

## Compulsory humanized judicial listening and violence against women before and during the COVID-19 pandemic

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**SUMMARY:** 1 *Introduction* • 2 *The Maria da Penha Law and the multidimensionality of the phenomenon of domestic and family violence against women* • 3 *Mandatory judicial listening: an essential procedural routine for the formulation of individualized judicial policy in the context of domestic violence and for judging with a gender perspective* • 4 *Effects of mandatory judicial listening: an analysis of the data collected in the Cabo de Santo Agostinho - Pernambuco Domestic Violence Court* • 5 *Conclusion* • 6 *References*.

**ABSTRACT:** This work analyses the effects of the mandatory humanized judicial listening within the judicial scope of urgent protective measures requirements, in the understanding of the multidimensionality of domestic violence. An excerpt from a research that has been carried out on domestic and family violence against women in Cabo de Santo Agostinho –PE, in 2016 to 2020 – before and during the COVID-19 pandemic, the effects of identifying individual vulnerabilities in the proper activation of the coping network domestic violence, as well as re-evaluating urgent protective measures. The qualitative research method will be used, based on official data from the mentioned court. In addition, an investigation of available

and specialized bibliographies on the subject will also be carried out. Among the conclusions, it can be inferred that humanized judicial listening is a tool available to the court providing an expansion of the effective protection of women's rights being able to compose an individualized judicial policy in the fight against domestic violence and provide a gender-based trial.

**KEYWORDS:** Multidisciplinary team • Mandatory judicial listening • Violence against women • Access to rights • COVID-19.

### **Escuta judicial humanizada e violência contra a mulher no pré e durante a pandemia de COVID-19**

**SUMÁRIO:** *1 Introdução • 2 A Lei Maria da Penha e a multidimensionalidade do fenômeno da violência doméstica e familiar contra a mulher • 3 Escuta judicial obrigatória: uma rotina procedimental essencial para a formulação da política judiciária individualizada no âmbito da violência doméstica e para o julgamento com perspectiva de gênero • 4 Efeitos da escuta judicial obrigatória: uma análise dos dados coletados na Vara de Violência Doméstica do Cabo de Santo Agostinho – Pernambuco • 5 Conclusão • 6 Referências.*

**RESUMO:** O presente trabalho analisa os efeitos da implementação da escuta judicial humanizada obrigatória, no âmbito judicial de requerimentos de medidas protetivas de urgência, na compreensão da multidimensionalidade da violência doméstica. Será apresentado um recorte da pesquisa na Vara de Violência Doméstica e Familiar contra a Mulher em Cabo de Santo Agostinho/PE, entre 2016 a 2020 – pré e durante a pandemia de Covid-19, os efeitos da identificação das vulnerabilidades individuais na ativação adequada da rede de enfrentamento à violência doméstica e na reavaliação das medidas protetivas de urgência. Utilizar-se-á o método de investigação qualitativo, baseado em dados oficiais da referida unidade jurisdicional. Além disso, será também realizada investigação das bibliografias disponíveis e especializadas sobre o tema. Dentre as conclusões, infere-se que a escuta judicial é uma ferramenta à disposição do juízo, propiciando ampliação da proteção efetiva dos direitos humanos das mulheres, podendo compor política judiciária individualizada no combate à violência doméstica e familiar e proporcionar um julgamento com perspectiva de gênero.

**PALAVRAS-CHAVE:** Equipe multidisciplinar • Escuta judicial obrigatória • Violência contra a mulher • Acesso a direitos • Covid-19.

## Escucha judicial humanizada y violencia contra las mujeres antes y durante la pandemia COVID-19

CONTENIDO: *1 Introducción • 2. La Ley Maria da Penha y la multidimensionalidad del fenómeno de la violencia doméstica y familiar contra las mujeres • 3 La escucha judicial obligatoria: rutina procesal fundamental para la formulación de una política judicial individualizada en el contexto de la violencia intrafamiliar y para juzgar con perspectiva de género • 4 Efectos de la escucha judicial obligatoria: análisis de los datos recogidos en el Juzgado de Violencia Doméstica Cabo de Santo Agostinho - Pernambuco • 5 Conclusión • 6 Referencias.*

RESUMEN: El presente trabajo analiza los efectos de la implementación de la escucha judicial humanizada obligatoria, en el ámbito judicial de los requisitos de medidas urgentes de protección, en la comprensión de la multidimensionalidad de la violencia intrafamiliar. Una sección de la investigación será presentada en el Juzgado de Violencia Doméstica y Familiar contra la Mujer en Cabo de Santo Agostinho / PE, entre 2016 y 2020 - antes y durante la pandemia de Covid-19, los efectos de la identificación de vulnerabilidades individuales en la adecuada activación de la red para enfrentar la violencia intrafamiliar y reevaluar medidas de protección urgentes. Se utilizará el método de investigación cualitativa, subsidiado por datos oficiales de la referida unidad jurisdiccional. Además, también se llevará a cabo una investigación de bibliografías disponibles y especializadas sobre el tema. Entre las conclusiones se puede inferir que la escucha judicial es una herramienta a disposición de la corte, brindando una ampliación de la protección efectiva de los derechos humanos de las mujeres, pudiendo componer una política judicial individualizada para combatir la violencia doméstica y familiar y brindar un juicio con perspectiva de género.

