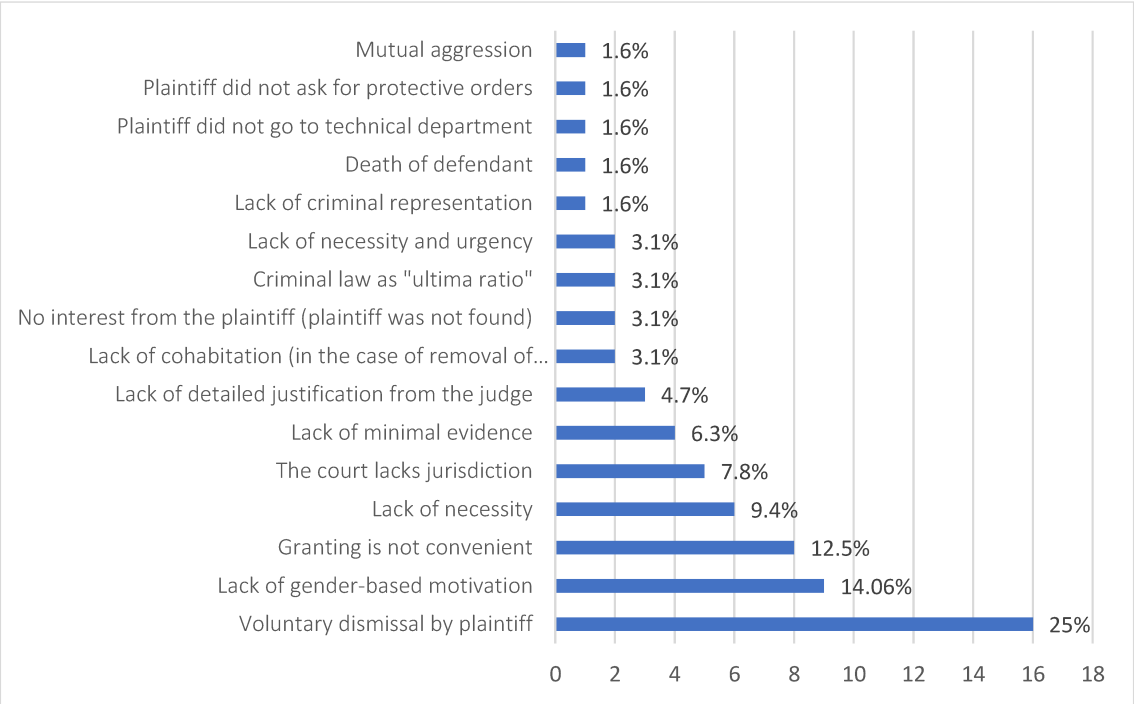
[103] In this case, a request for protective orders was filed, and the final decision, which ordered the case to be archived, referenced a prior decision that granted the orders. However, I could not find this decision in the proceedings, so I could not verify which orders were granted by the court.

respectively. Overall, this means protective orders were denied **41.67%** of the time for former relationships, and **50%** of the time for ongoing relationships.

On the other hand, the length of the relationship may have some significance to explain variation in judges' willingness to grant a protective order. If we focus on the top three most frequent groups, the rate of denied orders increases as the length of the relationship grows: relationships with more than 6 months and up to 1 year (N = 19), had **42.11%** of cases with denied orders; for relationships lasting more than 1 year and up to 3 years (N = 15), this rate is **46.67%**; and for those lasting more than 3 years and up to 7 years (N = 18), it is **61.11%**. This may be due to a familistic ideology, a reasoning that can be found explicitly in proceedings involving non-romantic/non-sexual cases. Judges may refuse to grant protective orders because of a supposed need to "resolve family conflicts harmoniously", or because they believe the Judiciary should only be involved when "all ways of resolving the conflict harmoniously have been exhausted", or "after an attempt to resolve the issue among family members in a harmonious manner and with mutual respect" (Cases CC2-8, CC2-9, and CC2-10, all from 2015).

When it comes to the reasons for denying protective orders, either entirely or partially, they vary significantly, comprising a total of 64 (sixty-four) justifications (Figure 11). The most common one is the voluntary dismissal by the plaintiff during the proceedings (**25%**). As mentioned earlier, I did not find cases of rekindled relationships in the records, but I did find cases where the parties no longer had any contact with each other, and the violence consequently had ceased. In second place, the alleged lack of a gender-based motivation to the violence committed in the specific case (**14.06%**), given the supposed absence of a gender-based subjugation of the plaintiff. Thirdly, the generic reason of "convenience" is given by judges to select which orders will be granted or not, without further elaboration (**12.5%**).

Figure 11. Reasons for not granting protective orders by lower courts (N = 64)



Source: author.

The frequency of granted protective orders and the justifications for refusing those orders also vary according to the type of violence filed by the police in the EAMP. Here, I will consider physical violence (*vias de fato* and bodily injury), psychological violence (threat), patrimonial violence (damage to property), moral violence (verbal insult and defamation), and sexual violence (rape and vulnerable rape), according to the definitions enshrined in Article 7 of the MPL. The rate of denied protective orders varies significantly: for physical violence (N = 38), the judges did not grant the protective order **57.89%** of the time; for psychological violence (N = 48), this rate drops to **31.25%**; for moral violence (N = 10), **30%**; for patrimonial violence (N = 6), **16.67%**; and for sexual violence (N = 2), the protective order was not granted in one of the cases.

The fact that cases involving physical violence have the highest rate of rejected requests for protective orders may be misleading. The top three justifications in Figure 11 are primarily driven by cases involving physical violence: in **31.58%** of these cases, voluntary dismissal by the plaintiff led to the protective order not being granted; **13.16%** of the time, the judge based their decision on the lack of gender-based violence; and in **13.16%** of cases, the judge used a "convenience" reasoning to partially deny some of the plaintiff's requests while granting others. Note that the most frequent justification has nothing to do with the facts of the case: the decision to deny the order is due to the plaintiff's expressed desire to let go of the proceeding.

Additionally, the "convenience" cases all had granted protective orders, except for some requests regarding patrimonial issues, visiting rights to dependent children, psychological treatment or reflective group for defendants, and the removal of defendants from the home (except for the latter, all matters the courts deem the JVDFMs should not adjudicate, as we will discuss further). These partial rejections by the courts does not seem to have anything to do with the fact that these cases involved physical violence.

For cases involving psychological violence, all of these justifications are also prevalent, even if on a smaller scale (voluntary dismissal: **10.42%**; lack of gender-based motivation: **6.25%**; lack of convenience: **6.25%**). However, the second most frequent reasoning for these cases is a lack of minimal evidence (**8.33%**). Regarding this latter justification, except for the latest decision (from 2018), the other three decisions are from 2011 and 2012 and still hold the view that the plaintiff's statements are not enough to grant a provisional order. This may be due, in part, to misconceptions about psychological violence that are not explicitly stated in the reasoning but permeate the Brazilian legal common sense[104], including in Belo Horizonte's CJS. Even though the smaller rate of denied protective orders (compared to physical violence cases) indicates an incremental shift in the seriousness given to this type of violence, which is a very positive development, the idea of psychological violence as less severe or even invisible still impacts some judges' mindsets.

For instance, in Case JVDFM1-7 (from 2021), the request was rejected by the on-duty judge ("*plantonista*") even though the facts of the case showed many "red flags" typical of abusive relationships: the plaintiff had tried to break up many times, but the defendant did not accept it; the defendant had been aggressive for many days before the report; when the plaintiff finally ended the relationship, the defendant said she would commit suicide and that it would be the plaintiff's fault (she actually cut herself in front of the plaintiff on the day of the breakup). Despite the vicious possessiveness and manipulation, and the fact that the risk assessment form indicated a prior history of physical violence, excessive jealousy, and alcohol/medication abuse, the judge concluded a lack of "necessity and urgency" because she could not identify a cycle of violence: "in addition to not perceiving the alleged violence or threat, the vulnerability of the plaintiff is also not apparent, which, in such situations, is not presumed, it should be emphasized". The judge did not explain what she meant by "such situations", but it is safe to

[104] This situation actually prompted the enactment of Law No. 14.188 in 2021, which criminalized psychological violence against women and allowed the removal of the defendant from the place of cohabitation in cases of imminent or actual risk to the woman's psychological integrity. Before this legislation, only risks to physical integrity were considered grounds for such a measure.

say she could not see psychological violence as it is, especially when committed in a non-heterosexual romantic relationship (the decision also stated that there was no gender-based subjugation of the plaintiff, a way to discard protection through heteroframing, as we have seen). This line of reasoning can also be found with moral violence: in Case JVDFM2-8, from 2019, the plaintiff suffered verbal insults ("trash", "rotten") from her former girlfriend, who went to her residence to retrieve some of her belongings. Again, no cycle of violence, no gender-based subjugation, and no necessity and urgency were identified by the judge.

Considering cases involving patrimonial violence, the justifications for not granting are few: convenience and lack of necessity (one each)[105]. In the former case (JVDFM2-2, from 2022), the plaintiff did not ask for a protective order for the damaged property she suffered, but the court partially granted other types of order that were requested. In the latter case (JVDFM2-12, from 2019), the defendant, in a fit of jealousy post-breakup, destroyed many objects in the house where she and the plaintiff lived. Even though the request for the restitution for property damage was not on the list of requested measures, the court justified its perception of a lack of necessity and, consequently, the decision to deny all requested orders because the "victim" had not reported a threat or violence, minimizing the seriousness of patrimonial destruction as a coercive tactic. To be clear: this is not an isolated reasoning. As we can see in Figure 9, in many cases where there is patrimonial violence (damaged property or theft), it is common for the police to not file the criminal offenses accordingly. Moreover, even when there is a request for a protective order involving the restitution of unlawfully taken property, judges tend to not grant it (see Table 5). This pattern is also present in cases involving non-sexual/non-romantic relationships, which has remained consistent over time (CC1-13, from 2010; CC1-27, from 2011; JVDFM2-26, from 2019; JVDFM1-14, from 2019).

Regarding some of the justifications in Figure 11, I will address the ones I found to be the most controversial (for the discussion of the "lack of gender-based motivation" argument, refer to sub-section 2.3)[106].

Lack of jurisdiction and "ultima ratio". The current situation in Belo Horizonte still does not comply with the intended hybrid jurisdiction (civil and criminal) of the JVDFMs, as outlined in Article 14 of the MPL. This divergence from the legislative provision results in women having to peregrinate through various state agencies and services, hindering the achievement of comprehensive assistance in one single location and potentially increasing the

[105] Even though this may seem like a small number, I am using filed criminal offenses as a point of reference, not the reported violence by the plaintiff, which reduces the number of observations.
[106] For a discussion on lack of a gender-based motivation, refer to Chapter 2, section 2.3.

risk of revictimization and inconsistent decisions. Protective orders related to property damage, custody, and alimony issues, for example, are still commonly denied by the judges in the capital, despite the legislative change in 2019 that determines that the offended party has the option to file for divorce or dissolution of a civil union in the JVDFM (Article 14-A), excluding, however, claims related to property division (§1). The cases from the JVDFMs indicate a restrictive interpretation of the courts' jurisdiction, encompassing, for its professionals, only the traditional criminal jurisdiction and the application of protective orders of lesser probative complexity and execution (orders for physical/online distancing of the parties to reduce the risk of further violence).

