

The Maria da Penha law: legislating against domestic violence in Brazil

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In May 2015, we had the privilege of participating in an exchange programme organised by the Law Society and Bar Council with the Bar Council of Sao Paulo, Brazil (Ordem Dos Advogados Do Brazil). As family practitioners, we were particularly impressed with the autonomous procedure and facilities available to protect victims of domestic violence.

A tribute to Maria da Penha, a biopharmacist who survived two almost fatal attacks at the hands of her husband, Heredia Viveiros; the Maria da Penha law is the result of a long and historic battle against domestic violence against women and arguably one of the most important pieces of Brazilian legislation in respect of the protection of women's rights.

The movement against domestic violence developed in Brazil throughout the decline of the military dictatorship and in to the late 1970s with the gradual liberalisation of Brazilian society.

In 1983, the government integrated councils on women in both state and federal administrations; and in the following year it ratified the United Nation's Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). By 1985, the women's rights movement had successfully established a number of Delegacias de Defesa da Mulher: police stations staffed solely by women; to assist victims of sex crimes and domestic violence.

These were significant social developments, at a time when domestic violence remained a mechanism for the subordination of women. In the criminal courts, the Legítima defesa da honra continued to engage as a legitimate and at times successful defence:

offering impunity to husbands charged (and prosecuted) with the murder of their allegedly adulterous wives. An important decision came in March 1991 as part of the murder trial of João Lopes. He relied upon the honour defence, which was rejected on appeal to the country's most senior appellate court, Superior Tribunal da Justiça. The case was remitted to the State Court of Parana which ignored the earlier decision and acquitted the defendant; a decision which had the effect of attaching great importance to a husband's honour.

In the intervening period, Maria da Penha had survived two attempted murder attacks, both perpetrated by her husband. As a result of the first attack (where she was shot in her sleep), she suffered catastrophic injuries which rendered her paraplegic. Her husband claimed there had been a robbery. The second attack took place shortly after her discharge from hospital: with an attempt to electrocute her while she was in the bath. From a judicial perspective, what followed was an ineffectual and frustratingly slow process; serving to highlight the unenviable position in which victims of domestic abuse were often left: with little to no protection or legal recourse.

Some 8 years passed before Maria da Penha's husband was successfully prosecuted and convicted following a jury trial. He was then sentenced to a term of 15 years' imprisonment which was reduced to 10 years, to take into account the fact he had no previous convictions. An appeal was lodged at the conclusion of the case, which under the Brazilian Code of Criminal Practice (and in particular, Art 479, which provides that it should be lodged during, rather than after proceedings) ought to have been time barred. Nonetheless, the earlier

decision was quashed and a second trial took place in 1996; again resulting in a conviction.

With the support of the Centre for Justice and International Law (CEJIL) and the Latin American and Caribbean Committee for the Defence of Women's Rights (CLADEM), Maria da Penha issued a claim some 2 years later in 1998 at the Inter-American Commission on Human Rights. She alleged that in failing to take effective steps properly to prosecute and punish her husband, the Brazilian Federal State had, in effect, condoned the domestic violence perpetrated by him. She also contended that hers was not an isolated case, but instead represented a pattern of impunity against domestic violence generally.

The Commission's report concluded, *inter alia*, that there had been a violation of Maria da Penha's right to a fair trial and judicial protection, rights guaranteed by Arts 8 and 25 of the American Convention and Art 7 of the Convention of Belem do Para, which provided for all States' Parties condemning all forms of violence against women.

The Inter-American Commission on Human Rights made a number of recommendations relating to education, the simplification of the criminal justice system and the establishment of alternative forms of dispute resolution. It also recommended a serious, impartial and exhaustive investigation, prompt and effective compensation and measures to be taken on a national level to eliminate tolerance of domestic violence against women.

On 7 August 2006, Luiz Inacio Lula da Silva, the (then) President of Brazil, sanctioned legislation to impose stricter (and longer) sentences faced by perpetrators of domestic violence; it came into force in September 2006 and was implemented with immediate effect. Yet another important development in the protection of women,

this was the first codification of domestic violence as a crime. It triggered not only the creation of special courts to adjudicate on domestic violence cases, but also an increase in the all-women police stations.

In practical terms, the law also sought to create mechanisms for protecting and assisting women, with referrals for childcare, monitoring and shelter. It also sought to prohibit the application of fines and other financial penalties to crimes committed against women.

Plainly, the *Maria da Penha* law represents a significant turn in the history of impunity; and a move away from what had historically been a patriarchal system.

On 9 March 2015, President Dilma Rousseff signed a new law: to amend the Brazilian Penal Code, redefine femicide and impose longer custodial sentences for gender-based killings. It provided for tougher punishments in cases where the victim is pregnant, under the age of 14 years or has a disability. Concurrent with the new law, Brazil was chosen to pilot the Latin American Model Protocol for the Investigation of Gender-related Violent Deaths, an initiative promoted by the UN Women and Brazil's Secretariat of Policies for Women.

Spain, Nepal, Uruguay and Venezuela are some of the jurisdictions which have opted for the creation of designated courts, dealing only with gender-based domestic violence cases. This is one of the recommendations by UN Women, to fight against gender-based violence.

Domestic violence is a global problem, widespread in society and something which affect individuals and consequently their families. The differing needs of those affected and the requirement for intervention is an area currently under research in Europe; due to be published in 2017 in the journal *Psychology of Violence*.