PALABRAS CLAVE: Equipo multidisciplinario • Escucha judicial obligatoria • La violencia contra las mujeres • Acceso a derechos • Covid-19.

## 1 Introduction

Equality between men and women is a constitutional vector that is explicit in art, 5, I, of the Federal Constitution of 1988 (CF/88), and should guide the interpretation of the entire legal system. However, this equality is still far from going beyond the merely formal plan. The search for equal opportunities between men and women is an agenda that still needs great advances, but there is an emergency demand that requires a sharing of responsibilities across society: the fight against domestic violence.

Art. 226, § 8, of CF/88, determines the creation of mechanisms to curb violence, which is why Law No. 11.340, of August 7, 2006 - Maria da Penha Law (LMP) - was enacted, which has been suffering changes in order to expand the protection of women in situations of domestic violence. Despite advances, the legislative policy, by itself, proves to be insufficient in facing the phenomenon. It is necessary that the public policy combat gender inequality does not only have a repressive bias, but also be multidimensional, that is, it encompasses the socioeconomic, cultural, legal, family dimensions, among others.

The Covid-19 pandemic - declared by the World Health Organization, since March 11, 2020 (BRASIL, UNASUS. World Health Organization declares a new Coronavirus pandemic) - is a peculiar example that intersectionalities need to be taken into account in appreciation of this complex phenomenon that is domestic violence, as it revealed how much the consequences of this emergency situation in global public health highlighted even more the asymmetries between genders. As an example, research data provided by the Brazilian Yearbook of Public Security (BRASIL, Brazilian Public Security Forum), published on October 19, 2020, highlight that the number of violent deaths of women has increased since the beginning of the pandemic, having grown 1.9% in the first half of 2020, compared to the same period of the previous year (BRASIL, Brazilian Public Security Forum, 2020, p. 25). The greatest increase was registered in the State of Acre, where the numbers increased by 166.7% compared to the previous year (2020, p.25). The aforementioned research also portrayed that during the months of isolation, the numbers of femicides increased, while, on the other hand, the records of occurrences for other crimes and, notably, of requests for urgent protective measures (MPU) suffered a fall (2020, p. 38-39). This, in turn, may indicate that most women would be having difficulties in accessing public services and that States should invest in accessing the Justice System. The United Nations Organization (UN-Women)

has even published a technical note recommending that States invest in services assist women in situations of violence in the context of the pandemic.

In view of this, there is no doubt about how much skill is needed in identifying the different types of vulnerabilities that affect women in situations of violence in order to seek multifaceted answers. The LMP, despite emphasizing the importance of a multidisciplinary view in understanding the phenomenon of domestic violence, does not specify a procedural routine for urgent protective measures that includes mandatory judicial hearing, by a technical team, in understanding the dimensions of the phenomenon of violence. Hence, the need arose in seeking the creation of a mechanism capable of mapping these intersectionalities, in order to provide judgment of such actions with a gender perspective.

The objective of the present work is analyse - from an empirical research carried out in the Court of Domestic and Family Violence of Cabo de Santo Agostinho - Pernambuco -, the effects of the creation of mandatory procedural routines, within the scope of the MPUs, with the performance of a humanized listening, by a technical team, after the initiation of the judicial process of requesting urgent protective measures, in the realization of the judgment with a gender perspective and consequent expansion of the effective protection of human dignity for women in situations of violence. It is worth clarifying that the period of empirical data survey took place from January 2016, since the incorporation of humanized listening in the mentioned Court began in December 2015. And as a time cut, this survey was completed in December 2020, as this article was structured and developed throughout 2021, and the annual database for the current year has not yet been completed.

Having satisfied these initial considerations of the process of defining the object of this study, it is noteworthy that the research starts from an institutional experience of a mechanism/procedure designed locally, through a systematized listening, carried out by a multidisciplinary team, in the processes of urgent protective measures (MPU). The jurisdictional unit was chosen because it is the place where one of the researchers/co-authors of this paper, as a magistrate, and, above all, because it is a jurisdictional unit that adopts routine procedures, without distinction, in all MPU.

Regarding the methodology, the qualitative research method was used based on official data from the mentioned court. First, a bibliographic research was carried out aimed at building a theoretical basis on the phenomenon of domestic violence against women, its dimensions and the importance of mandatory judicial hearing, by a technical team, as a tool for implementing a judgment with a gender perspective in

the procedural class of urgent protective measures. Then, data were collected from field research carried out in the mentioned jurisdictional unit, in the period from 2016 to 2020. In total, 1,506 interviews were carried out by professionals from the technical team of the jurisdictional unit - composed of a psychologist and a social worker - by completing questionnaires with objective and subjective questions. With the exception of 2020, in which part of the consultations were carried out remotely due to public health restrictions imposed by the pandemic, in previous years, all interviews were carried out on the forum's premises.

It should also be noted that, in more than 75% of cases, the service was provided within three months of the occurrence of the police report. From that point on, all cases were re-evaluated giving rise to new court decisions, which revealed that mandatory judicial listening is useful for individual monitoring of victims.

