

Fighting violence against women: the struggle between old values and new patterns of public policies¹

Written by Sonia Naves David Amorim

Year: 2012

With teaching note

1. Introduction

The case describes a situation of domestic violence experienced by a black woman and the obstacles she faced to denounce the aggressor and assert her rights. The fact reported takes place in 2011 after Law Maria da Penha and the Statute of Racial Equality have been sanctioned, laws by which it seeks to combat domestic violence against women and racial inequalities, factors that produce exclusion and vulnerability, particularly affecting some segments of the population, as the black women. The case shows the contradiction between norms and their effective application, when the behavior of public agents still maintains standards and values of an authoritarian, patriarchal and slavery State. The case is fictitious, but reflects real situations collected in documents and reports of the Ombudsman's Secretariat of Policies for Women (SPM)². It stimulates discussion about the problem and possible action strategies.

2. Improvements and challenges of policies to combat violence against women and racial inequality in Brazil

For centuries the abuse of women, mainly from husbands or partners, was treated in Brazil as a matter of the family, as the popular saying: "in a fight between husband and wife, no one sticks the nose." This perception only began to change in the second half of the 80s when, under the impulse of the democratization process of the country and international agreements, the social movements of women engaged in denouncing the violence, raising the mantle of silence that used to ensure the invisibility of the problem. These movements started to

pressure the government to promote actions to protect women victims of violence. Thus, the first specialized police stations in assistance to women were created between 1985 and 1986, in São Paulo and Bahia, followed by other states.

However, the Specialized Police Stations in Assistance to Women (DEAMs)³ did not expand properly and, in 2011, there were about 450 in the country, an insufficient number to meet the needs of the Brazilian female population. A large proportion of women victims of violence are attended in ordinary police stations without adequate training. Despite its importance and pioneerism, the creation of DEAMs in the 1980s was an isolated action, developed with the support of the Ministry of Justice within the Departments of Public Safety of the states. Other efforts were made in the second half of the 1990s, but still with fragmented actions.

The fight against racial inequality is an even more tortuous path. A major obstacle has been the traditional belief that in Brazil there would be no racial barriers. Since the democratization, black movements have denounced the falsity of the myth of Brazilian racial democracy that assumes equality of opportunity between blacks and whites. They emphasize that, by abolishing slavery, the State did not notice the serious damage caused to blacks, not offering them opportunities to access education, health and employment, generating fact of the worsening of racial inequalities over the years. Thus, studies using official data confirm the persistence of large differences between blacks and whites reflected in socioeconomic indicators that point to the disadvantage of the black population on things like unemployment rates and income levels, among others⁴.

It was from 2003 that actions to combat violence against women and promoting racial equality gained amplitude and effectiveness, articulating, through policies and programs, various agencies of the federal government with the other branches and agencies of the state and municipal governments. It was created in the Presidency, the Secretariat of Policies for Women (SPM) and the Secretariat for Policies to Promote Racial Equality (SEPPIR⁵).

In the context of combating violence against women, it was established in 2005 a call center - "Call 180" – meant to guide women on their rights in cases of aggression, the procedures to adopt and the filing of complaints about the service provided by the public services network. However, the milestone that consolidates these changes was the creation, in 2006, of the Law No. 11.340/2006, known as Law Maria da Penha, a specific law to combat domestic violence against women. Supported in Article 226 of the Federal Constitution which, in paragraph 8 assigns to the State "the assistance to the family in the person of each of the members, creating mechanisms to suppress violence within their relationships," as well as in

international agreements already signed by Brazil, the Law Maria da Penha not only ensured the punishment of offenders with greater rigor, but also created mechanisms to prevent violence and protect the abused woman. The Law has been recognized by the United Nations Development Fund for Women (UNIFEM) as one of the three most advanced laws in the world in comparison to the legislation on the subject in 90 countries, and has had profound impacts on policy to combat violence against woman, expanding programs and care services.

And it was succeeded in 2007 by the National Pact to Combat Violence against Women, as part of the social agenda of the federal government. The SPM strengthened. The Center for Assistance to Women in 2009/2010 was restructured and the bimonthly newsletters prepared by the Secretariat Ombudsman allowed to gather information on violence and monitor the performance of the public service to women victims of violence. About a year ago, SPM signed a protocol of technical cooperation with the Federal Public Ministry and State Public Ministries, which enables complaints about network services to be charged to the responsible institutions and that measures are taken.

In its nearly six years of existence, the Law has faced, however, many difficulties for its effective implementation, including by judges who questioned its constitutionality, arguing that it smote the Article 5 of the Federal Constitution, which affirms the equality of all before the law, intending thereby to judge the actions of domestic and family violence against women by the former Law No. 9.099/95 (Law of Special Courts), which treats these cases as misdemeanors, less serious than a felony deserving of less rigor.