This, of course, ties in with the deep-seated desire to streamline justice: it is fundamentally another "technical" argument to reduce caseload. Along with the "lack of jurisdiction" argument, I would also add the "*ultima ratio*" reasoning as another tactic to close the doors of heterojustice to many women. This argument still appears in recent cases: according to this reasoning, the EAMP is a criminal proceeding at its core (refer to the discussion on the legal nature of the protective order in sub-section 2.2), and therefore it should only be managed in the most severe cases. This makes it "necessary to proceed with caution in order to avoid saturating the judicial sphere with the intent of not trivializing important institutions, such as Law 11.340/2006 [*MPL*]" (JVDFM1-7, from 2021). Some argue that the JVDFMs should not handle everything (meaning: it should not handle everything *that is mandated by law*); instead, it should positively influence other courts to understand how to handle the gender marker (MP-1). True, all courts should enforce laws from a gender-based perspective when needed, but this should coexist with the affirmative action that the MPL represents – especially since we know that non-specialized courts are even less prepared to address the complexities of gender-based violence; otherwise, the specialized courts lose their entire reason for being.

Lack of necessity. This argument appeared in six cases, all decided in 2019, with two distinct rationales. In five of them, the decision was denied due to a lack of habitual violence, conditioning access to the protective order to previous episodes of violence. In three of those cases, the judge required evidence that the plaintiff is "inserted into a cycle of violence" or that the case "indicates the need for urgent measures". In two of them, reference is made to a 2014 precedent from TJMG (*Agravo de Instrumento* n. 1.0024.13.288629-2/001[107]) in which the court of appeals argues that "an isolated act of violence, without precedents, does not justify,

[107] The final decision from this case is publicly available on TJMG's official website.

by itself, the application of emergency protective orders". This is an old argument: shortly after the approval of the MPL, in a 2009 document, the MPMG had already appealed a similar decision, counter-arguing that requiring the repetition of violence meant "admitting that the state should tolerate an aggression before taking action", and stating that the purpose of the law is to protect "not only in a repressive manner but, above all, in a preventive and assistance manner" (emphasis in the original) (Case CC1-5). The "victim", the suffering body that is legible to legal professionals, needs to be threatened, injured, or humiliated more than once.

In one of the cases (CC1-1, from 2017), based on an opinion from the MPMG recommending revoking the orders, the judge presumes the absence of risk due to the eighteen months that had elapsed without new reports of violence between the parties. In this case, the woman had reaffirmed her desire to maintain the order for fear of new incidents of violence. This argument appears in many cases, irrespective of the nature of the relationship (CC1-7, from 2011; CC2-1, from 2017; JVDFM2-4, from 2019; JVDFM2-3, from 2020), which I refer to as the *umbrella paradox*: closing the umbrella in the midst of a storm because you are no longer getting wet. In other words: revoking the order during an ongoing conflict because the woman allegedly is no longer being assaulted – "Well, it hasn't happened again because the protective order is in effect, it is being effective!" (MP-6).

Aside from the lack of protection this reasoning entails, the "lack of necessity" argument also shifts the burden of the judicial system's slow pace onto the most vulnerable party involved. For instance, in Case CC1-5 (from 2009), involving a heterosexual couple, the MPMG appealed the lower court's decision because, instead of promptly addressing the requested order, the lower court only made a decision in April 2011. Subsequently, despite the plaintiff expressing the desire to keep the protective order out of fear of further violence, the judge refused to grant them, arguing the absence of current or imminent violence to justify such an order. I also found this paradox in a 2021 decision from the court of appeals in which the defendants were the plaintiff's sister-in-law, son, and grandson (Case JVDFM1-5). In *Apelação Criminal* No. 1.0024.18.061324-2/001[108], the TJMG ruled to revoke the protective orders due to the elapsed time since the lower court's decision, combined with the supposedly "blatant lack of interest of the offended party" in the criminal investigation of the alleged offense. In addition to upholding the obsolete idea of the protective order as a criminal proceeding, it disregarded the fact that, despite the lower court issuing its final decision in March 2019, the appeal was only admitted by the appellate judge in June 2021 and judged in October 2021.

[108] The final decision from this case is publicly available on TJMG's official website.

Lack of minimal evidence. This reasoning appeared in four cases: two in 2011 (CC1-2 and CC1-8), one in 2012 (CC1-3), and one in 2018 (JVDFM2-5). The latter dealt with the partial denial of some of the requested orders because there were "insufficient elements for a correct analysis" in the records. In the other cases, there was a total denial of the requests due to an alleged lack of probative basis, as only the testimony of the "victim" before the police authority appeared in the records. The 2011 cases, delivered by the same judge, exhibit some variation in the arguments, but a common thread of distrust is evident, whether subtly expressed or overtly articulated in the rulings. The CC1-8 case involved a plaintiff (referred to as the "alleged victim") seeking assistance for the second time, with her first request having been denied. The decision acknowledges that the "judge must be content with a superficial and provisional investigation", yet it still upheld the denial due to a lack of evidence. In the CC1-2 case, the language used is more severe: "Experience has shown that many times women who claim to be victims of domestic violence, when heard at the Police Station, declare that they do not want to criminally prosecute the aggressor but insist on requesting protective orders". In this instance, the plaintiff had identified a witness in her statements to the police, but their testimony was not included in the proceedings.

These cases are part of that sentencing pattern that I observed over the years in Chapter 2 and that betrays a deep distrust of women from heterojustice, under the alleged technical-legal assertion of the "violation of the rights of third parties" or the guarantee of men's fundamental rights. As we have seen, these types of decisions elicited strong reactions from some members of the MPMG over the years, as we have seen in Chapter 2, with heated discussions, on the record, revolving around the necessity for expeditious procedures. In more recent proceedings, particularly in the last seven years, the procedure has been reversed: except in cases involving women in non-romantic/non-sexual relationships, an "*in dubio pro victima*" standard has been applied by the lower courts, primarily driven by the apprehension of violence escalating to fatal outcomes. Nevertheless, this prioritization of expediency does not come comfortably for some legal professionals:

> It is much easier for you to withdraw a poorly applied protective order than to deny it and run the risk of feminicide (J-3).
>
> I can revoke my decision. Now, if the person dies, if a feminicide occurs, a worse event, being assaulted, there is no turning back. [...] I prefer to err on the side of excess, to give this order, and protect this woman, than to deny it (J-2).

Mutual aggression. This argument is part of Case JVDFM2-7, from 2019, involving former partners. Threats of death and bodily injuries (club blows, punches, and hair-pulling) occurred after a discussion regarding an unauthorized loan made by the defendant, who claimed that she was actually the one assaulted. Both parties requested protective orders, which were denied by the judge. Despite a careful introduction stating that Article 5, Sole Paragraph, of the MPL protected queer women, the denial of protection was based on the reasoning that "the conflict arose due to issues involving the execution of a loan, and the testimonies differ on who may have started the aggression".

Any kind of violence supposedly committed by the "victim" is enough to confound legal professionals, because stigmatizing language, so common in judicial proceedings, has firmly attached victimhood with passivity and helplessness. The way heterojustice subdues the "victim" is to minimize what happened: the violence is downplayed because it allegedly was exerted for a "futile reason" (CC2-9 and CC2-11, both from 2015), or because "relationships are volatile and are usually caused by emotional imbalances that should be resolved, first and foremost, between the parties in a harmonious and respectful manner" (CC2-7, also from 2015). Heterojustice shuts the door at these people, because their lives do not fit the victim/perpetrator framework invented and reinforced by its competent professionals. Power is understood to be static – someone holds all of it, while the other lacks it completely – so, even if violence is exerted to defend oneself, the plaintiff might be read as a co-perpetrator. The binary understanding of gender roles and gender expressions in heterosexual dynamics spills over to queer relationships, leading to the conclusion that relationships between women are necessarily established upon equality (Ana Cláudia Macedo, 2020, p. 159). The idea of mutual abuse becomes a problematic term, assuming "symmetry in a relationship with equal power, motivation and intention to harm when that is not what is being described" (Janice Ristock, 2003, p. 336).

Heterojustice makes it seem only two reactions are possible (and valid): to stay and endure (the passive victim) or to leave altogether (the victim who seeks peace). Reality is that "all combinations seem plausible, even the paradoxical ones" when it comes to relationship violence (regardless of the sexual orientation of the parties): "The situation of being dominated does not necessarily suppress the exercise of violence, whether physical or symbolic, and domination does not obviously depend on physical force to be exercised" (Barbara Soares, 2012, p. 193). People may escape; they may stay and manage the situation of violence; and they might fight back to protect themselves or to retaliate (Kierrynn Davis; Nel Glass, 2011, p. 23;

Janice Ristock, 2003, p. 336). In this latter case, they may participate in conflicting situations, even if in unequal positions, through provocation, insults, and even aggression – "Then I went at him, threw him to the ground, and beat him up too [*laughs*]. I'm not going to go easy on him!" (Bruna Pereira, 2013, p. 56, 65).

In research with lesbian women, the "cycle of violence" model often used to describe heterosexual dynamics is shown to be adequate for some relationship dynamics, but not all; instead, "shifting, relational power dynamics" might be at play, making these dynamics less predictable and more fluctuating. As a Canadian lesbian interviewee stated: "It's a dance between two people of submission and dominance" (Janice Ristock, 2003, p. 335). In another study, the same trend is relayed by a Brazilian interviewee as follows:

> We are never just in one position. Never. [...] But it was very comfortable to put all, all the responsibility on this girl who was violent with me. But that doesn't define her. She isn't just that violence [...] the hard part about this that we don't want to do is to look deeply into these relationships. And not just lesbian ones, all relationships. It's a violent society too. And we are both good and bad, and we are all of that. Human [*laughs*]. Bad and good at the same time, with different nuances (Ana Cláudia Macedo, 2020, p. 188).

Even if some types of protective orders may not require the victim/perpetrator framework to be effective – the mere existence of a situation of violence might warrant a mandated distance/no contact between the parties, or the restitution of property for the sake of all involved – this becomes complicated when measures require identifying the offended party, such as removal from the joint home. Even if in some cases the court's technical body is called to interview the parties to have a better grasp of the specific dynamics between them, the most common response is to simply deny the order – it is simpler and faster to downplay it and pretend justice has nothing to do with it. An adversarial system like the CJS is simply inadequate to deal with this complexity. It needs culprits; it needs victims. It needs the legal western: the good versus the bad, with the legally sanctioned vengeance in its grand finale – the punishment. Life is more complicated than this *macho* story.