In order to understand the effects of a procedural routine that includes mandatory judicial listening, we sought divide the work into five topics: introduction; the LMP and the multidimensionality of the phenomenon of violence against women; mandatory judicial listening as an essential procedure for the formulation of individualized judicial policy and implementation of a judgment with a gender perspective; the effects of mandatory judicial hearing, when selected data were analysed and, finally, the presentation of conclusions. With this path, it will be possible understand the importance of creating this tool in the identification of intersectionalities and further protection of the dimensions of the phenomenon of domestic violence.

## **2 The Maria da Penha Law and the multidimensionality of the phenomenon of domestic and family violence against women**

Domestic violence against women is considered a serious violation of human rights and, nowadays, it is a prominent issue on the national and international scene. In 2017, according to the United Nations (UN), nearly 90,000 women were murdered in the world, and 50,000 of them – about 58% – were killed by their partners (DHUMIERES, 2017). In Brazil, according to the Brazilian Public Security Forum (CERQUEIRA, 2020), 4,519 women were murdered in 2018, of which 1,925 died inside their homes, which reveals that the dimension of gender violence against women has particularities that need to be faced.

Furthermore, domestic and family violence against women is a phenomenon that transcends the boundaries of physical, moral, property, sexual and psychological

violations and can leave eternal wounds in the soul. On the subject, the brilliant lessons of Heleieth Saffioti should be highlighted:

“the magnitude of the trauma is not proportional to the abuse suffered. Body wounds can be successfully treated in a large number of cases. Soul wounds can also be treated. However, the chances of success, in terms of cure, are very small and, in most cases, no success is obtained”. (SAFFIOTI, 2015, p. 19).

It is, therefore, a social phenomenon that can have disastrous consequences for those involved and that can be evidenced in different parts of the world. With a view confirming the importance of confronting such a phenomenon, the UN defined, among its sustainable development goals at a global level, a document entitled *Agenda 2030*, which defined priorities that the world must deal with in this decade, among which they find up gender equality and female empowerment.

This, in turn, occurs because patriarchy previously defined status and roles that subjugate women to a situation of male domination, at any cost, even if the culmination of death is necessary for women who disobey the System (SAFFIOTI, 2015, p. 90). The levels of subordination will vary across the globe depending on the culture of each civilization, and it is therefore necessary adapt the global need face this phenomenon to the reality of each country<sup>1</sup>.

At the international level, there is a series of conventions on the subject, of which the Convention of Belém do Pará (1994) deserves to be highlighted, in which it was established that the States Parties must issue fair and effective criminal procedural and administrative norms to prevent, punish and eradicate violence against women (IACHR. Convention of Belém do Pará, 1994). The Brazilian State, despite having fully ratified the aforementioned international treaty, from Decree No. 1,973, of August 1, 1996, only created its normative instrument in 2006, five years after being condemned by the Inter-American Court of Human Rights in the case of biopharmaceutical Maria da Penha (VALENTIM, 2010).

Despite the LMP being considered one of the best in the world, according a global report by the United Nations Development Fund for Women (UNIFEM/2009), Brazil still has a significant increase in the number of murders of women, which calls for attention to the need for (re)formulation of public policies that increase the efficient

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1 Within Brazil, the Institute for Applied Economic Research/IPEA undertook to produce a document that aims to adapt the reality of the SDGs to Brazil. [https://www.ipea.gov.br/portal/index.php?option=com\\_content&view=article&id=33895&Itemid=433](https://www.ipea.gov.br/portal/index.php?option=com_content&view=article&id=33895&Itemid=433)

protection of the rights of these women. Reality shows that legislative instruments of a purely repressive nature, by themselves, are not enough to face the complexity of a phenomenon of this magnitude. On the symbolism of criminal law in the elaboration of the LMP, it is worth bringing the lessons of Marília Montenegro Mello:

The symbolic use of Criminal Law was, without a doubt, a strong argument of the feminist movement to justify its criminalizing demand. It is true that symbolic criminal rules cause, at least immediately, a feeling of security and tranquility, deceiving their recipients through a fantasy of legal certainty without working out the real causes of conflicts. Hence the statement that more criminal laws, more judges, more prisons means more prisoners, but not less crimes. (MELLO, 2020, p. 112).

German professor Winfried Hassemer (2005, p. 115) also criticizes symbolic criminal law that only “transmits the appearance of effectiveness and social protection and demonstrates to public opinion that the legislator satisfied a “need for action” quickly and effectively”.

In short: Punishment is not enough. It is necessary seek answers that are in tune with the legal demands and that, above all, prevent the commission of new crimes. The great challenge is, therefore, seek the effectiveness of the LMP with the expansion of guarantees and access to rights, which presupposes the implementation of public policies through assistance, confrontation, combat and prevention (STREY, 2019).

After all, it is known that domestic violence has a cyclical character, which follows gradual stages of violations, interspersed with phases of tension construction; moment of maximum tension - which most often violate the physical integrity of victims - and, finally, the stage of reconciliation or honeymoon (BIANCHINI, 2011). Due to these ups and downs, there is a great confusion of emotions, which makes it difficult to break the bonds and can compromise the psychophysical integrity of these women.

