

POLITICAL VIOLENCE AGAINST WOMEN IN THE INTERNATIONAL AND DOMESTIC SYSTEM: THE COOPERATIVE CONSTITUTIONAL STATE ON FOCUS

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- **ABSTRACT:** The present article aims to analyze and define the crime of gender political violence in the context of the Cooperative Constitutional State approach and the radiating effect of human rights, evaluating the challenges in applying the existing normative related to gender political violence and how it can be interpreted to protect victims better. The method chosen was bibliographic and documentary content analysis and interpretation of the data to identify relevant patterns and themes. In conclusion, the hypothesis that authorities in charge of enforcing gender-political violence laws should consider human rights protection and accountability of perpetrators as key objectives was confirmed. This should happen by integrating international human rights principles into legislation to ensure that laws are consistent with international norms in a performance that assumes the importance of cooperation between state agencies and civil society in protecting these rights.
- **KEYWORDS:** Gender; political violence; human rights; cooperative constitutional state.

VIOLÊNCIA POLÍTICA DE GÊNERO NO SISTEMA INTERNACIONAL E NO ORDENAMENTO INTERNO: O ESTADO CONSTITUCIONAL COOPERATIVO SOB ENFOQUE

- **RESUMO:** O presente artigo visa a analisar e definir o crime de violência política de gênero, sob o contexto do Estado Constitucional Cooperativo e do efeito irradiador dos Direitos Humanos, avaliando os desafios na aplicação da normativa relacionada à violência política de gênero existente e como pode ser interpretada para melhor proteção das vítimas. O método escolhido foi o de análise de conteúdo bibliográfico e documental e interpretação dos dados para identificar os padrões e temas relevantes. Como conclusão, foi confirmada a hipótese de que autoridades encarregadas de aplicar as leis de violência política de gênero devem considerar a proteção dos direitos humanos e a responsabilização dos perpetradores como objetivos fundamentais, a partir, inclusive, da integração dos princípios internacionais de direitos humanos na legislação, a fim de garantir que as leis sejam consistentes com as normas internacionais, em uma atuação que assuma a importância da cooperação entre os órgãos do Estado e a sociedade civil na proteção desses direitos.



- **PALAVRAS-CHAVE:** Gênero; violência política; direitos humanos; Estado Constitucional cooperativo.

1. Introduction

Gender-based political violence has received increasing attention in recent years, both in the context of the international human rights protection system and in domestic legal systems, including Brazil's. This form of violence occurs when women are targeted for intimidation, threats, assaults, and other violent acts due to their participation in political activities or because of their political views.

Gender-based political violence can have a significant impact on women's political participation, limiting their ability to participate meaningfully, with obstacles that intimidate their participation in events or candidacy for political positions and reinforcing negative stereotypes of institutional barriers that hinder their participation in politics, such as lack of funding or limited access to political networks.

As we have already stated, this violence can be understood in Brazil as a form of discrimination, as it constitutes

[...] a distinction, exclusion, restriction or preference based on gender, to nullify or restrict the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public or private life (ABADE, 2020, p. 89)

– a concept present in article 1 of Law 12.288 (BRASIL, 2010).

Although widely recognized as a human rights violation, it continues to be a reality in many countries, including Brazil. The murders of Marielle Franco in Brazil¹ and Juana Quispe² in Bolivia, and the continued death threats to women with political representation are a sad example of this reality.

- 1 On March 14th, 2018, Marielle Franco, a city councilor in Rio de Janeiro elected in 2016 with over 40,000 votes, was executed along with her driver, Anderson Gomes. Marielle was shot at least four times in the head, and Anderson at least three times in the back. The episode represented a serious incident of violence with international repercussions. The execution of a black, bisexual, human rights defender and female parliamentarian marked the political history of Brazil and the world, bringing to the fore the importance of the debate on political violence and the targeting of human rights defenders in our country.
- 2 Juana Quispe, a Bolivian councilor, was murdered a few days before her inauguration in March 2012. She had already denounced the harassment she had been suffering and was working on the defense of a law to protect

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This text aims to analyze and define the crime of gender-based political violence from the perspective of the Cooperative Constitutional State and the radiating effect of human rights. It also assesses the challenges in applying existing norms related to gender-based political violence and how it can be interpreted for better victim protection.

Following the above objective, the study adopts a three-step approach: first, establishing the *status quo* of existing obligations and commitments; second, identifying gaps and ambiguities; and finally, reaching conclusions and recommendations.

In the Inter-American human rights protection system, gender-based political violence is considered a form of gender-based violence that occurs in the context of women's political participation, as recognized by the Inter-American Model Law, developed by the Follow-Up Mechanism to the Belém do Pará Convention (Comisión Interamericana de Mujeres, MESECVI, 2017).³

The prologue of the document “Standards of Women’s Human Rights Protection: Necessary Tools for the Defense of Their Political Participation”, by the Inter-American Commission of Women of the Organization of American States (OAS) and United Nations Women, determines that understanding that violence against women in politics occurs because they are women is fundamental, emphasizing that this violence often becomes invisible (CORES, 2020).