Only the trial on February 9, 2012 by the Supreme Court in two lawsuits related to Law Maria da Penha ended such questions definitely⁶.

The ministers of the Supreme Court, in the trial seen as a milestone in combating domestic violence against women, unanimously decided for the constitutionality of Articles 1, 33 and 41 of Law Maria da Penha, eliminating the possibility of prosecution of crimes of domestic and family violence by Law No. 9.099/95. As for the new interpretation by the Attorney General, most ministers agreed to the proposal, according to which the prosecution in cases of domestic violence against women does not depend on the presentation of denunciation or withdrawal by the victim, the Public Prosecution Service may denounce the aggressor. With this result the criminal cases under Law Maria da Penha gain greater speed and effectiveness, imposing, however, full disclosure and monitoring.

Another difficulty alleged by public agencies to effectively implement the policy has been the lack of resources for the implementation of the service network: DEAMs, shelters, public defense centers, among others. To work around the issue, It was approved the

amendment to the Budget Guidelines Law for 2012, including the Program for Combating Domestic Violence against Women in the list of non-contingenciable cases.

With regard to combating racial discrimination, although effective for over 20 years, the Law No. 7.716/1989, known as “Caó” law, that classifies racism as non-bailable offense, punishable by imprisonment of up to five years and fine, is rarely used. Many analysts and activists estimate that most cases of racial discrimination is typified by Article 140 of the Criminal Code, such as injury, which provides more lenient punishment, as some police authorities, public prosecutors and magistracy consider the penalty for crime of racism too high in relation to the type of offense.

Brazil has, since the 1960s, ratified various international instruments against racial discrimination⁷. However, the application of the principles of promotion of racial equality only came to be approved with the sanction of the Racial Equality Statute Law No. 12.288/2010. The Statute directed the long-term investment in changing the referentials of public action, including training of managers, in order to change entrenched cultural patterns and lead to the overcoming of inhumane practices, naturalized and internalized throughout our history. Moreover, anti-discrimination agencies have been created in the state and municipal levels, signaling capillarity of administrative practices aimed at promoting racial equality.

The above scenario is complex and involves advances and setbacks. The difficulties related to the implementation of the policy of guaranteeing the rights of women and to combat racial inequality, pointed out by many public agencies, highlight many administrative, financial, political and legal questions. Is there anything else?

The specific situations of public assistance to women victims of violence and to black women provide evidence of other factors, of different nature. Check the following situation and draw your own conclusions.

3. Ana Carolina, a victim of domestic violence, seeks assistance at a Police Station

Ana Carolina, 32 years old, a Black woman who has lost count of the times she was beaten by her partner with whom she lived for eight years and father of her two children. In the beginning, there were verbal assaults followed by slaps for any carelessness or jealousy. Over time, the attacks were getting heavier, without any clear reason, and took place in front of the children. Several times she thought of leaving him, carrying their children, but feared losing the house, built over the years

and to which she had contributed with her salary as a teacher of a public school. She also concerned with the children's maintenance. She knew she had rights, but how to guarantee these rights, if when she spoke of leaving him, over three years ago, he had threatened her to death? She remained thus helpless, hoping that he would one day return to be the fascinating man that had won her.

One day after being assaulted again, a colleague advised her to seek the nearest police station, saying that now there was a law that defended abused women - Law Maria da Penha - and that she could file a complaint against her attacker, and that the police would protect her. Her friend said that in some cities there was a police station just to assist women, which was much better, but that was not the case in their city. Therefore, she would have to seek an ordinary police station.

Then, after another aggression, she decided to change the course of her life.

She took courage, put some make-up on to disguise the injuries and went to the police station. She was surprised to see the amount of people in the place and spent almost an hour to be helped by one of the police officers who were at the counter. He called her from where he was, and asked out loud: "What's the problem? Be quick, as we got a lot of work." Her courage disappeared. How to explain in a few words, to be heard by everyone, so many years of aggression? Still, faltering, reported the situation of violence in which she lived, how it frightened her children and said she wanted to press charges of her partner. The officer replied: "I do not see any major injury. Did you bring a witness? How did this happen? Did you give him any reason?"

Then he started asking questions about her partner, if he had been arrested before, if he worked, if he contributed to the maintenance of the family. Noting that the partner had no criminal records and that he provided for the family, he immediately said: "I see that your husband is a worker. I do not think it's the case of making a police report and fine him. We have a lot of bandits on the loose out there to worry about, we can't go after workers. Be more patient, things will get better."

She was stunned and helpless. She tries to insist, but the agent already called someone else. As she turned away to leave, she heard him saying to his coworker: "See what we have to deal with: a little black girl, hysterical for getting some slaps, who knows for what reason, and yet thinks she is so important for being a teacher...".