Also on the subject, jurist Maria Berenice Dias explains:

The cycle of violence is perverse. First comes silence followed by indifference. Then there are complaints, reprimands, reproaches. Then the punishments and punishments begin. Psychological violence turns into physical violence. The screams turn into pushing, slapping, punching and kicking in an endless growth. (DIAS, 2012, p. 21).

Often, the victim is unaware of the perception of their risks and naturalizes this process of violence, which increases the intensity of this circle, making the family home



an extremely dangerous environment. According to a survey conducted by the World Health Organization (WHO, 2014, p. 8), in the World Report on Violence Prevention, one in three women was a victim of physical or sexual violence committed by an intimate partner at some point in their lives. And, taking into account that there is still a lot of hidden data - either because of the resistance of the victims report it, or because of the naturalization of violence, which includes the omission of the most diverse professionals (ZANELLO, 2019) -, there is an urgent need to expand mechanisms of prevention of gender violence with the consolidation of women's rights.

Most feminises are committed by the victims' partners and, therefore, can be considered an "announced tragedy". After all, as death results from a process of intensification of aggressions during the circle of violence, it can be said that it is a preventable crime, as long as there is an effective interruption of this vicious circle (CANAL, 2020). Unfortunately, it is very common that when victims seek the justice system, they have already suffered a series of other violations of their psychophysical integrity, which have different impacts for each one of them. It is known that one of the great advances brought by the LMP was the instrumentalization of the institute of urgent protective measures, which reveal themselves as an alternative for interrupting the vicious circle of domestic violence and safeguarding the dignity of the human person. After all, as Daniel Sarmiento (2006, p. 193) points out, human dignity must be the primary reason for infraconstitutional norms and, therefore, must guide all institutions of the Democratic State of Law.

In this same sense, professor Ingo Wolfgang Sarlet, when dealing with the concept of dignity, adds that:

The intrinsic and distinctive quality recognized in every human being that makes him deserving of the same respect and consideration by the State and the community, implying, in this sense, a complex of fundamental rights and duties that ensure the person both against any and all acts of degrading and inhumane nature, as they will guarantee the minimum existential conditions for a healthy life, in addition to providing and promoting their active and co-responsible participation in the destinies of their own existence and life in communion with other human beings. (SARLET, 2002, p. 62).

And, still on the concept of dignity, the eminent jurist from Rio Grande do Sul, reflects that the dignity of the human person is endowed with fluidity, as "it is a concept in a permanent process of construction and development" (SARLET, 2003, p. 198-236). Thus, it cannot be considered only abstractly. For these women, having

the right to a dignified life goes far beyond having the right to a life free from violence, it means having access to health care, employment, housing, day care and so on. Thus, it is necessary consider that even after the victim seeks the Justice System challenges arise that are often not known by the judicial authority, but that need to be necessarily faced. When reporting, the victim starts to fight several other battles such as financial, educational, physical and emotional health issues, raising their children, among others.

Knowing the intersectionalities is crucial both for assessing the risk of reiteration of criminal conduct and defining which protective measures will be appropriate, as well as for activating the network for combating violence. This reflects the need consider the multidimensionality of the phenomenon of violence against women, in light of the principle of human dignity, in order to find more effective judicial solutions.

In this sense, it is worth emphasizing the vision of researchers Izabelle Pontes Ramalho Wanderley Monteiro and Ana Luisa Celino Coutinho on the subject:

Covered with cultural concepts that reinforce the unequal and hierarchical roles between male and female, still naturalized in the social environment and reproduced in affective relationships, in addition to its systematic and difficult-to-break character, domestic violence against women needs to be analysed from the start from an interdisciplinary and intersectional perspective. So that the vulnerability experienced by women victims, even after reporting and requesting protective measures, is considered for the purposes of protection and enforcement of rights. (MONTEIRO; COUTINHO, 2020, p. 73).

The LMP determines in art. 29 et seq. that the courts of domestic and family violence against women will have the support of a multidisciplinary team, which will have as its main attribution the preparation of reports that support the jurisdictional action, as well as the development of guidance, referral and prevention work. In the same vein, the National Council of Justice (CNJ) issued Resolution No. 254/2018, of September 4, 2018, which instituted the National Judicial Policy to Combat Violence against Women within the scope of the Judiciary and defined, in its art. 2, III, that comprehensive and multidisciplinary care for women in situations of violence and their dependents is made possible.

With these arguments in hand, it is admitted that knowing the intersectionalities of each victim so that there is an adequate activation of the entire network of integral protection for victims of domestic violence is essential to ensure an efficient interruption of the vicious circle of domestic violence. There is, therefore, a need for jurisdictional

action aimed at a multidimensional perspective of victims' vulnerabilities, in order to establish an individualized judicial policy able to prevent violations of women's human rights, providing, this time, a judgment with lenses of gender.