3.5 "Here I am not a 'woman', I am a judge": a few (more) notes on sentencing

I have come across the decisions from 40 (forty) judges in total when considering the larger sample comprising all cases with women defendants (N = 466). These include 21 (twenty-one) women and 19 (nineteen) men; 4 (four) people of color and 31 (thirty-one) White

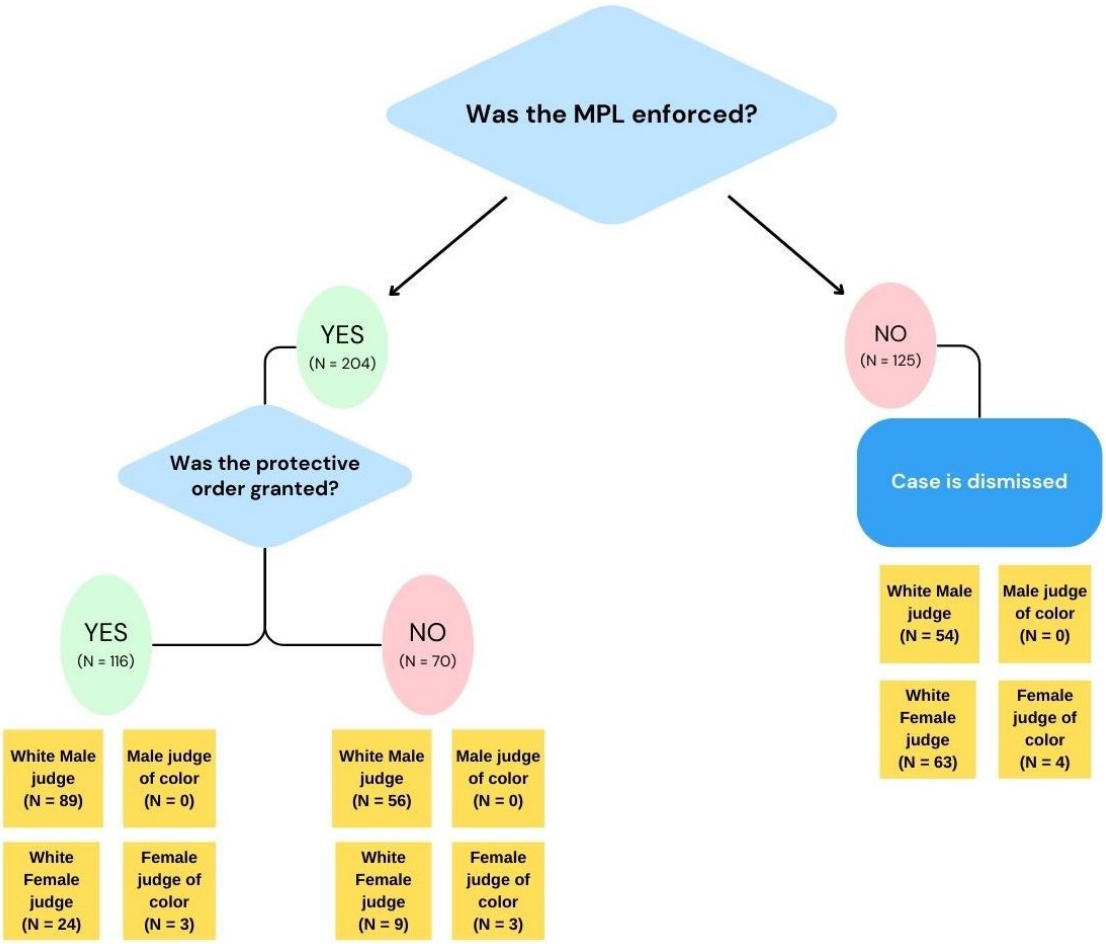
judges[109]. Focusing only on cases with queer women (N = 83), I could access decisions from 23 (twenty-three) judges: 10 (ten) women and 13 (thirteen) men; 18 (eighteen) White and 3 (three) judges of color. The racial disparity is significant, mirroring the lack of diversity of the Brazilian Judiciary according to official data: in these samples, **10% to 13.04%** of judges are from racially minoritized groups, which is even less than the national rate of 16.6% to 19.7%. Regarding the judges' gender, the biggest sample has a larger representation of women judges (**52.5%**), whereas the smallest sample has a similar representation (**43.48%**) compared to the national rate of 35.9% to 40% (Brasil, 2014, 2024a; Isabella Matosinhos, 2023).

When we consider both variables (race and gender), the variation in sentencing is as described in Figure 12[110]. It represents the two "funnel" moments in EAMPs: firstly, the decision on the contours of the rules of engagement with the MPL (who is protected and who is not, or: "Was the MPL enforced?"); secondly, the decision on the protective orders themselves (which orders are granted and which are not, or: "Was the protective order granted?"). In practical terms, the first step becomes a condition for the second funnel to exist: only if the CJS reads the plaintiff as a victim and the case as an instance of domestic violence, will the court adjudicate on the request for protective orders. On the contrary, if the system perceives the case as foreign to the specialized jurisdiction, the case will be dismissed.

Figure 12. Enforcement of MPL by judge's race and gender (excluding cases with no decision on the merits) (N = 329)

[109] For all judges I could not ask, both variables of "sex" and "race" are used here through a process of hetero-identification on my part. To do this, I looked for photographs of those judges online and researched whether they had publicly self-identified before. Unfortunately, I could not find records of self-identification for any of them, so all hetero-identification on my part came from photographic evidence. If I was not sure about one's race or could not find any evidence, I would code it as missing data (N = 5). Despite the problematic nature of this task due to my White privilege, this became the only way I could find to measure these characteristics because I could not access any official data on these variables.

[110] There is missing data (N = 108) because I could not measure the variables represented in this flowchart in the last de-archiving request I made to the courts. In this final round, I could only "excavate" the proceedings involving queer women in order to complete the smaller database. Also, I am excluding 29 (twenty-nine) cases that I call "*prejudicados*", which are proceedings that did not have decisions on the merits (for instance, voluntary dismissal from the victim before any decision was made).



Source: author.

If we zoom in on the decision patterns of racially minoritized judges, the small number of observations hinders broad interpretations: from the total of 10 (ten) cases with only judges of color, the MPL was not enforced in four of them. However, these four non-enforcement decisions come from the same judge, all of them mobilizing the argument of a supposed lack of gender-based motivation. Notably, in one of these cases (CC2-2, from 2015), a racially charged insult was placed outside of the limits of protection of the MPL for the same reason: in an altercation between mother-in-law and daughter-in-law involving the payment of rent from some property, the latter threatened and insulted the former calling her "*macumbeira*", a racist violence based on religious intolerance towards African diasporic religions, such as Umbanda and Candomblé. A possible racial solidarity stemming from the fact that the judge herself is racialized did not impact the outcome of this case: it seems (just as with gender, as we will see) that judicial habitus and class disparity may trump the possibility of racial solidarity and even the visibility of racially-tinged incidents in the context of domestic violence. While this hypothesis needs further research, this is compatible with previous studies that already points

to the White perspective that, consciously or unconsciously, commonly guides the decisions of Brazilian judges when adjudicating cases of racial insults, transforming those crimes into "distasteful jokes" and "heated debates" (Marta Machado; Márcia Lima; Natália Santos, 2019).

What remains clear with the fieldwork is that racial dynamics are, at best, unacknowledged in the proceedings and interviews, and, at worst, actively minimized among legal professionals, including judges. It seems that for racial violence, there is an extra step that precedes those represented in Figure 12 and that increases the attrition rate for these cases: an invisible funnel which also acts as a blanching ("*branqueamento*") mechanism, actively erasing or at least paling the racial connotations that might be relayed by the plaintiffs in their initial police report. This explains, in part, why I could find only sparse cases of racial violence in the EAMPs (notwithstanding my own racial bias while researching, which may have caused me to overlook instances of racial violence in some cases). This is compatible with accounts from other parts of Brazil, which report the unwillingness of DEAMs to classify racial insults as such, like this one from a domestic violence lawyer in Salvador (Bahia state):

> In some relationships, Black women are also victims of racism. However, the DEAM does not want to classify these cases as racial insults. And what's the difficulty? Because it seems that gendered violence is already too much, and the issue of race should not be added as well (Silvia Pimentel et al., 2019, p. 152).

One police chief confirmed how common racial insults are in the day-to-day operations at the women's police station of Belo Horizonte:

> **Samantha:** Was it common for you to see on duty... crimes with a racial connotation, like, in domestic violence?
> **PC-6:** Yes! Yes, a lot, a lot. There was always racial insult, always.
> **Samantha:** And in those relationships as well, like, involving homosexual women?
> **PC-6**: Yes, also, also. There was always some little racist insult. Not always, but, like, generally, when it was a White person and the partner was Black, and the woman was Black, oh! There was always something. "You monkey, and whatever!" Or the neighbor would curse them. There was a lot. There was a lot of racial insult, yes. A lot.

In effect, some recent cases involving queer women had racial connotations, either committed by the defendant or the plaintiff, albeit not classified as racist incidents by any of the legal professionals in each case. In two cases, racism and classism were explicit: "you are ugly, smelly, a fifth-rate waitress", said a White defendant against her former partner, a Black

woman (Case JVDFM1-2, from 2022)[111]. In Case JVDFM1-9 (from 2021), an altercation between plaintiff, defendant and the defendant's current girlfriend, had the plaintiff (a multiracial woman) offending the latter (a Black woman) by saying that she was poor, that her son would be born Black, and that the defendant (a White woman) detested Black people[112]. In another case, JVDFM1-10 (from 2021), the racial undertones can only emerge if one is attuned to the complexities of Brazilian structural racism. This is the only EAMP I found, with or without queer women involved, in which there is a labor relation in a domestic context, even though: a) these relations are formally under the protection of Article 5, I, of the MPL[113]; and b) domestic labor relations are knowingly extremely hierarchical, racialized, and commonly violent in Brazil since colonial times (Rita Laura Segato, 2006).

According to the plaintiff (a self-identified multiracial woman), during the first month of their romantic relationship, her girlfriend (the defendant) also became a domestic worker for the plaintiff's mother, moving to her home and "taking care of housecleaning". One month and a half later, the distrust with the girlfriend/domestic worker grew: the plaintiff started to believe that the defendant was interested in her money and had the "*intention* of stealing" (emphasis is my own). Moreover, the plaintiff also thought to be important to relay to the police (and, by consequence, to the Prosecutor's Office and the judge) that the defendant had a son arrested for drug trafficking, even though the relation between this information and the facts of the case was not clear. After being fired for a suspected intention of stealing (which seem to not have happened), the defendant started to threaten and harass the plaintiff. The protective order was granted by the judge.

A race-sensitive approach to this last case is impacted by the lack of care in data management by the police: the information on the race of the defendant (who was not heard because she was not found to be subpoenaed) is nowhere in the proceeding. However, other information on her profile points to at least a class-impacted power relation between the parties: the plaintiff, a multiracial woman with postgraduate studies, working as a professor and living in Belo Horizonte; the defendant, with less than a high school degree, working as a cook, and living in the metropolitan region of the capital. This asymmetric power relation between the two, linked to structural inequalities that are bigger than each individual, seeps in a particular way into the violent dynamic that is captured in the plaintiff's statements: deep-seated

[111] In this case, the defendant died before a decision on the merits was issued.
[112] In the end, plaintiff and defendant both went to the court to request a voluntary dismissal of the proceeding, which was granted by the judge.
[113] See the following precedents from the STJ: AgRg no REsp 1.900.478/GO (6th Chamber, from 2021), and HC 500.314/PE (5th Chamber, from 2019). These decisions are publicly available at the STJ's website: www.stj.jus.br.

racist/classist stigma (the drug-trafficking criminal, the suspected thief) is mobilized to persuade the decision-maker that *she* (and not the defendant) is the real victim. This is not to say that the harassment and threats did not happen, or that the protective order should not have been granted, but all this complexity must be considered before a decision is made. In this instance, despite the judge asking for the court's technical body to analyze this case before making a decision, the final assessment by the court's psychologist only heard the plaintiff and failed to ask about these important nuances. Notably, when recounting the facts of the case one more time, the plaintiff also did not mention her suspicion of a possible theft and even omitted the fact that this was related to the defendant's duties while working as a housecleaner for her mother.

Overcoming a White-centered perspective is paramount for racial violence to be seen and categorized as domestic violence in the routines of the CJS, especially when we account for the fact that, in a brutally racist society as our own, it is still hard for many racialized women to even grasp that the violence that may be happening in their relationships is, in fact, domestic violence. For example, in a qualitative study with Black and multiracial women in Brasília, Bruna Pereira (2013, p. 44) noted the difficulty for the informants to link the racial dimension of their violent experiences (the extra burden of domestic work, the racial insults, the male accusations of infidelity because of the color of descendants, the exacerbated sexualization) with the lexicon of domestic violence. Therefore, whoever is tasked with providing assistance must be prepared to fully hear not only what is being said, but also what is being left out in the plaintiff's storytelling: the subtext of the narrative is as important as the spoken word. This sensibility, however, comes with preparation and practice. Solidarity is not spontaneous, it has a practical and relational nature that "has to be built and sustained by repeated interactions and involvements over time" and has to be "realized by institutions that embody shared membership, fellow-feeling, mutual interests, mutual respect, and a parity of esteem" (David Garland, 2023, p. 57).

