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## PROTECTION OF WOMEN IN THE HORIZON OF SOCIAL PACIFICATION: AN ANALYSIS BASED ON LUSO-BRAZILIAN COMPARATIVE LAW

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**Abstract:** In the world, according to the map of violence: Homicide of Women (2015), Brazil is already ranked 5th in cases of femicide. This study, in partnership with governmental organizations and feminist and women's movements, of the "Extension, Research and Teaching Group: Human Rights, Citizenship and Diversity (CNPq Udesc) regarding actions for social pacification through an extension program and research project on women's human rights, aims to contribute to the reduction of indicators of violence against women through the improvement of prevention strategies and security plans, according to the guidelines of the Brazilian government (2015) regarding the application of urgent protective measures (cases included in the LMP - Maria da Penha Law n° 11.340/2006) and the use of technological resources for monitoring. Therefore, it will analyze the good practices of public policies and build doctrinal arguments regarding the intervention of protective measures through the analysis of the Portuguese-Brazilian comparative law legislation. In this context, the LMP and the Portuguese legal regime applicable to the prevention of domestic violence, protection and assistance to its victims will be carried out (Law number 112/2009). In order to contextualize, a cut will be presented, through analysis, of the concrete case of a university student - victim of femicide.

**Keywords:** Women's Human Rights, Public policy, Gender violence, Maria da Penha Law, Femicide.

## INTRODUCTION

In the world, according to the results of a survey promoted by the Institute of Applied Economic Research, Brazil (2015) is already ranked 5th in cases of femicide, whether death, the extreme of violence against women framed in a political context, in which it is

verified the exercise of a power derived from cultural factors. In fact, faced with statistics that reveal a condition of public calamity, Kofi Annan (former secretary general of the United Nations Organization - UN) emphatically stated: "domestic violence against women is perhaps the most shameful violation of human rights. It doesn't know geographic, cultural or wealth borders". He also highlighted, "as long as it remains, we cannot say that we have made real progress towards equality, development and peace (UN/Women 2000)".

The complexity of this theme requires constant attention and care, as well as systematic studies with a view to training people - activists, education professionals, health and public safety, law practitioners, etc. -, because "knowledge requires a curious presence of the subject in the face of the world. It requires a transformative action on reality. It demands a constant search. It implies invention and reinvention" (Paulo Freire).

Faced with this complex reality, the Extension, Research and Education Group: Human Rights, Citizenship and Diversity (CNPq/Brazil) - in partnership with governmental organizations and feminist and women's support movements - develops systematized actions (via extension programs and projects research) on Education in Human Rights and Women's Citizenship with a view to equality for social peace.

Among the studies and actions carried out by the research group, this article will present, in an exploratory documental research, in the context of comparative law, the analysis of the Portuguese-Brazilian legal instruments and the good practices of public policies aimed at the construction of doctrinal arguments regarding the intervention of urgent protective measures for women victims of domestic violence. In this sense, in order to fulfill the objective, it is necessary to present the connection between the gender human

rights and the type women's rights to support the interpretation of the legal instruments for the Protection of Women's Human Rights. These instruments are supported by the United Nations System (UN), ratified by the Brazilian State and the Portuguese State. Then, a comparative analysis will be made between the Maria da Penha Law (Law 11.340/2006) and the Portuguese legal regime (Law number 112/2009) applicable to urgent protective measures, with emphasis on the use of technological resources of monitoring. In addition, in order to contextualize, a cut will be presented, through the analysis, of the concrete case of a victim of femicide involving people from the area of Brazilian education. It will end with final considerations and references.

## **THEORETICAL FOUNDATION**

### **THE CONNECTION BETWEEN THE HUMAN RIGHTS GENDER AND THE WOMEN'S RIGHTS SPECIES**

The **construction of gender discrimination** is directly related to socially constructed differences that are naturalized, that is, they are attributed to a supposed male or female essence with different roles and social places, which imply different values and capacities attributed to women and men in society and, consequently, unequal access to resources, opportunities and benefits, which impact on women's dignity. Even in the age of humanism, the **discrimination excluded women as holders of citizenship rights in the first political document to establish the principle of universality**, although they actively participated in the struggle for this ideal during the French Revolution. This Document entitled, solely and solely, Declaration of the rights of man and citizen (FRANÇA, 1789). However, as a result of this fact, Olympe de Gouges (revolutionary, historian and journalist), trying to ensure

citizenship to women as well, drafted the Declaration of the Rights of Women and Citizens (FRANÇA, 1791). These statements are relevant historical documents, as in the 20th century they were used to prepare the "**Universal Declaration of Human Rights**", which has as its founding principle the **equal rights for women and men**.