### **3 Mandatory judicial listening: an essential procedural routine for the formulation of individualized judicial policy in the context of domestic violence and for judgment with a gender perspective**

Despite the existence of a normative provision that conveys the importance of the performance of a multidisciplinary team in protecting the dimensions of the phenomenon of domestic violence, the LMP does not discipline the procedure for urgent protective measures, nor does it limit the mandatory listening by the team technique, in a systematic way, regardless of the judge's direction (a). Nor is there a normative instrument of the CNJ that deals with this forecast.

The present work proposes a reflection on the effects of creating mandatory procedural routines, within the scope of the MPUs, based on the realization of humanized listening, by a technical team, and the evaluation of their effects on the expansion of the efficient protection of women's human dignity. in situations of violence, as a vector for the prevention of new crimes - especially femicide - and as an alternative to providing an effective trial with a gender perspective.

Do so, it starts from the experience of more than five years of a judicial unit specialized in the matter, where a qualified listening moment was implemented in which all victims, after preliminary assessment by the MPU, were summoned participate in an individual interview with the multidisciplinary team. At the time, data were collected by filling out forms on the victim's situation, and opinionated technical opinions were drawn up, which were evaluated by the various actors of the Justice System (Prosecutor's Office, Public Defender's Office, lawyers), among others) and influenced the delivery of a new judgment/judicial decision. The main objectives of the program were promote the approximation of those with jurisdiction to the Judiciary, monitor the effectiveness of judicial decisions and assess the individual need to activate the network for combating violence against women, through referrals.<sup>2</sup>

Domestic violence is a complex phenomenon that needs be tackled through adequate tools, capable of meeting its two main characteristics, namely: its cyclical character and its multidimensionality. The proposal now formulated attends to

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2 All referrals were made directly by the psychology and social service team.

all these singularities. First, because it proposes to monitor whether there was an adequate interruption of the cycle of violence, considering that after the moment in which the victim seeks the Justice System, the factual situation can be changed, and the listening humanized, after a period of preliminary assessment of the MPU, will serve as a beacon assess the need for maintenance, revocation or alteration of precautionary measures previously granted/rejected. Second, because it reflects the need to assess intersectionalities such as age, education, degree of financial autonomy or economic dependence of the aggressor, employment status, race, number of children, among other essential factors for formulating responses in line with the complexity of the lawsuits.

From these services, several measures are adopted, ranging from registration in assistance programs (art. 9, paragraph 1, of the LMP) referrals for psychotherapy; official letters for attendance at the Public Defender's Office; determination of enrolment of school-age children in educational institutions, among others. It should also be noted that the tool object of this study can be effective as a means of applying predictive tools for the occurrence of feminised, such as the National Assessment and Risk Form (CNJ. Joint Resolution No. 05, 2020).

Establishing a procedural flow of MPUs, with the inclusion of mandatory listening by a technical team, can save lives and make court decisions effective, preventing most of these measures from fading away over time. After all, practice demonstrates that the absence of a flow generates the ineffectiveness of MPUs. Therefore, the imposition of a reassessment of the case contributes to the achievement of institutional macro challenges of the Judiciary (CNJ - National Strategy of the Judiciary, 2019), both in the scope of guaranteeing fundamental rights and strengthening its relationship with society, as well as in internal processes, aimed at improving the management of the Criminal Justice in cases of domestic violence against women and preventing litigation of this nature.

Furthermore, incorporating this multidisciplinary tool in the procedure of urgent protective measures is enable the materialization of a judgment with a gender perspective, where one seeks to know the intersectionalities pertaining to each of the jurisdictions before issuing a court decision. In other words, it is provide for the placement of “gender lenses”, inserting a feminist constitutionalist bias in the interpretation of legal norms, in order to provide for the materialization of the right to equality between men and women described in art. 5, I, of CF/88.

In this sense of emphasizing the importance of mapping intersectionalities for judgment with a gender perspective, it is worth highlighting an excerpt from the Judicial Notebook of Good Practices for Incorporating the Gender Perspective in Sentences, authored by the Judicial Branch of the Republic of Chile (TOBÓN; GONZÁLEZ):

Intersectionality is that methodological tool that allows us to understand how different categories suspected of discrimination intersect and concur in a person or in a group (Example: woman, Mapuche, adolescent, poor, pregnant woman who demands a health service), making it more serious the handicap experience. The figure of intersectionality helps in understanding how these cases are more serious and therefore require a more complex analysis in making judicial decisions. The issue is important because in terms of human rights the challenge is to move from the formal statement to the guarantee and to the effective exercise for each person or group, within a specific territory, and taking into account a specific situation, where multiple forms of discrimination may occur. Therefore, intersectionality requires the judge not to ignore all the suspicious categories that may appear in a case and under such conditions is obliged to carry out a careful analysis of these criteria to guarantee that justice is fair. Thus, intersectionality stands as a useful mechanism in the task of guaranteeing human rights and access to justice, as it emerges from the need to analyse in a comprehensive and multidimensional way, the reality that not only women live in the exercise of their rights, given that many approaches, including the gender approach, see discrimination as the sum of multiple factors, which interrelate, generating inequality among all.