This is not the case with Belo Horizonte's CJS. The pervasive "out of sight, out of mind" approach to dealing with the violent experiences of racialized people in other social contexts is actualized in legal settings, functioning as a comfortably numb White establishment:

> **Samantha:** And regarding race? What was the profile of these women?
> **PC-7:** Ah, there were all kinds... White, Black... everything.
> **Samantha:** When I say "profile", I mean the majority, right. What is the main demographic who is accessing the on-duty [*police*] station, if it's possible to speak of a profile, a main demographic.

> **PC-7:** I can't classify them by race for you, but I can tell you, by economic class, that the majority is from a lower class, but... not just the lower class, but the majority is. Like, I don't know, more than 90%. Now, color... I don't know, I've never paid that much attention to it. Nowadays it's difficult, right, because... there's multiracial in the mix... I don't know, I've never paid attention to that distinction.

The rationale above is not an exception. Only a few interviewees had an understanding of the need for intersectional thinking, and even fewer mentioned the active effacement of Black women's experiences in domestic violence cases:

> **MP-3:** It [*racist violence*] doesn't show up! It's impressive! "Monkey", "Black" ... it doesn't show up as it should. It doesn't show up in the police report, it doesn't show up in the records, you know? It's a challenge.
> **Samantha:** What is your hypothesis to explain this? Are these victims[114] not going to the DEAM [*women's police station*], are they going to another type of police station, and that's why it doesn't get into the system?
> **MP-3:** No, no, it's that *we* don't see them, right. Us! The system doesn't see them intentionally.

The lack of intellectual labor on this topic coexists with rhetorical devices that actively minimize the subject's importance or suggest its untimeliness. The complexities of structural violence are routinely overlooked through a "gender essentialist" approach which upholds a unitary women's experience isolated from other realities such as race (Angela Harris, 1990, p. 585), effectively associating victimhood with Whiteness. For some, seeing race *is* injustice, amounting to special treatment (or "more protection"), and the possibility that racialized people may internalize oppression, uphold racist views of the world and act upon them, is used as an indictment of the nonsensical nature of a race-sensitive legal enforcement of the MPL:

> I think that Black women are already covered under the protection of the Maria da Penha Law. I don't think we need to make a distinction to... ah, increase the penalty because the victim is Black. [...] The aggressor is Black too, do you understand? They are also of color. That's why it's very complicated to think about a distinction that will provide more protection. [...] I think it might even cause injustices. From the moment you only look at the color of the victim. And are you going to look at the color of the aggressor? You'll have to look at the color of the aggressor too (J-5).

For others, race is dismissed as a competing view that might dislocate gender as the primary category of analysis in domestic violence jurisprudence, and whose discussion should

[114] Here, I am mirroring language as an active listening technique. I am not using this term because I agree with its common meaning in legal settings.

be catapulted to an uncertain future after the legal establishment finally understands a gender-based perspective:

> **Samantha:** [...] And so, that's why I ask myself this: should we... gender-based violence is a very important paradigm, and it's not necessarily about completely abandoning it, but maybe thinking of it as a first step, a premise for having a more complex view, perhaps, of various axes of oppression to understand domestic violence.
> **J-3:** That would be great, but we're not managing to...
> **Samantha:** Does this idea make sense?
> **J-3:** It does, it makes sense, but we're not even able to get a majority to understand this gendered perspective yet. If we broaden it at this moment, for example, I think... it would actually be worse, because... if you can't make them understand that this is gender-based violence, how are you going to make them understand that, besides being gender-based violence, it's also racial violence, you know? I think...
> **Samantha:** Do you think it's not the right time?
> **J-3:** No, I don't think it's the right time.

American social science research has been showing for some time the need to move beyond examining only the direct effects of race on CJS processing and start examining the indirect and cumulative effects that contribute to significant race differentials at all stages of justice processing: "small disparities at the initial stages [...] translate into very large disparities as individuals are processed further through the justice system" (Katherine Rosich, 2007, p. 3, 21). This insight might be helpful for our reality, notwithstanding contextual differences. If the police do not see racial violence, the probability of it being recorded and named as such becomes smaller, which impacts the chances of this complexity being detected and carefully considered by the prosecutor and the judge. And if the judge, for individual and institutional reasons, does not see it or does not think it is important, the quality of sentencing is also negatively impacted, which, in its turn, may also influence the future behavior of all other decision-makers during processing (police chiefs, prosecutors, defense lawyers), who may adjust their understanding of the law to be more compatible with the jurisprudence enforced by that specific court. In the end, all of these small disparities generate a cumulative effect that perpetuates a race-based distinction, amounting to institutional violence: the CJS ends up acting as an epistemic agent of the myth of "racial democracy", which, in order to be successful, needs a future that never arrives and a past that is never present.

Let us go back to Figure 12. Each funnel has different predictive factors[115]. The fieldwork has indicated that the main conditions for judges' willingness to *enforce* the MPL (first funnel) are twofold. Firstly (and most importantly), the gender of the defendant (if a man or a woman according to the proceedings). Secondly, the nature of the relationship between the plaintiff and defendant: whether it is romantic/sexual or represents other family or affection dynamics (mothers and daughters, grandmothers and granddaughters, sisters, mother-in-law and daughter-in-law, etc.), as we have seen in sub-section 2.3. Nowadays (this was not always the case, as we have seen in Chapter 2), if the defendant's gender is male and the nature of the relationship is (or was) sexual/romantic, enforcement of the MPL is a given, with no need for further elaboration. For other genders and relational dynamics, however, the chances of non-enforcement are higher or almost certain. Race, at this moment, is secondary.

For example, in Case JVDFM2-13 (from 2022), male sons battered their mother, the plaintiff, while she was praying on her knees and holding a Saint George's sword or Iansã's sword plant ("*espada de São Jorge*" or "*espada de Iansã*"), a symbolic plant in Afro-Brazilian religions that represents protection and wards off negative energies. Two White women judges enforced the MPL and granted the protective orders, with no discussion about the racial contours of this violence, nor the nature of the relationship between the plaintiff and defendants. On the other hand, in Case JVDFM2-14 (from 2019), involving two sisters and, among other incidents, racial insults of one against the other ("monkey", "*crioula*"), the same judge who adjudicated JVDFM2-13 decided to not enforce the MPL in this case due to a lack of gender-based motivation in the defendant's actions. What is the fundamental difference between these cases that merits such opposite decisions on enforcement by the same judge? It is not the race of the parties, the racially-charged incident, or the racial identity of the judge: it is the fact that, in the first case, the defendants are identified as male (and therefore the gendered nature of the incident is presumed), and that, in the second case, the bond that exists between two women who are sisters is considered, by default, a powerless relationship.

The presence of a woman judge adjudicating the case also does not seem to be strongly associated with higher rates of enforcement. In this sample, lack of enforcement actually was higher when only women judges were involved in the proceedings: **53.6%** of non-enforcement decisions were issued by women judges (N = 125). If we focus only on cases with queer women, the trend is the same: a woman was the judge with the most non-enforcement cases in the sample

[115] For an analysis of the patterns of sentencing for granting different protective orders (second funnel), see sub-section 3.4.

(**13.3%** of 30 cases). When considering decisions on protective orders, this pattern is inverted: denials of protective orders are higher when only men judges are deciding (**38.62%** of 145 cases) than cases with only women judges presiding the proceedings (**30.77%** of 39 cases). Compared to men judges, women judges in this sample show that the primary factor influencing their decision-making process is the first funnel: cases meeting their higher standards of enforcement are more likely to be granted protective orders. This data counters a self-evident relationship between gender and sentencing, a complex correlation related to many conditional factors.

The question of whether having more women judges will impact on sentencing behaviors is not a new one: many empirical research in the global North has been done to test it quantitatively, with equivocal results on its significance. Many ideas still float around to justify the need for more women in the Judiciary: they are more likely to have more empathy for women litigants and witnesses; they will civilize their male colleagues by making it difficult to voice certain views that they might otherwise have been happy to voice; they will encourage other women to enter their careers and will provide mentorship to new apprentices of the job; and they will simply bring different perceptions to the task of legal enforcement (Rosemary Hunter, 2015, p. 123, 124; Brenda Hale; Rosemary Hunter, 2008, p. 245). Will they?

Gendered solidarity is not an automatic process: it needs some conditions for it to occasionally come to fruition. Pervasiveness of neutrality-based judicial ideology, access to specialized knowledge, personal worldview, and external encouragement seem to be more important factors to predict a higher probability of gender-based sentencing than the judge's gender alone. Even though women judges and women plaintiffs and defendants may share a common gender oppression (although their experiences certainly vary), I agree with Anne Worrall's assessment (1990, p. 68, 71, 73) of women magistrates in England as one partially applicable to the women judges in this sample. They are not able to fully recognize each other because: a) of their class differences (and I would also add race differences), and b) because judicial ideology mandates that enforcement of the law should be gender and class-neutral. They are pressured to conform: to keep othering and controlling alternative and non-legitimated modes of lived experience (represented by the defendants) and to uphold the androcentric way of dispensing justice by emulating the objectivity demonstrated by their male colleagues. And when they do conform (which happens often because they want to "survive" in that environment), political solidarity is no longer possible: as long as women use their class and

race privileges to dominate other(ed) women, sorority in all its powerfulness cannot fully exist (bell hooks, 2020, p. 36).

Of course, the institutional pressure is felt in diverse ways and has various impacts on each individual, especially when we consider the period in which she served or is serving on the bench. Societal changes in gender relations may widen (or reduce) one's latitude in confronting the male norm inside traditional institutions such as a court of law. Hence, subversion is context-specific, it allows for different (and sometimes contradictory) strategies, and always has to be carefully considered when it comes to its risks to one's reputation and career prospects (as discussed in Chapter 1). A "civilizing" effect of a woman's presence, therefore, is not a given. For instance, in a rabidly sexist environment like the TJMG many years ago, one might have felt the need to reject womanhood altogether to maintain a "professional" identity intact:

> "*Uai*, but you're a woman, you're going to go out and handle jury cases?!" [*said a colleague, also a judge*]. I said, "Hold on, here I am a judge! Here I am not a 'woman', I am a judge, just like you!" [...] So, I think we also can't act like... like little women, you know, in our career... [...] There must also be women judges who act like women, you know? I think we have to act like professionals (J-7).

Nowadays, even though some judges feel comfortable with identifying publicly with some version of feminism and are willing to speak their minds ("I'm very outspoken, I say what I think", said J-3; "I'm not ashamed to say it; on the contrary, I'm proud to say that I'm a feminist. Yes, I am a feminist", said J-5), some interviewees also emphasized how many women judges are still wary or downright critical of outspoken women judges who spearhead the debate on gender-based violence in the tribunal and are organized for gender parity within the institution: "We clearly notice it [*peer stigmatization*] exists among the women themselves. There are those who support the cause and those who criticize it" (J-5) and "Even among women, there is a lot of resistance [*with the debate on gender-based violence*]" (J-2). Clearly, gender is not sufficient to predict one's view on judging.