In the first year of the UN (1948), the Economic and Social Council (ECOSOC) established its Commission on the Status of Women as the main policy-making body dedicated exclusively to **gender equality** and the advancement of women.. One of her first achievements was to ensure gender neutrality in the draft Universal Declaration of Human Rights. The landmark Declaration, adopted by the General Assembly on December 10, 1948, reaffirms that **all human beings are born free and equal in dignity and rights** and that **"every human being has the capacity to enjoy the rights and freedoms established in this Declaration, without distinction of any species, whether of race, color, sex, religion... or any other condition"** (UN Women, Internet).

This declaration is sponsored by the UN and its Member States, which have agreed to promote human rights through pacts and conventions (binding legal instruments), implying the obligation of compliance by Member States with all its provisions (See content in §§ 1 and 2 of Article 5 of the CRFB, 1988).

Although major human rights documents and virtually all constitutions of the modern era proclaim the equality of all, this equality unfortunately remains understood in its formal aspect and we are still far from achieving real, substantial equality between women and men (DE FARIA, Helena; DE MELO, Mônica, 1998, p. 373).

As the international feminist movement began to gain traction in the 1970s, the UN

General Assembly declared the year 1975 as the International Year of Women and organized the 1st World Conference on Women. As a result of the Conference, the years 1976 to 1985 were declared the Decade for Women (UN Women, Internet).

Thus, the UN system has adopted specific instruments about the human **rights of women, including the Convention on the Elimination of All Forms of Discrimination against Women, which presents, in its article 1, the definition of “discrimination against women”**.

[..] any distinction, exclusion or restriction based on sex and whose object or result is to impair or nullify the recognition, enjoyment or exercise by women, regardless of their marital status, based on the equality of men and women, of the **human rights and fundamental freedoms in the political, economic, social, cultural and civil fields or in any other field** (ONU/Cedaw, 1979, excerpt we highlighted).

It is insufficient to treat the individual in a generic, general and abstract way. [...]. In this sense, **women must be seen in the specifics and peculiarities of their social condition**. Respect for difference and diversity is important, which guarantees them special treatment (PIOVESAN, Flávia, 1998, p. 140).

This question gave rise to the 4th principle of the conference on population and development.

**The human rights of women and girls are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in civil, cultural, economic, political and social life, at the national, regional and international levels, and the eradication of all forms of discrimination based on gender is a priority objective of the international community.** (ONU/CIPD, 1994).

1. UN Women has 6 priority areas: women's leadership and political participation; economic empowerment; an end to violence against women and girls; peace and security and humanitarian emergencies; governance and planning; and, global and regional standards.

2. <http://www.onumulheres.org.br/onu-mulheres/sobre-a-onu-mulheres/>

Professor Clair Castilhos Coelho - an activist of the Women's Movement of Brazil - in her speech during the meeting to review goals at the Beijing+20 event, highlighted: **“human rights without women's rights are not human.** We claimed the right to have the right.”

**The fundamental transformation in Beijing was the recognition of the need to shift the focus from women to the concept of gender,** recognizing that the entire structure of society, and all relationships between men and women within it, had to be re-evaluated. Only through this fundamental restructuring of society and its institutions could women be empowered to take their rightful place as equal partners with men in all aspects of life. This change represented a reaffirmation that **women's rights are human rights and that gender equality was a matter of universal concern, benefiting all** (<https://nacoesunidas.org/acao/mulheres/>, 2015).