Given these arguments, it is clear that the judgment with a gender perspective is nothing more than a methodological tool for interpreting legal norms that aims break with the normative silencing in relation to gender asymmetry in order to ensure material equality between men and women described in art. 5th, I of the CF. It starts, therefore, from the assumption that, in fact, men and women are not equal and, therefore, they need to have special treatments. On the subject, Professor Canotilho points out that "There is the possibility of justifying unequal treatments that benefit women (affirmative actions), especially in educational training and in the labor market, when their purpose is to ensure equal chances and competitive conditions (. ..)" (CANOTILHO, 2018, p. 243). Continuing reasoning to this, still concludes the illustrious scholar that the Judiciary will be able to grant differentiated treatment to men and women, even as a way of safeguarding material equality (CANOTILHO, 2018, p. 246).

Therefore, in order to ensure a judgment based on this methodological perspective of gender differentiation, it is necessary map intersectionalities, in order to provide a multidimensional approach to the phenomenon of gender violence. In this bias, the proposal developed in this work is consistent with this judgment based on the gender perspective, as it maps and manages intersectionalities, in order to subsequently reassess urgent protective measures, thus providing a more effective interruption of the vicious circle of violence and, in turn, preventing the occurrence of femicide.

#### 4 Effects of mandatory judicial listening: an analysis of data collected at the Domestic Violence Court of Cabo de Santo Agostinho - Pernambuco

In this topic, a cut of the data collected from the conduct of judicial hearings carried out in the period from January 2016 to December 2020 will be carried out - based on the questionnaire found in annex I - which led to the preparation of several tables and graphic elements related to services provided at the Domestic and Family Violence Court of Cabo de Santo Agostinho – Pernambuco.<sup>3</sup>

TABLE 1 - PROFILE AND NUMBER OF VICTIMS SERVED IN THE PERIOD FROM 2016 TO 2020

Year	2016	2017	2018	2019	2020	Total
Number of victims assisted	297	324	287	315	283	1.506
underage	13 years old	16 years old	16 years old	15 years old	17 years old	13
older age	66 years old	75 years old	80 years old	72 years old	78 years old	78
average age	34 years old	34 years old	34 years old	34 years old	35 years old	34,2
Lower Income	R\$0,00	R\$0,00	R\$ 0,00	R\$0,00	- <sup>4</sup>	R\$ 0,00
Higher Income	R\$ 5.000,00	R\$ 13.000,00	R\$ 8.500,00	R\$ 10.000,00	-	R\$ 13.000,00
Average income	R\$369,75	R\$576,22	R\$526,13	R\$436,35	-	R\$ 477,11

Source: Reception Hearing Project – Victims of Cabo de Santo Agostinho and Ipojuca - 2016 to 2020

3 As determined by the State Judicial Organization Code, the Court of Domestic and Family Violence of Cabo de Santo Agostinho has regional competence and, therefore, is competent to process and judge facts that occurred in the cities of Cabo de Santo Agostinho and Ipojuca – PE.

4 In 2020, the interview form underwent changes and no longer included the income of the interviewees individually, to include them by income ranges, in order to support a better study of this metric. For this reason, there is no data on lower income, higher income and average income for the year 2020.

According to the data shown above, it is clear that there was a slight oscillation in the number of consultations in the specified period. In 2020, despite all the difficulties imposed by the COVID-19 pandemic, assistance continued to be carried out, as a rule, remotely, and only in emergency situations were interviews conducted in person. It is very likely that the reduction of just over 10% in the number of consultations in the last year, compared to the period of 2019, is linked to the difficulties in filing complaints brought by public health restriction measures. This, in turn, was also reflected in the overall number of MPU applications which, compared to the year 2019, were reduced by 11.4%.

It was also noted that there was a reduction in the average income of users of the service in the period 2017 to 2019. At this point, it is worth noting that according to the census carried out by the IBGE in 2010 the monthly percentage of the population with average income up to half minimum wage, in the city of Cabo de Santo Agostinho, was 43.8% and 44% in the city of Ipojuca, a number that is compatible with the sample specified above. Another point that draws attention is that although ages varied throughout the time interval from 13 to 80 years, the average age was stable and remained at the level of 34, with a slight increase in 2020 to 35 years.

Among other elements analysed, it is worth highlighting the cut of race, in order to try to find a correlation with the different contexts of violence. It is known, however, that these data may contain distortions, as they are the result of self-declaration and may reflect a bias of structural racism (ALMEIDA, 2018), in which people deny recognition of their race. Of the care provided, 31.3% of the women declared themselves to be brown, 28.2% said their color was brown, 22.1% said they were white and only 12.1% said they were black. In addition, 4.2% stated that they would have a different race from the options above and 2% did not respond to this question.

Given its importance in the victim's social context, schooling was also analysed. It was seen that only 3.7% of women declared themselves illiterate and 36% stated that they had completed or incomplete primary education. The highest percentage was women with complete or incomplete high school, which represented 48.9% of respondents. Only 4.3% said they had a higher education diploma and 4.9% said they had incomplete higher education. The percentage of interviews with graduate courses was 1.7% and less than 1% of those interviewed during the entire period did not respond to this question.