Even though the most common form of feminism that is shared by some of the participants may be defined as a "feminism of the female power-holders" (Cinzia Arruzza; Tithi Bhattacharya; Nancy Fraser, 2019, p. 11, 12) – one that confuses feminism with individual ascent and "refuses to address the socioeconomic constraints that make freedom and empowerment impossible for the majority of women" – there is still a qualitative difference between feminist judges (regardless of their gender) and women judges that should not be

ignored. Having a decision-maker that is attuned, even if in different degrees of critical consciousness, to the existence of social hierarchies as a context that should be considered during processing is a necessary beginning to any intersectional thinking that we might expect from them. And this sensitivity, one that counters the neutrality and objectivity myths of the law, may come from *any* judge, not only and not necessarily women (even though it still usually comes from them, especially racialized women)[116]. This is actually the reasoning behind many initiatives, inside and outside of Brazil, that use legal fiction to rewrite judicial decisions from a feminist perspective: this worldview is capable of making a difference in sentencing (Samantha Nagle de Moura; Fabrizia Serafim, 2024; Fabiana Severi, 2023; Luanna de Souza; Camilla Gomes, 2023; Aparna Chandra; Jhuma Sen; Rachna Chaudhary, 2021; Māmari Stephens et al., 2017; Rosemary Hunter; Clare McGlynn; Erika Rackley, 2010; Mairead Enright; Julie MacCandless; Aoife O'Donoghue, 2017; Vanessa Munro, 2020).

All of this is not to say that recent initiatives for gender parity in the Judiciary are irrelevant: representation, both in the sense of symbolic framing ("who is included, and who excluded, from the circle of those entitled to participate") and political voice, is an important dimension of justice (Kate Nash; Vikki Bell, 2007, p. 77). Moreover, there is something to be said about representation and social/self-esteem: a White, male, and proprietary Judiciary prescribes the stereotype of justice as an elitist affair which impedes for the excluded (and society at large) to visualize themselves as capable and belonging to that environment. So, even if the participation of more women judges would not make any difference in the processing of cases (which is not true), to keep privileging only White men in positions of power is, in and of itself, undemocratic. My contention, however, is that representation cannot be purely cosmetic and must come with a clear ethical commitment to social justice. "Diversity" – to use a popular term in capitalist pink-washing – is easily depoliticized: a prettier face for sure, but still showing its sharp teeth to the same people as before. It is not substantive equality if the decision-making (and the institution as a whole) remains untroubled.

[116] The same can be said for racial issues: see, for instance, the convocation by professor Adilson José Moreira (2019, p. 287) of "thinking as a negro" as an imperative for all jurists of employing a multiple consciousness capable of empathy with all subordinated persons, even if you are White.

CONCLUSION *(or: A possible tally and sights for the future)*

"It's[117] very interesting, Samantha, the *time* [*emphasis*] when we get into things. 2009, 2010, it's not 2023 in domestic violence" (MP-1). Indeed, we have come far. But I would argue we have not come *as far* as we could – and for certain persons (women in non-sexual/non-romantic relationships with other women, queer men, non-binary people, etc.), we have not come anywhere yet. Betting on the same institutions, impervious to outside criticism and employing a "straight mind" to its inner workings, effectively hinders the experimentation of new responses to domestic violence, especially when we consider women who occupy social positions that differ from the legal definition of the "victim", and whose relationships disturb the heteroframing tendencies of the CJS.

Therefore, I want to close this thesis by stressing two important points.

Firstly, I am convinced that a better approach when thinking about domestic violence is one that encompasses a multilevel analysis. This is not new: other researchers have been defending some version of this idea in their own work. This could be called an "integrated analysis" that moves beyond the patriarchal/male domination analysis to a broader framework in which this system of power is one more element among others (Lori Girshick, 2002, p. 164). Or it can be simply called an "intersectional" framework that analyzes violence both as how it traverses intersecting systems of power (sexism, racism, classism, heterosexism, etc.), as well as how it is organized across domains of power. For Patricia Hill Collins and Sirma Bilge (2016, p. 27, 55), these domains can be categorized as interpersonal, disciplinary, cultural, and structural; for Nira Yuval-Davis (2006, p. 198), these can be separated into the organizational, intersubjective, experiential, and representational forms of social division; and for Cecília MacDowell dos Santos (2017, p. 55; Cecília dos Santos; Isadora Machado, 2018, p. 258), into structural, intersubjective, and epistemic dimensions.

Either way, these different levels of analysis – that I will refer to as structural, institutional, and intersubjective – move beyond either a structural-only account of domestic violence as a manifestation of gender-based hierarchy that underpins all political, economic, and social relations (commonplace in theory, including feminist), or an atomistic comprehension of violence as a matter of individual problematic behavior (commonplace in

[117] Some excerpts in this section were previously published as a chapter in the book "*Feminismo e Direito*", Lumen Juris, 2024, edited by Carmen Hein de Campos and Salete Maria da Silva, under the title "*Proteger a Agredida Dela Mesma: Lei Maria da Penha Feminista, Supremo Tribunal Federal Paternalista*", co-authored by Marcelo Maciel Ramos. Here, I am only using excerpts written by me.

criminal proceedings, and represented by the victim/perpetrator dyad). If we approach intersectionality in a more complex manner – rather than merely viewing it as a continuous "add-on" of new intersecting variables (which, although important, are insufficient) – we can find a way to give meaning to violence among women that does not merely serve to update the terms of domination. It enables new paths of investigation that do not fall into the trap of squeezing explanations catered to heterosexual conjugal violence into realities that share some common characteristics with the norm. "Any theory or cultural/political creation that treats lesbian existence [...] as the mirror image of either heterosexual or male homosexual relations, is profoundly weakened thereby, whatever its other contributions" (Adrienne Rich, 1980, p. 632).

If relationality is fundamental to think about power as a relationship, and not as a static entity that can be gained or lost (Patricia Hill Collins; Sirma Bilge, 2016, p. 28), it is not difficult to hold two truths at the same time: women are more at risk of suffering gender-based violence because they are women, including in their intimate relationships and in their families; and women are also capable of committing violence against other women *as women*, and not as masculine emulations of heterosexual men. Rather, they are "acting out a behavior for power and control", according to socialization in a culture that teaches dominance, "both through norms and values and through societal institutions" (Lori Girshick, 2002, p. 117, 165). This explanation does not overlook the direction of the violent behavior – women are still central in this account, even though, now, they are not placed in a static position called "victim". It also does not abandon the gender-based violence framework completely but understands that this critical element ("gender") "has the power even to surpass itself" (MP-1). In coupling social structure with the particular dynamics of interpersonal relationships, we are able to advance a broader discussion of mutually-constitutive systems of power (such as lesbophobia and *machismo*), and how they combine with the multiple experiences of concrete individuals.

But these two levels of analysis are still not enough. This leads me to the *second* point: different institutions help normalize hierarchy in a particular (and sometimes contradictory) fashion. Systems of power and personal experiences with domestic violence intersect in a multitude of ways when we consider how they are filtered through spaces with internal logics and rules. For certain women and types of violence, the justice system is ready to pursue vigilance and punishment; at the same time, for others, it is lenient and revictimizing. The lack of accountability, of democratic representation of minorities in its ranks, and the historical hermetism of these institutions, all favor certain types of interpretation and intervention. This

thesis had plenty of examples: police officers bowing to judges' distorted interpretations of the law because they understand their place in the juridical division of labor; prosecutors advancing bogus claims to favor a conservative ideology gaining ground in public opinion; judges feeling empowered to systematically deny enforcement of the law for personal reasons, or to keep discriminating against certain women, even in the face of legislative advancements (as the discussion on Article 40-A shows). Despite all this evidence, the institutional domain of power is seldom at the forefront of criminological/legal analysis and so heterojustice goes unchecked: the CJS and its members are routinely spared in the assessment of the enforcement of the MPL, still seen as largely neutral operators or as benevolent protectors of women's rights – when, in fact, they are neither. Their habitus must be an element of research, shedding light on the power relations between heterojurists and the parties they encounter, as this line of investigation may also make visible the limits of what the CJS might achieve for the purpose of our emancipation.

"An intersectional analysis reveals how violence is not only understood and practiced within discrete systems of power, but also how it constitutes a common thread that connects racism, colonialism, patriarchy, and nationalism, for example" (Patricia Hill Collins; Sirma Bilge, 2016, p. 55). Gender-based violence is a continuum. As the Egyptian American feminist Mona Eltahawy (2023) states, the "trifecta of patriarchal fuckery" – comprised of state, street, and home – must all be met with our equal rage. Reeling from the misogyny from revolutionary comrades and state forces alike during the 2011 Egyptian Revolution, and her own experience of sexual violence committed against her when protesting against the dictatorship, she said: "until the rage shifts from the oppressors in our presidential palaces to the oppressors on our streets and in our homes – unless we topple the Mubaraks [*then president and dictator of Egypt*] in our mind, in our bedrooms, and on our street corners – our revolution has not even begun" (Mona Eltahawy, 2015, p. 32). Violence in our family and intimate relationships may only fester with complicit institutions.

As we have seen, Brazilian heterojustice is deeply rooted in the violent birth of the modern state, inextricably linked to political and colonial power: its institutions, from the start and until this day, have been organized to provide a legal architecture to domination. Using state authority, it has systematically wielded its symbolic power to transform power relations into technical-legal language, deepening the hierarchical distance between professionals and their subjects (both in the sense of legal subjects, as in the sense of subjected to someone's will), and naturalizing many forms of epistemic and physical violence against the oppressed. As a result, they have been instrumental in maintaining all of the contradictions of Brazilian society

that makes it one of the most unequal places to live in the world. To paraphrase Derecka Purnell (2021, p. 9, 79), as the CJS continues to work as managers of inequality, we should be aiming to reduce its power to be violent instead of trying to increase the benevolence of its individual members.

Therefore, imposing on women a cooperation with heterojustice to obtain some version of safety in their lives is a reckless and dangerous policy for a few reasons: a) it cannot guarantee that the violence will stop or escalate; b) it obscures that the CJS operates differently depending on the kind of woman who is made to occupy the position of "victim"; c) it advances the idea that only women are subjected to structural constraints in their decision-making, likening men to the liberal idea of the autonomous, free, and independent subject, thus justifying the adoption of paternalistic and anti-emancipatory measures (see the concept of "hyposufficiency" as a criteria to determine a gender-based motivation) and, furthermore, d) it empowers legal institutions designed to command obedience to hierarchy under the pretext of protecting the vulnerable, thus maintaining the façade of being neutral and apolitical. The freedom not to be subjected to violence by others should not depend on submission to the violence of the law.

What is the solution, then? I do not think anybody really knows. Some might say that an anti-state, autonomous self-organizing and self-protection is the best way to forge solidarities between women that do not rely on violent institutions and responses (Fernanda Martins, 2021, p. 231). Some might caution not veer too far from law, embodying a skeptical stance that still allows manipulating it without being manipulated by it: "to enter into it, to criticize it without utterly rejecting it, and to manipulate it without self-abandonment to their system of thinking and doing" (Duncan Kennedy, 1982, p. 62) – what Mari Matsuda (1988) calls employing a "multiple consciousness". In this latter sense, it means defending the need for "coordinating individual and collective alternatives", advancing an "emancipatory justice" that stems from society, placing community in the center of various responses "with, without, and, when necessary, against the state"; "It is about fully implementing the Maria da Penha Law, but also going beyond it" (Cecília dos Santos; Isadora Machado, 2018, p. 258).