In 2010 a single UN body was created in charge of accelerating progress towards achieving gender equality and strengthening women's empowerment. UN Women <sup>1</sup> – brings together four agencies and offices of the Organization: the United Nations Development Fund for Women (UNIFEM), the Division for the Advancement of Women (DAW), the Office of Special Advice on Gender Issues, and the International Institute of Training and Research for the Advancement of Women (INSTRAW). Through partnerships with civil society, the Executive, Legislative and Judiciary powers, universities, companies and the United Nations system, UN Women defends international commitments <sup>2</sup> undertaken by UN Member States with the human rights of women, such as: 1) Convention on the Elimination of All Forms of Discrimination against Women,

sponsored by the UN General Assembly on 12/18/1979 (ONU/Cedaw<sup>3</sup>, 1979): it was considered: **women's human rights charter**, with the force of law in the Brazilian legal framework, it is constituted by a preamble and 30 **articles, 16 of which contemplate substantive rights that must be respected, protected**, guaranteed and promoted by the State; /2) Declaration and Program of Action of the 2nd International Conference on Human Rights (Vienna, 1993): highlighted by the recognition of the human rights of women and girls as an inalienable, integral and indivisible part of universal human rights;/3) Declaration and Plan of Action of the International Conference on Population and Development (Cairo, 1994): important for defining the concept of reproductive health, including goals to reduce maternal and child deaths;/4) **Inter-American Convention to Prevent, Punish and Eradicate Violence against Women** (Belém do Pará Convention, 1994) adopted by the UN General Assembly on 06/06/1994: determines violence against women as a violation of human rights and a manifestation of historically unequal power relations between women and men. Therefore, as a commitment of the international community, a **Declaration on the Elimination of Violence against Women** was adopted by the UN General Assembly on 27/02/1994 with clear and comprehensive definitions of the rights to be applied by Member States to ensure the elimination of violence against women in all its forms; and, /5) **Beijing Declaration and Platform for Action** (1995): defines the concept of gender for the international agenda and represents a consensus of UN Member States with a minimum commitment to the human rights of women and the consequent elimination of gender discrimination and violence.

This introduction of the gender issue became fundamental to establish the concept of domestic violence against women, even because it is a kind of gender violence. Bearing in mind that for Criminal Law, the duty to protect and avoid individual and collective damages arising from gender violence and the correlative right to prevention of damages arising from the lack of defense are assumed. The Convention of the Council of the European Community on Preventing and Combating Violence against Women and Domestic Violence was very precise on the aspects of gender-based violence. This convention entered into force in the Portuguese legal system in 2014.

**Violence against women constitutes a violation of human rights and is a form of discrimination against women**, encompassing all acts of gender violence that result, or could result, in **physical, sexual, psychological or economic harm or suffering for women**, including the threat of such acts, coercion or arbitrary deprivation of liberty, both in public and private life. 'Domestic violence' covers all acts of **physical, sexual, psychological or economic violence that occurs in the family** or in the domestic unit, or between spouses or ex-spouses, or between partners or ex-partners, whether the aggressor cohabits or has cohabited, or not, with the victim. 'Gender', on the other hand, refers to the roles, behaviors, activities and socially constructed attributes that a given society considers to be suitable for women and men. Therefore, the 'gender violence' exercised against women encompasses **all violence directed against women because they are a woman or that disproportionately affects women** (2011, p. 5, excerpt that we highlighted).

Next, in this context, comparative law will be used with a view, specifically, to the analysis of prevention strategies through the application of **monitoring technological**

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3. CEDAW: Convention on the Elimination of All Discrimination Against Women.

## resources as urgent protective measures in UN Member States: Brazil and Portugal.

### LUSO-BRAZILIAN COMPARATIVE LAW: URGENT PROTECTIVE MEASURES FOR WOMEN

With a view to Equity, Sustainable Development and Social Pacification, the **Beijing Platform for Action** (UN, 1995) presents specific actions to ensure respect for human rights and fundamental freedoms. Thus, the novelty in the international legal system, which was reflected in the doctrines of member states such as Brazil (Law 11.340/2006) and Portugal (Law 112/2009), was the inclusion of the gender relationship as a reference to set the limits of what is to come. to be discriminations that impact on violence against women in the public and private spheres.