The fact that women with higher education represent a relatively low percentage does not mean that they suffer less from this type of violence, but that they look less to the justice system in order to support the breaking of the circle of violence, which can derive from multiple factors. In order to seek answers to this question, it would be necessary cross-reference statistics with other elements, but this is not the objective of this work, which seeks only draw an overview of the importance of mandatory listening in understanding the dimensions of the phenomenon of domestic violence.<sup>5</sup>

Another important data be evaluated is related to the types of violence suffered, be observed in Table 2. However, it is important clarify that it is possible that a single victim suffers from different types of violence and, therefore, gives multiple answers to this question. In fact, situations in which the interviewee reported only one type of violence were rare.

TABLE 2 - NUMBERS AND TYPES OF VIOLENCE REPORTED IN THE PERIOD FROM 2016 TO 2020

Year	2016	2017	2018	2019	2020	TOTAL
Physical violence	167	152	129	113	106	667
Moral Violence	234	238	140	208	216	1036
Psychological violence	142	173	160	200	199	874
Sexual violence	8	11	3	5	13	40
Property Violence	37	36	19	34	34	160

Source: Reception Hearing Project – Victims of Cabo de Santo Agostinho and Ipojuca- 2016 to 2020

Given these elements, in a comparative analysis of the absolute numbers throughout the period surveyed, it is clear that the most reported violence was moral, followed by psychological and physical. What also draws attention is the low rate of sexual violence in relation to other types of violence, which does not mean to say that the criminal escalation of sexual crimes is decreasing. Such numbers,

<sup>5</sup> It is worth mentioning a monographic work in relation to the financial autonomy of women in which the researcher took into account data from the same research in the period 2017 to 2018, using statistical crossings, which concluded: "the lower the woman's income, it takes longer to seek help from the authorities and request judicial intervention in the conflict" in MATOS, Francisco Tojal Dantas. Women's financial vulnerability as an obstacle to breaking the vicious circle of domestic violence: A critical analysis of the data collected in the host hearings held at the Court of Domestic Violence of the District of Cabo de Santo Agostinho – PE. ESMAPÉ: Recife, Brazil, 2019. In press



perhaps, may reveal the need to carry out more awareness campaigns on the subject, since one of the hypotheses be raised is the lack of awareness in society that even within a marital relationship there can be rape, in case of there is no consent. However, there is a noticeable increase in such violations in the last year, compared to the last three years, which may be linked to the COVID-19 pandemic and the possibility of isolation measures to increase sexual violence. It should also be noted that throughout the analysis period, there is a growing trend in the number of psychological violence, which has remained stable at its maximum level in the last two years.

Based on this analysis of the types of violence, it is important to bring data compiled about the time these victims took to endure acts of violence until the formal news of the criminal facts and the application for urgent protective measures, it can be observed in Table 3.

TABLE 3 – PERCENTAGE OF WOMEN IN RELATION TO THE TIME IN WHICH THEY SUPPORTED ACTS OF VIOLENCE BY THEIR PARTNERS UNTIL THE COMPLAINT – 2016 TO 2020

Year	2016	2017	2018	2019	2020	Total
Less than 1 month ago	11%	13%	10%	4%	11%	9,8%
Between 1 and 6 months	23%	24%	22%	27%	16%	22,4%
For more than 6 months and less than 1 year	8%	7%	12%	17%	15%	11,8%
More than 1 year and less than 5 years ago	31%	32%	33%	26%	34%	31,2%
More than 5 years ago	27%	24%	23%	26%	24%	24,8%

Source: Reception Hearing Project – Victims of Cabo de Santo Agostinho and Ipojuca- 2016 to 2020

It should be noted that, throughout the course of the research, the highest percentage of women declared that they were experiencing violence in the period from 1 to 5 years when they filed the complaints, followed by a period of more than 5 years. If the two intervals are added together, it will be seen that more than half of the women interviewed had suffered acts of violence for at least more than a year until the day they decided seek support from the Justice System. This data is

extremely critical for risk assessment and, above all, for defining which protective measure is the most appropriate for each case. Furthermore, it is an element that calls attention to public policies that increase these women's access to justice, so that the circle of violence can be broken as soon as possible, as a measure to prevent femicide.

Furthermore, still in relation to Table 3, another crucial point to be analysed is the data of women who reported being subjected violence in a period of more than 6 months to less than 1 year. In a detailed analysis, it can be seen that in 2016 this number was 8% and in 2020 it went to 15%, registering an increase of almost 100%. On the other hand, in the same period, the number of respondents who reported having suffered acts of violence for more than 5 years, dropped from 27% to 24%. As an apt hypothesis to justify this numerical correlation, there is a potential increase in trust in the institutions that make up the justice system, with a possible reduction in the time of submission to the vicious circle of domestic violence.

Regarding the year 2020, it is noteworthy the fact that there was a significant drop, compared the year 2019, in the number of reports of women who suffered violence between 1 (one) and 06 (six) months, which can be in a relationship with difficulty in accessing services caused by public health restriction measures arising from the COVID-19 pandemic.

Advancing in the analysis of the data collected, it is important point out that of the victims attended to, more than 76% said they felt safe with the MPUs granted by the court and more than 67% said that the accused was respecting the determinations previously issued. Such information supports the idea that MPUs are valuable instruments available to justice for the purpose of preventing criminal progression in crimes of this nature. Furthermore, based on the collected elements, all cases were re-evaluated, thus proving to be useful in the search for an optimization of protection for victims in situations of domestic and family violence.