Whether inside or outside the CJS, the last thing any violence-related intervention must do is to undermine one's agency once again. But to be able to exercise the capacity to make existential decisions in one's life, one needs the help of other people (Nancy Hirschman, 2003). A safety plan catered to the needs and limitations that constitute each woman's freedom, without automatic relation with a criminal proceeding, has a greater chance of effectiveness and a lower chance of revictimization: this means assisting (and not patronizing) in identifying and

addressing priority needs, visualizing the concrete options available and the repercussions of each alternative on her life and the lives of her family members, and finally, discussing what kind of reparation would be desirable and possible in the specific case. However, in order for this to be feasible, the promise enshrined in the MPL of an integrated system ("the network") comprised of many public and private institutions would have to come into reality – in the speech of many interviewees, this network is still a makeshift operation in one of the largest cities of Brazil:

> Here the network is quite united, although it is still not ideal. We see the issue of shelter, how difficult it is, the referrals for the woman, the children, the issue of social assistance... this follow-up service is still not ideal (PC-3).
>
> [*there is*] still a lack of a workflow of assistance, of referral, reference, and counter-reference (PC-5).
>
> But I think it's essential that professionals – and here I include the Public Prosecutor's Office and the Judiciary – also actively participate in this protection on a daily basis. Because... creating networks in municipalities without the engagement of these actors, I'm sorry. It's just for show. It's useless! (MP-6).

I am for still unimagined responses with an abolitionist horizon in sight. As I tried to demonstrate until this very page, there is reason to be skeptical of what the CJS can achieve and to advocate for the need to decentralize its power to cause further harm to the oppressed. Empowering other types of assistance, in health, social assistance, housing, economic power, and safety, with a woman-centered approach, helping her make an informed decision on what her present and future might look like, has better chances of bringing a cycle of violence into definitive rupture. Therefore, rather than thinking of abolition as simply getting rid of punitive agencies overnight, an abolitionist framework invites us all to "create and support a multitude of approaches to the problem of harm in society, and, most excitingly, as an opportunity to reduce and eliminate harm in the first place"; to that, "experimentation, implementation, and evaluation" are in order (Derecka Purnell, 2021, p. 127). The time is now. Let us have the courage to seek the *how*.

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ANNEX – Original text of the MPL (official version in English from SPM)

Presidency of the Republic Office of the Chief of Staff Sub-Office on Legal Affairs

Creates mechanisms to restrain domestic and family violence against women, in compliance with paragraph 8 of article 226 of the Federal Constitution, the Convention on Elimination of All Forms of Discrimination against Women and the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women; provides for the creation of the Courts of Domestic and Family violence against women; alters the Penal Procedure Code, the Penal Code and the Law of Penal Execution; and establishes other provisions.

The PRESIDENT OF THE REPUBLIC
I hereby make it known that the National Congress decrees and I sanction the following Law:

TITLE I
PRELIMINARY PROVISIONS

Article 1. This Law creates mechanisms to restrain and prevent domestic and family violence against women, in compliance with paragraph 8 of article 226 of the Federal Constitution, the Convention on Elimination of All Forms of Discrimination against Women, the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women and other international treaties ratified by the Federative Republic of Brazil; it provides for the creation of the Courts of Domestic and Family Violence against Women; and establishes measures for assistance and protection of women in a situation of domestic and family violence.

Article 2. All women, regardless of class, race, ethnicity, sexual orientation, income, culture, educational level, age and religion, enjoy the basic rights inherent to the human person, and are ensured the opportunities and facilities to live without violence, preserve their physical and mental health and their moral, intellectual and social improvement.

Article 3. Women are ensured the conditions for the effective exercise of the rights to life, security, health, food, education, culture, housing, access justice, sport, leisure, work, citizenship, freedom, dignity, respect and family and community living.

Paragraph 1. The public power shall develop policies aimed at guaranteeing the human rights of women in the scope of the domestic and family relations, with a view to protecting them against all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.

Paragraph 2. It belongs to the family, society and the public power to create the necessary conditions for the effective exercise of the rights listed in the heading.

Article 4. In the interpretation of this Law, its social purpose and, especially, the peculiar conditions of the woman in a situation of domestic and family violence shall be taken into account.

TITLE II
DOMESTIC AND FAMILY VIOLENCE AGAINST WOMEN

CHAPTER I
GENERAL PROVISIONS

Article 5. For the effect of this Law, domestic and family violence against women is defined as any action or omission based on gender that causes the woman's death, injury, physical, sexual or psychological suffering and moral or patrimonial damage:
I - in the scope of the domestic unit, understood as the permanent space shared by people, with or without family ties, including people sporadically aggregated;
II - in the scope of the family, understood as the community formed by individuals that are or consider themselves related, joined by natural ties, by affinity or by express will;
III - in any intimate relationship of affection, in which the aggressor lives or has lived with the abused woman, regardless of cohabitation.

Sole paragraph. The personal relations listed in this article are independent of sexual orientation.

Article 6. Domestic and family violence against women constitutes one of the forms of human rights violation.

CHAPTER II
FORMS OF DOMESTIC AND FAMILY VIOLENCE AGAINST WOMEN

Article 7. The forms of domestic and family violence against women, are, among others:
I - physical violence, understood as any behavior that offends the woman's bodily integrity or health;
II - psychological violence, understood as any behavior that causes emotional damage and reduction of self-esteem or that harms and disturbs full development or that aims at degrading or controlling the woman's actions, behaviors, beliefs and decisions, by means of threat, embarrassment, humiliation, manipulation, isolation, constant surveillance, constant pursuit, insult, blackmail, ridiculing, exploitation and limitation of the right to come and go or any another means that causes damage to the woman's psychological health and self-determination;
III - sexual violence, understood as any behavior that forces the woman to witness, maintain or participate in unwanted sexual intercourse, by means of intimidation, threat, coercion or the use of force; that induces the woman to commercialize or to use, in any way, her sexuality, that prevents her from using any contraceptive method or that forces her to marriage, pregnancy, abortion or prostitution, by means of coercion, blackmail, bribe or manipulation; or that limits or annuls the exercise of her sexual and reproductive rights;
IV – patrimonial violence, understood as any behavior that constitutes retention, subtraction, partial or total destruction of the woman's objects, working instruments, personal documents, property, assets and economic rights or resources, including those intended to satisfy her needs;
V - moral violence, understood as any behavior that constitutes slander, defamation or insult.

TITLE III
ASSISTANCE TO THE WOMAN IN A SITUATION OF DOMESTIC AND FAMILY VIOLENCE

CHAPTER I
INTEGRATED PREVENTION MEASURES

Article 8. The public policy aimed at restraining domestic and family violence against women will be implemented by means of an integrated set of actions by the Federal Union, the States,

the Federal District and the Municipalities and non- government actions, according to the following guidelines:
I - operational integration of the Judiciary Branch, the Prosecutor's Office and the Public Defender with the areas of public security, social assistance, health, education, work and housing;
II - promotion of studies and research, statistics and other relevant information, with a gender and race or ethnicity perspective, on the causes, consequences and frequency of domestic and family violence against women, for the systematization of data, to be unified nationally, and the regular evaluation of the results of the adopted measures;
III - respect, in the social communication media, for the ethical and social values of the person and the family, avoiding stereotyped roles that legitimize or encourage domestic and family violence, in compliance with item III of article 1, item IV of article 3 and item IV of article 221 of the Federal Constitution;
IV - implementation of specialized police assistance for women, in particular in the Police Offices for Assistance to Women;
V - promotion and holding of educative campaigns to prevent domestic and family violence against women, directed to the school public and society in general, and dissemination of this Law and of the instruments of protection of women's human rights;
VI - establishment of accords, protocols, adjustments, terms or other instruments of promotion of partnership between government bodies or between them and non-government entities, with a view to the implementation of programs to eradicate domestic and family violence against women;
VII - permanent training of the Civil and Military Police, Municipal Guard, Fire Brigade and of the professionals belonging to the agencies and areas listed in item I, on gender and race or ethnicity issues;
VIII - promotion of educational programs that disseminate ethical values of unrestricted respect to the dignity of the human person with a gender and race or ethnicity perspective;
IX - emphasis, in the school syllabus of all levels of education, on contents related to human rights, gender and race or ethnicity equity and the problem of domestic and family violence against women.

CHAPTER II
ASSISTANCE TO THE WOMAN IN A SITUATION OF DOMESTIC AND FAMILY VIOLENCE

Article 9. Assistance to the woman in a situation of domestic and family violence will be provided in an integrated manner and in compliance with the principles and guidelines provided for in the Organic Law of Social Assistance, in the Unified Health System, the Unified Public Security System, among others protection norms and public policies, and on an emergency basis when necessary.

Paragraph 1. The judge shall determine, for a defined period of time, the inclusion of the woman in a situation of domestic and family violence in the registry of assistance programs of the federal, state and municipal government.

Paragraph 2. The judge shall ensure to the woman in a situation of domestic and family violence, to preserve her physical and psychological integrity:
I - priority access to transfer, when the woman is a civil servant in the direct or indirect administration;

II - maintenance of the working links, when it is necessary to remove her from her place of work, for up to six months.

Paragraph 3. The assistance to the woman in a situation of domestic and family violence will include access to benefits resulting from scientific and technological development, including emergency contraception services, prophylaxis of Sexually Transmitted Diseases (STDs) and of the Acquired Immune-Deficiency Syndrome (AIDS) and other necessary and appropriate medical procedures in the cases of sexual violence.

CHAPTER III
ASSISTANCE BY THE POLICE AUTHORITY

Article 10. In case of imminent or actual domestic and family violence against women, the police authority that learns of the occurrence shall immediately adopt the appropriate legal measures.

Sole paragraph. The provision in the heading of this article applies to failure to comply with urgent protective measure that has been determined.

Article 11. In assisting the woman in a situation of domestic and family violence, the police authority shall, among others measures:
I - guarantee police protection, when necessary, communicating the occurrence immediately to the Prosecutor's Office and the Judiciary Branch;
II - direct the victim to the hospital or health center and to the Legal Medical Institute;
III - provide transport to the victim and her dependents to a shelter or safe place, in case of risk of life;
IV - if necessary, to accompany the victim to assure removal of her belongings from the site of the occurrence or from the family home;
V - inform the victim of the rights conferred to her in this Law and the available services.

Article 12. In all cases of domestic and family violence against women, after registering the occurrence, the police authority shall immediately adopt the following procedures, without loss to those provided for under the Penal Procedure Code:
I - hear the victim, register the police report and take the representation to term, if presented;
II - collect all the evidence that can serve to clarify the fact and its circumstances;
III - send, within 48 (forty-eight) hours, separate communication to the judge with the victim's request, for the concession of urgent protective measures;
IV - determine the victim's examination of body of the offense and request other necessary expert examinations;
V - hear the aggressor and the witnesses;
VI - command the identification of the aggressor and the addition of the aggressor's criminal record to the judicial proceedings, indicating the existence of arrest warrant or record of other police occurrences against him;
VII - send, within the legal period of time, the judicial proceedings of the police inquiry to the judge and the Prosecutor's Office.

Paragraph 1. The victim's request shall be taken to term by the police authority and shall contain:
I - qualification of the victim and the aggressor;
II - name and age of the dependents;

III – brief description of the fact and the protective measures requested by the victim.

Paragraph 2. The police authority shall attach to the document referred to in paragraph 1 the police report and copy of all the available documents of the victim.

Paragraph 3. The medical findings or records provided by hospitals and health centers shall be accepted as evidence.

TITLE IV
PROCEDURES

CHAPTER I
GENERAL PROVISIONS

Article 13. The norms of the Codes of Penal Procedure and Civil Procedure and of specific legislation on children, adolescents and elderly people that are not in conflict with the provisions of this Law shall apply to the process, the judgment and the execution of the civil and criminal causes derived from the practice of domestic and family violence against women.

Article 14. The Courts of Domestic and Family Violence against Women, Ordinary Justice bodies with civil and criminal competence, may be created by the Federal Union, in the Federal District and the Territories, and by the States, for the process, judgment and execution of causes derived from the practice of domestic and family violence against women.

Sole paragraph. The procedural acts may be carried out at night, as provided for in the norms of judiciary organization.