**Violence against women:** Violence against women is an obstacle to achieving the goals of equality, development and peace. **Violence against women violates, undermines or undermines women's enjoyment of their human rights and fundamental freedoms. [..] Knowledge about its causes and consequences, as well as its incidence and measures to combat** this has been greatly expanded since the First Conference on Women (Nairobi Convention, 1985). In all societies, to a greater or lesser degree, women and girls are subjected to **physical, sexual and psychological abuse that cross lines of income, class and culture** [..].

Strategic objective D.1. **Take integrated measures to prevent and eliminate violence against women.**

Strategic objective D.2. **Study of the causes and consequences** of violence against women **and the effectiveness of preventive measures** (ONU-Pequim, 1995, excerpt we highlighted).

In Portugal, Law Number 61/1991 guarantees adequate protection to women victims of violence, although it has not yet

dealt with domestic violence. In 2009, two new legislations were approved in the perspective of gender violence. The first, Law Number 104/2009, which deals with the specific system of advance payments by the State to women victims of domestic violence. And the second, the **Law number: 112/2009**, establishing the **legal regime applicable** to the prevention of domestic violence, **protection and assistance to its victims**. Article 3 establishes:

- a) To develop awareness-raising policies in the areas of education, information, health and social support, [...];
- b) Enshrine the rights of victims, ensuring their **fast and effective protection**;
- c) **Create protective measures** with the goal to **prevent, prevent and punish domestic violence**;
- d) To consecrate one **integrated response of emergency social services and victim support**, ensuring fast and efficient access to these services;
- e) To protect the rights of workers victims of domestic violence;
- f) Guarantee the economic rights of the victim [...];
- g) Create **public policies** aimed at guaranteeing the protection of the rights of victims of domestic violence;
- h) To ensure **swift and effective police and jurisdictional protection for victims**;
- i) Ensure the application of **coercive measures and appropriate penal reactions to the perpetrators of the crime** of domestic violence, promoting the application of complementary prevention and treatment measures;
- j) Encourage [...] **civil society associations and organizations** which aim to **act against domestic violence**, promoting their collaboration with public authorities;
- and, l) Ensuring the provision of adequate health care to victims of domestic violence.

In relation to **Brazil**, although domestic violence is seen as a very serious problem that needed to be treated with due care, Portuguese legislation is 15 years ahead of our first specific law, Law n° 11.340/2006 (Law Maria da Penha).

Mechanisms were created to curb domestic and family violence against women, pursuant to paragraph 8 of Article 226 of the

Federal Constitution, the Convention on the 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 Courts of Domestic and Family Violence against Women; amends the Criminal Procedure Code, the Penal Code and the Criminal Execution Law; and take other measures

According to Cunha and Pinto (2015, p. 169),

it is common that in traumatic situations, of evident animosity between the parties, involving the practice of aggressions and other attacks, the aggressor starts to torment the peace not only of the offended party, but also of family members and witnesses. Such behavior is not restricted to the recesses of

the home. [...] It so happens that the torment continues, extending to the victim's workplace, to places he frequented, etc.

Items a, b and c of article 22 of the LMP and subparagraph d of article 31 of Law 112/2009 aim to preserve the health, safety and well-being of women victims of violence, in order to avoid any physical approximation between the victim and aggressor. They must be examined and handed down by the judiciary within 48 hours.

In Portugal, in 2007, regarding the most effective way to ensure that the aggressor does not approach the victim, the III National Plan against Domestic Violence (2007-2010) provided for the adoption of electronic means for this purpose, which was ratified in article 35 of Law number 112/2009.

<b>Brasil</b> (article 22 of the LMP/2006)	<b>Portugal</b> (article 31 of the Law number 112/2009)
I - suspension of possession or restriction of the possession of weapons, with communication to the competent body, pursuant to Law Number 10,826, of December 22, 2003	a) immediately deliver weapons or other objects capable of facilitating the continuation of criminal activity
II - removal from the home, domicile or place of coexistence with the victim.	b) to attend a program for the elimination of domestic violence <sup>4</sup>
III - prohibition of certain conducts, including: a) approximation of the offended party, their family members and witnesses, establishing the minimum distance limit between them and the aggressor; b) contact with the victim, her family members and witnesses by any means of communication; c) going to certain places in order to preserve the physical and psychological integrity of the victim	c) not to stay in the victim's residence
IV - restriction or suspension of visits to minor dependents, [...]	d) not to contact the victim and people linked to the victim, as well as not frequent common places for the victim, including professional environment <sup>5</sup> of the victim
§ 3º To ensure the effectiveness of urgent protective measures, the judge may request, at any time, the assistance of the police force.	Paragraph h of article 3 of Law number 112/2009 – To ensure swift and effective police and jurisdictional protection to victims of domestic violence.