Two months later, after another attack, she threatened to leave him permanently. The reaction was even worse followed by death threats. Feeling in danger, she decided to go back to the police station. Hadn't her friend told her that Law Maria da Penha guarantees protection to women under threat?

This time she was helped by another agent, but the answer was not much different. Without paying much attention to her story and in her insistence on a police report, the agent impatiently interrupted her saying that only a police report was not enough. It was a long process. She had to fill out other papers to get the lawsuit to court. Her partner would be sought to testify and that it could turn him against her. They would not be around to defend her. And finished, staring at her for a long time: “Better try to understand the reason for your fights and seek to change your way of acting.”

She left heartbroken, helpless and angry at the officers that attended her. That’s when her friend told her that there was a call service to women, the 180, where she could complain of the poor service she received by the police and also get guidance on what to do. Perhaps the situation could change?

On that same day, she called and explained the disregard with which her problem was handled, adding that she had felt discrimination because she was a black woman. The attendant heard her attentively, asked some questions and explained that this was not the first case of poor service to women in that police station. Everything was being registered and it would be forwarded to the authorities.

4. The police station under investigation

The police chief holder of the 6 § PD, Paulo Roberto, was surprised. He had been called by the general director of the Civil Police of the state to explain himself on complaints of poor service to women victims of domestic violence and racial discrimination on the part of his Police Station agents. These complaints had been taken by the Secretariat of Policies for Women and forwarded to the Public Ministry for investigation. The charges involved negligence in treating the problem, signs of racism and lack of provisions for domestic assault situations. Paulo Roberto belonged to the career for five years, and had participated in college, in movements of defense of human rights. Occupied only recently the position of police chief and, despite the lack of resources, space and personnel, thought he fulfilled his mission accordingly. His police station had good investigators and had disrupted various gangs who worked in the nearby neighborhoods. He decided before the hearing with the director general, to meet with his team and do their own investigation. Wouldn’t it be a mistake, a misinterpretation of the facts?

Faced with the allegations made, the agents became angry. They argued that they were few and, for the wages paid, they were already working and facing too much risks by investigating and arresting criminals. An exalted agent said: “We do not have adequate space to attend people,

especially mulattas from the neighborhood nearby, which exhausted the patience of their companions, got slapped and then came running, asking for help from the police.” Another officer added that “the accusation of racism is even more absurd because, in Brazil, this problem doesn’t exist, nor any law about it.”

The police chief argued that the protection of physical integrity was a human right and that Law Maria da Penha prescribed a strong performance of the state against domestic violence, strictly punishing the accused and protecting the woman. As for the legislation that punishes discrimination, he noted that first there is the Constitution, which states in Article 5, Item XLII: “the practice of racism is a non-bailable offense and infeasible, subject to imprisonment.” Moreover, there is the Law No. 7437/1989 which defines and punishes crimes resulting from prejudices of race or color, and the Racial Equality Statute, which seeks to ensure black people full access to their rights. He felt himself talking in a vacuum. Most agents seemed disinterested, as if he was making a theoretical speech, far from practical actions of everyday life. Some claimed not to know the laws and questioned the legitimacy of the state to meddle in such matters. One even argued that there are many doubts about the Law Maria da Penha and that many judges refuse to apply it.

After the meeting, Paulo Roberto felt alone with his principles. More than that, he felt the need to define a strategy to change the situation.

What to do? Change the team? Punish the offenders? Improve the working conditions? Would that be enough? Deep down he knew that what prevailed was the old sexist and racist values which the new policies wanted to extirpate, but that remained latent. Is that possible? How? What strategies would be most effective?

Notes

¹ Case prepared in partnership with the Secretariats of Policies for Women (SPM / PR), and of Policies for Promotion of Racial Equality (SEPP/PR), National School of Public Administration (ENAP) and the United Nations Program for Development (UNDP), under the Interagency Program for Promotion of Gender, Race and Ethnicity Equality, implemented in Brazil by the United Nations (UN).

² Translator note: SPM stands for “Secretaria de Política para as mulheres”

³ Translator note: DEAMs stands for “Delegacia Especial de Atendimento à Mulher”

⁴ Picture of inequalities of gender and race. Institute of Applied Economic Research ... [et al.]. 4^o ed. Brasília: Ipea, 2011.

⁵ Translator note: SEPP/PR stands for “Secretaria de Políticas de Promoção da Igualdade Racial”.

⁶ Trial of the Supreme Court on 02.09.2012, Direct Action of Constitutionality - ADC 19, required in a request for Habeas Corpus and Unconstitutionality Action - ADI 4424, filed by the Attorney General, asking new interpretation, consonant with the Federal Constitution, on some Articles.

⁷ As an example, it can be enumerated the Convention No. 111 of the ILO on the Discrimination in Respect of Employment and Occupation, ratified by Brazil in 1965, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), ratified in 1968, the Declaration and Plan of Action of the III World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in 2001.