Article 15. By the victim's choice, for the civil processes ruled by this Law, the following courts are competent:
I - of her domicile or residence;
II - of the place where the fact that generated the claim occurred;
III - of the domicile of the aggressor.

Article 16. In the public penal lawsuits conditional to the representation of the victim provided for in this Law, the renunciation of the representation shall only be admitted before the judge, in a hearing especially assigned for such purpose, before receiving the denunciation and after hearing the Prosecutor's Office.

Article 17. In the cases of domestic and family violence against women, it is forbidden to sentence payment of basic food basket or other pecuniary penalty, as well as substitution of sentence that implies in isolated payment of a fine.

CHAPTER II
URGENT PROTECTIVE MEASURES

SECTION I
GENERAL PROVISIONS

Article 18. Having received the communication with the victim's request, the judge, within the period of 48 (forty-eight) hours, shall:

I - know the communication and the request and decide upon the urgent protective measures;
II - determine that the victim be directed to the judiciary assistance body, when appropriate;
III - communicate to the Prosecutor's Office so that it adopts the appropriate measures.

Article 19. The urgent protective measures may be granted by the judge, upon request by the Prosecutor's Office or by the victim.

Paragraph 1. The urgent protective measures may be granted immediately, regardless of hearing with the parties and of manifestation of the Prosecutor's Office, the latter being communicated as soon as possible.

Paragraph 2. The urgent protective measures shall be applied isolated or cumulatively, and may be replaced any time by others of greater effectiveness, whenever the rights acknowledged in this Law are threatened or violated.

Paragraph 3. The judge may, upon request by the Prosecutor's Office or by the victim, grant new urgent protective measures or review those already granted, if deemed necessary for the protection of the victim, her family and her property, after hearing the Prosecutor's Office.

Article 20. In any phase of the police inquiry or the criminal instruction, the preventive custody of the aggressor may be decreed by the judge, ex-officio, upon request by the Prosecutor's Office or by means of representation of the police authority.

Sole paragraph. The judge may revoke the preventive custody if, in the course of the process, he or she verifies lack of reason to maintain it, as well as decree it again, if reasons that justify it arise.

Article 21. The victim shall be informed of the procedural acts related to the aggressor, especially those related to entry and exit from prison, without loss to the summon of the constituted lawyer or public defender.

Sole paragraph. The victim may not deliver the summons or notification to the aggressor.

SECTION II
URGENT PROTECTIVE MEASURES THAT COMPEL THE AGGRESSOR

Article 22. Having established the practice of domestic and family violence against a woman, in the terms of this Law, the judge may immediately apply on the aggressor, together or separately, the following urgent protective measures, among others:
I - suspension of ownership of weapon or restriction of weapon carrying license, with communication to the competent agency, in the terms of Law n. 10.826, of December 22, 2003;
II - removal from the home, domicile or place of relationship with the victim;
III - prohibit certain behaviors, among which:
a) approaching the victim, members of her family and the witnesses, establishing a minimum distance between them and the aggressor;
b) contact with the victim, members of her family and witnesses through any means of communication;
c) going to certain places in order to preserve the physical and psychological integrity of the victim;

IV - restriction or suspension of visits to dependent minors, after hearing the multidisciplinary assistance team or similar service;
V - provision of provisional or temporary alimony.

Paragraph 1. The measures referred to in this article do not rule out the application of others provided for under the legislation in force, whenever the safety of the victim or circumstances require so, the measure having to be communicated to the Prosecutor's Office.

Paragraph 2. In the event of application of item I, the aggressor being in the conditions mentioned in the heading and items of Article 6 of Law n. 10.826, of December 22, 2003, the judge shall communicate to the respective agency, corporation or institution the urgent protective measures granted and shall determine the restriction of the weapon-carrying license, the immediate superior of the aggressor being responsible for the fulfillment of the judicial order, otherwise incurring in the crimes of disobedience or prevarication, as the case may be.

Paragraph 3. In order to guarantee the effectiveness of the urgent protective measures, the judge may request, at any time, the aid of the police force

Paragraph 4. The provisions in the heading and in paragraphs 5 and 6 of Article 461 of Law in. 5.869, of January 11, 1973 (Code of Civil Procedure) apply to the hypotheses foreseen in this article.

SECTION III
URGENT PROTECTIVE MEASURES FOR THE VICTIM

Article 23. The judge may, when necessary, without loss to other measures:
I - direct the victim and her dependents to an official or community program of protection or assistance;
II - determine the return of the victim and her dependents to the respective domicile, after removal of the aggressor;
III - determine the removal of the victim from the home, without loss of rights related to property, custody of the children and alimony;
IV - determine separation from bed and board.

Article 24. For the patrimonial protection of the property of the conjugal society or of the private property of the woman, the judge may determine, through preliminary order, the following measures, among others:
I - restitution of property unduly subtracted from the victim by the aggressor;
II - temporary prohibition to enter acts and contracts of purchase, sale and rent of common property, except in case of express judicial authorization;
III - suspension of power of attorney conferred by the victim to the aggressor;
IV - provision of temporary bond, by means of judicial deposit, for material loss and damage resulting from the practice of domestic and family violence against the victim.

Sole paragraph. The judge shall officiate to the competent notary's office for the purposes foreseen in item II and III of this article.

CHAPTER III
ACTION OF THE PROSECUTOR'S OFFICE

Article 25. The Prosecutor's Office shall intervene, when not a party, in the civil and criminal causes resulting from domestic and family violence against women.

Article 26. It shall belong to the Prosecutor's Office, without loss of other attributions, in the cases of domestic and family violence against women, when necessary:
I - to request police force and public services of health, education, social assistance and security, among others;
II - to inspect the public and private establishments that provide assistance to women in a situation of domestic and family violence, and to adopt, immediately, the appropriate administrative or judicial measures with regard to any irregularities detected;
III - to register in a registry the cases of domestic and family violence against women.

CHAPTER IV
JUDICIARY ASSISTANCE

Article 27. In all procedural acts, civil and criminal, the woman in a situation of domestic and family violence shall be accompanied by a lawyer, except as provided for in Article 19 of this Law.

Article 28. Every woman in a situation of domestic and family violence is assured access to the services of Public Defense or Free Judiciary Assistance, in the terms of the law, at police and judicial headquarters, through specific and humanized assistance.

TITLE V
MULTIDISCIPLINARY ASSISTANCE TEAM

Article 29. The Courts of Domestic and Family Violence against Women that are created may rely on a multidisciplinary assistance team made up of professionals specialized in the psychosocial, legal and health areas.

Article 30. It belongs to the multidisciplinary assistance team, among other attributions reserved to it by the local legislation, to provide inputs in writing to the judge, the Prosecutor's Office and the Public Defense, by means of expert written opinions or verbally in hearing, and to develop guidance, forwarding, prevention activities and other measures directed to the victim, the aggressor and the family members, with special attention to the children and the adolescents.

Article 31. When the complexity of the case requires more in-depth evaluation, the judge may determine the manifestation of a specialized professional, upon indication by the multidisciplinary assistance team.

Article 32. The Judiciary Branch, in the elaboration of its budget proposal, may provide for resources for the creation and maintenance of the multidisciplinary assistance team, in the terms of the Law of Budgetary Guidelines.

TITLE VI
TRANSIENT PROVISIONS

Article 33. While the Courts of Domestic and Family Violence against Women are not structured, the criminal courts shall accumulate the civil and criminal competences of knowing and judging the causes resulting from the practice of domestic and family violence against

women, observing the provisions of Title IV of this Law, with inputs from the pertinent procedural legislation.

Sole paragraph. The right of preference shall be guaranteed, in the criminal courts, for the process and judgment of the causes related in the heading.

TITLE VII
FINAL PROVISIONS

Article 34. The Courts of Domestic and Family Violence against Women may be instituted together with the establishment of the necessary curatorship and judiciary assistance service.

Article 35. The Federal Union, the Federal District, the States and the Municipalities may create and promote, within the limits of their respective competences:
I - centers of comprehensive and multidisciplinary assistance to women and their dependents in a situation of domestic and family violence;
II - home-shelters for women and respective minor dependents in a situation of domestic and family violence;
III - police offices, public defense offices, health services and medical-legal examination centers specialized in assistance to women in a situation of domestic and family violence;
IV - programs and campaigns to fight domestic and family violence;
V - education and rehabilitation centers for the aggressors.

Article 36. The Federal Union, the States, the Federal District and the Municipalities shall promote the adaptation of their agencies and programs to the guidelines and principles of this Law.

Article 37. The defense of the trans-individual interests and rights foreseen in this Law may be exercised, concurrently, by the Prosecutor's Office and by association active in the area, regularly constituted for at least one year, in the terms of the civil legislation.

Sole paragraph. The requirement of pre-constitution may be waived by the judge if it is found that there is no other entity with appropriate representation to file the collective demand.

Article 38. The statistics on domestic and family violence against women shall be included in the databases of the official agencies of the Justice and Security System in order to provide inputs to the national system of data and information on women.

Sole paragraph. The Public Security Secretariats of the States and the Federal District may send their criminal information to the database of the Ministry of Justice.

Article 39. The Federal Union, the States, the Federal District and the Municipalities, within the limits of their competences and in the terms of their respective laws of budgetary guidelines, may establish specific budgetary allocations, in each fiscal year, for the implementation of the measures established in this Law.

Article 40. The obligations provided for in this Law do not exclude others derived from the principles adopted by it.

Article 41. Law n. 9.099, of September 26, 1995, does not apply to crimes practiced with domestic and family violence against women, regardless of the penalty provided.

Article 42. Article 313 of Decree n. 3.689, of October 3, 1941 (Code of Penal Procedure), enters into force with the addition of the following item IV:

> "Article 313.....……...
> IV – if the crime involves domestic and family violence against women, in the terms of the specific law, to guarantee the execution of the urgent protective measures." (New Language)

Article 43. Line f of item II of Article 61 of Decree n 2.848, of December 7, 1940 (Criminal Code), enters into force with the following language:

> "Article 61.....…….
> II -.....…….....
> f) with abuse of authority or taking advantage of domestic relations, cohabitation or hospitality, or with violence against the woman in the form of the specific law;
> ……..……" (New Language)

Article 44. Article 129 of Decree n. 2.848, of December 7, 1940 (Criminal Code), enters into force with the following alterations:

> "Article 129.....
> Paragraph 9. If the injury is practiced against ascendant, descendant, sibling, spouse or partner, or someone with whom the agent has or had a relationship, or if the agent has taken advantage of domestic relations, cohabitation or hospitality: Sentence - detention, 3 (three) months to 3 (three) years
> .....
> Paragraph 11. In the event of paragraph 9 of this article, the sentence shall be increased by one third if the crime is committed against a person with special needs." (New Language)

Article 45. Article 152 of Law n. 7.210, of July 11, 1984 (Law of Penal Execution), enters into force with the following language:

> "Article 152.....
> Sole paragraph. In the cases of domestic violence against women, the judge may determine the obligatory attendance of the aggressor in recovery and re-education programs." (New Language)

Article 46. This Law shall enter into force 45 (forty-five) days after its publication.

Brasilia, August 7, 2006; 185th day of the Independence and 118th day of the Republic.

LUIZ INÁCIO LULA DA SILVA
Dilma Rousseff

APPENDIX A – Translated interview protocol (latest version)

Note: as I discussed in the introduction, and since grounded theory was the chosen methodology, I used my interview protocols in a flexible manner. The interviews often took unexpected directions, going beyond my initial questions. Many other questions arose along the way, depending on how the conversation unfolded. Therefore, some of the following questions went unanswered at times due to the interviewees' time constraints or the serendipity of the free-flowing interview format. Here, I present the most frequent questions I posed to the majority of participants.