Table 1 - Urgent protective measures required of the aggressor.

Source: Prepared by the authors, based on the research carried out.

4. Article 38 of Law 112/2009: provides for the creation, by the Portuguese State, of the necessary conditions for psychological and psychiatric support to agents convicted of crimes of domestic violence

5. Article 43 of Law 112/2009: Absences [...] motivated by the impossibility of providing work due to victimization for the practice of the crime of domestic violence [...] are considered justified.

The technical means of remote control constitute a kind of electronic surveillance in the inspection of contact between aggressor and victim of domestic violence. The objective is an effective protection of the victim and a more rigorous means of overseeing the decision of the judicial authority to prohibit contacts. The determination to use this institute may come in the context of the provisional suspension of the process (artigo 281 CPP), as a rule of conduct. It is also possible that it is stipulated within a prohibition of contact enforcement measure. There is provision, moreover, that the technical means of remote control include the suspension of the execution of the prison sentence as a rule of conduct (artigo 52 CP) or as an accessory penalty of prohibition of contact (artigo 152, number 4 and 5 CP ). [...], before Law n.112/2009, the technical means of remote control were already provided for as instruments to oversee additional penalties for the crime provided for in artigo 152 of the CPP and also as a way to ensure the measure of coercion for the aggressor to remain away from the residence (artigo 201 of the CPP). Electronic surveillance is georeferenced. There is a definition of exclusion zones for the aggressor: a fixed one, such as, for example, the victim's home, place of work or study, and a dynamic one (corresponding to the victim). The exclusion perimeters are defined according to the decision of the judicial authority [...] (DE ÁVILA et al. 2014, p.176-7).

In Brazil, in 2011, comparative law was used in the reformulation of the Brazilian penal procedure code - in its item IX of artigo 319 -, in which electronic monitoring was provided for as an alternative to preventive detention, which applies to the case of the LMP.

Comparative activity is inherent in any legal research. In fact, the knowing act itself is comparative to the surrounding reality. The learning and abstract development of human beings occurs largely through successive generalizations, typifications and classifications of the environment, depending on whether the objects are

similar or different. Thus, its knowledge through the comparative method cannot be foreign to the Law, especially when one sees that the system of norms itself did not arise exclusively from the mind of the legislator, but rather is the historical result of contact between different peoples and nations ( MENDONÇA, 2001, p. 185).

**Electronic Monitoring is an Urgent Protective Measure granted via court decision**, in order to safeguard the physical and psychological integrity of women victims of violence. When the woman has a protective measure, the judge registers and the notification is immediately sent to the civil police (Delegacia da Mulher) and the military police to activate the Maria da Penha Patrol to assist the victim in urgent cases. With these joint actions, the LMP contributed to a decrease of about 10% in the rate of homicides against women committed within the victims' homes (BRASIL/IPEA, 2015). According to the National Council of Justice (CNJ-Brasil), os dispositivos de proteção de urgência são classificadas em:

**Electronic anklet attached to the aggressor** – Perimeter determined by the judiciary in which the aggressor will be prohibited from approaching the victim. The equipment allows public security agents to monitor the approach of the aggressor and intervene in order to avoid a confrontation between victim and aggressor. When the aggressor's approach is detected, an audible signal is sent to the victim's cell phone and the emergency center. In Brazil, states like Minas Gerais and Rio Grande do Sul use this technology.

**Panic Button** – Microtransmitter with GPS to perform audio and location monitoring of the victim, when activated for three seconds. Used in the State of Espírito Santo.

**OS device** – It works with three options: green, to signal that everything is at peace; the red, to be activated when aggression is



imminent; and yellow, in the event that this woman sees that the person is close. Used in Paraíba.

**PLP 2.0** – Tool developed for cell phones with Android system. Just shake the phone to send the distress call. The system is also capable of recording sound and image. For personal safety, the application also allows you to register up to five phones in the protection network.