Finally, it is also important to point out that from the total of 1,506 assistances carried out during the period from 2016 to 2020, 1,168 referrals of the most diverse types were made, such as: CREAS, CRAS, Women's Reference Centers, Public Defender's Office, MP, Hospital da Women, Health Departments, Shelters, Maria da Penha Patrols, among other services. It should also be noted that activating the entire network for combating violence against women is essential to enhance the protection of victims, starting from a perspective that each of them will have their own challenges to be faced along this path and that the Judiciary Knowing

these intersections, more complex responses will be formulated that meet the constitutional expectations of increased protection for vulnerable groups, in this case, women in situations of domestic and family violence.

Having made these considerations, there is no doubt that the implementation of the mandatory judicial hearing tool, by a technical team, in identifying the individual needs of victims and, consequently, in the implementation of an individualized judicial policy has positive effects on the prevention of new crimes. After all, knowing the victims' vulnerabilities after the judicial request for protection allows the previously granted/rejected decision be reassessed in order to increase the efficient protection of women's human rights, providing a more effective fight against this phenomenon.

#### **4.1 Partial analysis of data collected in field research on the effects of the COVID-19 pandemic**

Having gone beyond these general considerations about the data collected in the judicial phase of mandatory listening, it is also worth noting that the respective judicial unit used the aforementioned procedural moment collect specific data on the effects of the COVID-19 pandemic on victims of domestic violence undergoing assistance. Carry out the research, a new form was carried out, which is in annex II of this work, which started be applied by sampling for the assistance provided after September 2020. Unlike the first approach - where all victims assisted are invited specialized care, when they are submitted an evaluation by filling out a complex form - in the latter case, the selected victims answered only six specific questions about the effects of the pandemic. Until March 2021, the survey had the participation of 120 interviewees and, due the short period of time, the answers may contain distortions, so that they cannot generate reliable conclusions about the results.

Among the data collected, it is noteworthy that almost 56% of women said they were unable maintain their sources of employment or income after the outbreak of the COVID-19 pandemic. On the other hand, almost 57% of the women interviewed said they had received, at some point, the emergency aid offered by the government. Likewise, only 11.7% of those interviewed said they had filed new accusations against the accused since the beginning of the measures to restrict movement, and in almost 82% of the cases, the women said that it was easy for them to seek help from the police station or institutions.

In addition these brief considerations, it is clear that the moment of mandatory judicial hearing can be used for the most diverse purposes given its potential to

investigate specificities that, in addition being decisive for the materialization of a judgment with a gender perspective, can be elucidative to the point of influencing the consolidation of public policies aimed at the multidimensional confrontation of the phenomenon of domestic violence.

## 5 Conclusion

Notwithstanding the significant evolutions that have taken place since the edition of the LMP, it is known that it is still necessary advance in the fight against domestic violence, especially given the expressive numbers of violent deaths of women that occur daily in Brazil. There is a need for answers capable of enhancing the effectiveness of breaking the circle of violence through the implementation of a policy that meets the individual needs of the victims, with a view towards judgment with a gender perspective.

The heterogeneity of the data analysed in the research object of this study attests the complexity of the phenomenon, which keeps individual dimensions influenced by the most diverse environmental factors, which confirms the initial premise that it is essential to know the specific vulnerabilities of each of the victims assisted by the Judiciary to the formulation of systemic responses that really address the cause of the problem. With this, the possible positive effects of judicial listening carried out by professionals able to identify individual intersectionalities are evident, thus enabling the Judiciary carry out a more complex analysis of each case and adopt a methodological tool that facilitates the judgment with a perspective of gender. It should also be noted that listening carried out by a professional with specific skills is an alternative to the individualized formulation of the judicial policy, and may also be an appropriate time apply the National Assessment and Risk Form or other tools predict violence.

In view of this, it is believed that this empirical research can help the legal community reflect, from a multidimensional view of domestic violence, on the proposition of a change in procedural routines within the scope of MPUs, in order to revisit the scopes of jurisdiction in deeds of this nature. This would provide a more efficient activation of the network for coping with domestic and family violence against women and the monitoring of the usefulness of decisions in MPUs as a means of increasing the protection of the psychophysical integrity of victims of gender violence in the domestic and family sphere.

Furthermore, the tool can also be considered as a means of human rights education, as it is a time to offer relevant information to the victim, clarifying doubts and promoting female empowerment and, as a consequence, gender equality, in addition of generating beneficial effects for their dependents, which helps in combating transgenerational consequences (ZANCAN; WASSERMANN; LIMA, 2013) of domestic violence. Finally, it can be a mechanism for managing the profile of users, in order to support networking and the possible formulation of public prevention policies that meet regional specificities.

Despite the possible benefits that would be achieved with an eventual implementation of this procedural routine in all processes, there are risks and difficulties – inherent any and all innovations – that need be discussed. However, it is believed that with political will and risk management, they can be adequately circumvented, as eventual benefits outweigh the costs/problems of implementing a flow that enhances the protection of women in situations of violence.

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