1. Profile questions

- How long have you been part of the institution?
- Why did you join the institution? Why this career and not any other legal career?
- How long have you worked with domestic violence?
- Could you explain how you came to the [*name of the institution where the interviewee works or had worked in relation to domestic violence*]? What were your first impressions with the subject?
- Have you received specific training on domestic violence? Are trainings on this subject available to your colleagues?
- Do you consider yourself a feminist?

2. Questions about the institution

- Previous interviewees mentioned a resistance/disregard to the subject of domestic violence within the [*name of the institution*]. Some even mentioned that working with the subject was considered a penitence and that the discourse of "gender ideology" entered these places. How do you perceive the openness of the institution and your colleagues to discuss the issue of gender-based violence today?
- Previous interviewees mentioned that they were stigmatized by their peers for being vocal about gender-based violence within the institution. Some even mentioned the need to be strategic about language. What is your perception about this?
- [*Only for interviewees who were working in the field at that time:*] The 2012 Joint Parliamentary Committee of Inquiry's final report mentioned a complaint made at a public hearing, stating that in the two domestic violence courts at that time, weekly religious services were held in the judges' chambers, and many women seeking protective orders were referred to the church. Are you aware of this? What is your perception of this period in history regarding women's access to justice when seeking legal remedies in Belo Horizonte's courts?
- [*Only for interviewees who were working at the time of the Criminal Courts:*] Previous interviewees mentioned changes in the understanding of the legal nature of the protective orders and how difficult it was to grasp their autonomous nature. Could you elaborate on that?

3. Substantive questions about domestic violence cases

- What women are seeking when they go to the police/the court? Is it criminal punishment, the protective order, or both?
- Do/did you analyze gender-based motivation in your cases? How do you define gender-based motivation procedurally?
- The MPL was recently amended to add Article 40-A. What is your interpretation about this rule? Are you still going to analyze gender-based motivation in your cases?
- Do you see any significant differences between domestic violence in heterosexual relationships and that in homosexual relationships?
- Do you think the MPL should be enforced for homosexual relationships? If so, do you think the MPL is prepared to handle these cases, or do you believe changes in the law are necessary?

4. Concluding questions

- Is there anything I failed to address in the interview that you think is important to note?
- Do you have any suggestions on who I should talk to next?

APPENDIX B – Translated Google Forms for the interviewees' sociodemographic information (post-interview)

Sociodemographic questions

These questions are part of the interview for the thesis research "Domestic violence against homosexual women and the Criminal Justice System of Belo Horizonte", conducted by PhD candidate Samantha Nagle Cunha de Moura from UFMG and supervised by Prof. Dr. Marcelo Maciel Ramos.

Like the rest of the interview, these questions are confidential and voluntary. They will be used for research analysis and will not be used to identify you, including in the thesis and other publications resulting from it, under penalty of civil and criminal liability for the researcher.

If you have any questions or suggestions, feel free to contact: samienagle@gmail.com

Full name: _____

Name of the educational institution where you graduated: _____

What is your age range?
- o 20 to 29 years old
- o 30 to 39 years old
- o 40 to 49 years old
- o 50 to 59 years old
- o 60 years old or more

How do you identify yourself according to race/color?
- o White
- o Black
- o Mixed-race[118]
- o Indigenous
- o Asian[119]
- o None of the above
- o Other: _____

How do you identify yourself according to gender identity?
- o Cis man (I identify with the sex assigned to me at birth)
- o Trans man (I do not identify with the sex assigned to me at birth)
- o Cis woman (I identify with the sex assigned to me at birth)
- o Trans woman (I do not identify with the sex assigned to me at birth)
- o Non-binary (I do not identify either as a man, or as a woman)
- o None of the above
- o Other: _____

How do you identify yourself according to sexual orientation?

[118] In Brazilian Portuguese, "*parda*".
[119] In Brazilian Portuguese, "*amarela*".

- Heterosexual
- Gay
- Lesbian
- Bisexual
- None of the above
- Other: _____

APPENDIX C – Translated Google Forms for the smaller database involving queer women

Question 1. Tribunal
- Criminal Court 1
- Criminal Court 2
- JVDFM 1
- JVDFM 2

Question 2. Docket number: _____

SECTION 1: SOCIODEMOGRAPHIC DATA ABOUT THE PARTIES

Sub-section 1.1 Socioeconomic profile of the plaintiff

Question 3. Gender identity
- Cis
- Trans
- No information in the proceedings
- Other: _____

Question 4. Sexual orientation
- Heterosexual
- Homosexual
- Bisexual
- No information in the proceedings
- Other: _____

Question 5. Race
- White
- Mixed-race[120]
- Black
- Indigenous
- Undefined
- Other: _____

Question 6. Age (at the time of the incidents)
- 10 to 13 years old
- 14 to 17 years old
- 18 to 19 years old
- 20 to 24 years old
- 25 to 29 years old
- 30 to 39 years old
- 40 to 49 years old
- 50 to 59 years old
- 60 to 64 years old
- 65 years old or more

[120] In Brazilian Portuguese: "*parda*".

- No information in the proceedings

Question 7. Residence at the time of the incidents (municipality): _____

Question 8. Residence at the time of the incidents (neighborhood): _____

Question 9. Profession: _____

Question 10. Education level
- Incomplete lower secondary education[121]
- Lower secondary education[122]
- Incomplete high school[123]
- High school degree[124]
- Some college but no bachelor's degree
- Bachelor's degree
- Graduate degree
- No information in the proceedings
- Other: _____

Sub-section 1.2 Socioeconomic profile of the defendant

Question 11. Gender identity
- Cis
- Trans
- No information in the proceedings
- Other: _____

Question 12. Sexual orientation
- Heterosexual
- Homosexual
- Bisexual
- No information in the proceedings
- Other: _____

Question 13. Race
- White
- Mixed-race
- Black
- Indigenous
- Undefined
- Other: _____

Question 14. Age (at the time of the incidents)
- 10 to 13 years old
- 14 to 17 years old

[121] In Brazilian Portuguese: "*ensino fundamental incompleto*".
[122] In Brazilian Portuguese: "*ensino fundamental completo*".
[123] In Brazilian Portuguese: "*ensino médio incompleto*".
[124] In Brazilian Portuguese: "*ensino médio completo*".

- 18 to 19 years old
- 20 to 24 years old
- 25 to 29 years old
- 30 to 39 years old
- 40 to 49 years old
- 50 to 59 years old
- 60 to 64 years old
- 65 years old or more
- No information in the proceedings

Question 15. Residence at the time of the incidents (municipality): _____

Question 16. Residence at the time of the incidents (neighborhood): _____

Question 17. Profession: _____

Question 18. Education level
- Incomplete lower secondary education
- Lower secondary education
- Incomplete high school
- High school degree
- Some college but no bachelor's degree
- Bachelor's degree
- Graduate degree
- No information in the proceedings
- Other: _____

SECTION 2. RELATIONSHIP CHARACTERISTICS

Question 19. Type
- Spouses/partners
- Ex-spouses/ex-partners
- Girlfriends
- Ex-girlfriends
- Fling
- Other: _____

Question 20. Length of the relationship at the time of the incidents
- Up until 1 month
- More than 1 month, up until 6 months
- More than 6 months, up until 1 year
- More than 1 year, up until 3 years
- More than 3 years, up until 7 years
- More than 7 years, up until 10 years
- More than 10 years, up until 15 years
- More than 15 years
- No information in the proceedings
- Does not apply

Question 21. Common children?

- Yes
- No
- No information in the proceedings

Question 22. Cohabitation at the time of the incidents?
- Yes
- No
- No information in the proceedings

Question 23. Financial dependency?
- Yes
- No
- No information in the proceedings

Question 24. Number of children with the defendant? _____

SECTION 3. SPECIFICITIES OF THE VIOLENCE

Question 25. Month/year of the incidents: _____

Question 26. Month/year of the report to the police: _____

Question 27. Location of the violence
- Plaintiff's home
- Joint home plaintiff-defendant
- Plaintiff's workplace
- Public venue
- Internet (including social media)
- Other: _____

Question 28. Criminal offenses (according to the police)
- Threat
- Bodily injury
- "Vias de fato"
- Damage to property
- Rape
- Harassment (contravention)
- Insult
- Defamation
- Stalking
- Other: _____

Question 29. Criminal offenses (according to the plaintiff's statement)
- Threat
- Bodily injury
- "Vias de fato"
- Damage to property
- Rape
- Harassment (contravention)
- Insult

- Defamation
- Stalking
- Other: _____

Question 30. Recidivism (in the same relationship)?
- Yes (according to the criminal record)
- Yes (according to the plaintiff's statements, with no prior criminal record)
- No

Question 31. Were the incidents allegedly motivated by the breakup of the relationship?
- Yes
- No

Question 32. Outing (attempted or completed)?
- Yes
- No

SECTION 4. MEASURES TAKEN BY THE CRIMINAL JUSTICE SYSTEM

Question 33. Did the plaintiff want to proceed with the criminal investigation?
- Yes
- No

Question 34. Requested protective orders
- Police escort for the removal of the plaintiff's belongings
- Shelter
- Removal of defendant from home, residence, or place of cohabitation
- Prohibition of approximation with the plaintiff, her family members, and witnesses
- Prohibition of contact with the plaintiff, her family members, and witnesses
- Prohibition of attending certain places (plaintiff's home, workplace, etc.)
- Reflective group
- Restriction or suspension of visits to minor dependents
- Alimony
- Treatment for substance abuse/alcoholism
- Compulsory rehabilitation
- Other: _____

Question 35. Prison of the offender during the police investigation/EAMP?
- "*Flagrante delicto*"
- Preventive detention
- No arrest

Question 36. Month/year of first decision on the merits: _____

Question 37. Was the court's technical body involved?
- Yes
- No

Question 38. Were the protective orders granted? (Consider the last decision on the merits by the lower court before any appeals.)

- Yes
- No
- Partially

Question 39. Were there any appeals to the higher court?
- Yes
- No

If there were any appeals (Questions 40-46):

Question 40. When was the appeal filed (month/year)? _____

Question 41. Who appealed?
- Public Prosecutor's Office
- Defense
- Assistant to the prosecution

Question 42. Why did they appeal? _____

Question 43. Did the appellate prosecutor agree with the appeal?
- Yes
- No
- Partially

Question 44. What was the decision by the TJMG?
- Totally granted
- Partially granted
- Not granted

Question 45. In the case of a partially granted or not granted appeal, what was the legal reason provided? _____

Question 46. When was the judgment by the TJMG finalized (month/year)? _____

If the protective orders were granted (Question 47):

Question 47. Which ones were granted?
- Police escort for the removal of the plaintiff's belongings
- Shelter
- Removal of defendant from home, residence, or place of cohabitation
- Prohibition of approximation with the plaintiff, her family members, and witnesses
- Prohibition of contact with the plaintiff, her family members, and witnesses
- Prohibition of attending certain places (plaintiff's home, workplace, etc.)
- Reflective group
- Restriction or suspension of visits to minor dependents
- Alimony
- Treatment for substance abuse/alcoholism
- Compulsory rehabilitation
- Other: _____

If the protective orders were not granted (even if only partially) (Question 48):

Question 48. What was the legal reason provided?
- o Lack of gender-based motivation
- o Lack of minimal evidence
- o Lack of criminal representation
- o Lack of jurisdiction
- o Voluntary dismissal by the plaintiff
- o Other: _____

Question 49. Legal operators in the case:
Police chief: _____
Prosecutor: _____
Judge: _____
Appellate prosecutor: _____
Appellate judge (lead): _____

SECTION 5. OBSERVATIONS THAT CAUGHT MY ATTENTION

Question 50. Sensible information? _____