It is concluded, therefore, that the Portuguese-Brazilian comparative law made possible a new doctrine in Brazil in the fight against violence, through the use of remote electronic control monitoring implemented by item IX of artigo 319 of the Brazilian penal code, including in cases covered by the LMP. This allowed for greater efficiency and effectiveness in protecting women who are victims of domestic violence established in the LMP.

## THE CASE OF FEMICIDE INVOLVING PEOPLE IN THE EDUCATION AREA

According to professor Clair Castilhos Coelho, “violence against women, which can lead to femicide, is related to the violation of the issues imposed by the patriarchy, whether it is the fidelity that does not allow her to break with the man, or the submission that does not give her permission to lead one’s life”. In this bias, the research on: *Women’s Mortality from Aggression in Brazil: Profile and corrected estimates* (GARCIA et. al, 2015, p. 6) points out

17.581 deaths from assaults in the period 2011-2013. There were 5860 deaths of women from violent causes each year, 488 each month, 16.06 each day, or one every hour and a half. The study confirmed that mortality from aggression affects women of all age groups, ethnicities and educational levels, and does not only occur in the poorer classes.

In view of this finding, the Femicide Law (Law number 13.104/2015) was enacted,

which placed the death of women on the list of heinous crimes and reduced tolerance in these cases. This instrument aims to contribute to the effectiveness of the Maria da Penha Law (LMP). Among the cases of femicide, due to disrespect for the law of patriarchy, one can mention what occurred in the region along the border between the state of Santa Catarina and Argentina. It was the end of the semester of the year 2016, it was also the conclusion phase of a pedagogy course for a group of academics. But an academic failed to fulfill one of her dreams: graduation. On December 9, 2016, during a family lunch, she was the victim of femicide by her husband. Three shots erased dreams and left marks on students and teachers, who lived with the victim for four years. According to a teacher. “she was very happy, radiant. Looking forward to graduation day.” To the surprise of many, the spouse is also a professional in the field of basic education. There was no previous record of the victim’s police report against the spouse. According to Waiselfisz (2012, p. 257), “high levels of femicide are often accompanied by a high tolerance for violence against women and, in many cases, are the result of this very tolerance”.

In accordance with the **humanistic principles of education**, training people promotes **transformation of this reality into an integral, critical and emancipatory perspective**. The world education forum (2015) resulted in the declaration of Incheon (South Korea) - “Education 2030” with a view to implementing goal 4 of the SDGs (Sustainable Development Goals, inspired by the

**humanist vision of education and development, based on human rights and in dignity; in social justice; on inclusion; in protection; in cultural, linguistic and ethnic diversity; and in shared responsibility and accountability. We ratify that education is a public good, a fundamental human**

right and the basis that guarantees the realization of other rights. It is essential for peace, tolerance, human fulfillment and sustainable development. (UNESCO, 2015, p. 1, excerpt we highlighted).

## FINAL CONSIDERATIONS

The intention to protect and expand the fundamental rights of women can be seen in the UN system diplomas as: **right to life**, to safety, education, culture, food, housing, access to justice, leisure, citizenship, freedom, **to dignity, respect and family and community life**. Therefore, the importance of **comparative law** increases enormously nowadays, marked by internationalization and globalization.

In this sense, in a comparative analysis between UN Member States such as **Brazil and Portugal**, one can observe the use of actions, including affirmative actions, which encourage greater equity between women and men in different spheres of society, seeking to

adapt domestic legislation international legal instruments. In this perspective, States will be moving towards a more democratic future in which discrimination and violence against women must be eradicated. However, to achieve this goal, specific legislation to protect the right to life of women is necessary, such as Law Number 11.340/2006 and Law Number 112/2009, which highlight the importance of **electronic monitoring associated with police force support**, which in Brazil has been carried out through Maria da Penha patrols.

The purpose of this study of Portuguese-Brazilian comparative law was to point out convergences of the Brazilian and Portuguese penal codes, which introduced the electronic monitoring systems of the aggressor, representing the guarantee of the effectiveness of the legal framework in Brazil and Portugal, with a view to guaranteeing the protection of women victims of violence and consequently the right to life, the main human right of women.

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