Gender-based political violence has also been the subject of attention in the universal human rights protection system. In this sense, United Nations General Assembly Resolution 73/148 of December 17th (ASSEMBLEIA GERAL DAS NAÇÕES UNIDAS, 2018), in its Article 13, recommends that states prevent, address, and prohibit violence against women in public and political life, adopting measures to prevent threats, harassment, and violence, and to combat impunity, ensuring that “those responsible for violations and abuses, including sexual and gender-based violence and

women from this type of violence. Her assassination triggered the creation of the Bolivian law against political gender-based violence, the first of its kind in the world.

- 3 Article 1 of the document establishes that “This law aims to prevent and eradicate violence against women in political life in order to ensure that they fully exercise their political rights and participate on a parity basis and under equal conditions in all spaces and functions of political and public life, particularly in government positions”. Article 3 defines violence against women in political life as “any action, conduct, or omission, carried out directly or through third parties, which, based on gender, causes harm or suffering to one or more women, and which aims or results in undermining or nullifying the recognition, enjoyment, or exercise of their political rights. Violence against women in political life may include, among others, physical, sexual, psychological, moral, economic, or symbolic violence.” Inter-American Commission of Women – Follow-Up Mechanism for the Belém do Pará Convention (MESECVI). Inter-American Model Law to Prevent, Punish and Eradicate Violence Against Women in Political Life. OAS. Official documents; OAS/Ser.L/II.6.1, 2017.

threats, including digital threats, are promptly brought to justice and held accountable through impartial investigations” (UN, A/RES/73/148).

In Brazil, the Federal Constitution (BRASIL, 1988) recognizes equality between men and women as a fundamental right and establishes the principle of non-discrimination. Additionally, the Maria da Penha Law – Law N^o. 11.340 (BRASIL, 2006) and the Femicide Law – Law N^o. 13.104 (BRASIL, 2015) represent significant advances in protecting women’s rights.

However, gender-based political violence is still a reality in the country. Women are underrepresented in political positions and are often targets of intimidation, harassment, and violence because of their political positions. Many challenges still need to be overcome, such as (i) difficulty in recognizing gender-based political violence or minimizing its occurrence by authorities; (ii) adequate training of actors who will deal with the issue; (iii) difficulty in obtaining evidence (especially in a context of intimidation or threats); (iv) insufficient protection of victims, who may face retaliation or new forms of violence if they report the aggression.

In light of this situation, we understand that an approach of the Cooperative Constitutional State is necessary, recognizing human rights as guiding principles that must be met in interpreting and applying laws.

Therefore, we structure this article to address the commitments assumed by the Brazilian State, among others, to ensure the preservation of women’s citizenship and participation in politics. These reflections guide us better to understand the context of democratization in the international environment.

We then move on to demarcating the concept and forms of manifestation of gender-based political violence in Brazil, including the approach of international legal mechanisms to combat this type of violence.

Next, we present some manifestations of political violence in institutionalized power spaces. Finally, we establish limits that must be observed and respected by the parliamentary immunity institute so that this institutional guarantee does not become arbitrary use of power to the detriment of the protection of women’s rights, violated in their essence as women, in these spaces that also belong to them because they are part of Brazilian society.

And so, we decided to choose to look beyond the surface, to dive into the depths of the dark waters and search for the roots of this evil that plagues politics, demanding and implementing real and lasting changes – considering that political violence against

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women is a force that silences women's voices and undermines democracy, preventing fair and equitable representation of all citizens.

2. Democracy in international law, citizenship and political participation rights

Democracy, alongside the Rule of Law and respect for and protection of human rights, constitutes a fundamental pillar for the organization of the international community, forming a link between the sovereign states that compose it since the post-war period. In fact, although the United Nations Charter (1945) does not provide an explicit definition of democracy, its preamble states that the peoples of the United Nations are "determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small," emphasizing the importance of human rights, equality, and human dignity as fundamental values that sustain democracy.

Subsequently, the Universal Declaration of Human Rights (1948) establishes in its Article 21 that "the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

The International Covenant on Civil and Political Rights (BRASIL, 1992), in its Article 25, defines that

[...] every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors,

and the American Convention on Human Rights (1969) affirms in its Article 23 that

[...] every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters,

highlighting the right to political participation of citizens and the importance of periodic, free, and fair elections as a means of exercising political power.

According to the Vienna Declaration and Programme of Action, “democracy is based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives” (Conferência Mundial sobre Direitos Humanos, 1993). There is no paradigmatic model of democracy to be applied everywhere, at all times: democratic governments can take many forms and evolve through many phases, depending on a given community’s particular characteristics and circumstances (CRAWFORD, 1994, p. 4).

For this reason, the UN Human Rights Commission recognized the “richness and diverse nature of the community of the world’s democracies”.⁴ A regime may be called “democratic” if it incorporates the principles of political equality and popular sovereignty in its institutions and mechanisms – including its electoral system (WHEATLEY, 2005, p. 128). Political equality requires that the votes of each citizen receive the same respect as those of all others. And popular sovereignty “is the idea that individual citizens confer legitimacy on a government through their implicit or actual consent”. (WHEATLEY, 2005, p. 129).

Political participation rights, expressly provided for in Article 25 of the International Covenant on Civil and Political Rights (already mentioned), include the right to stand for election and must be enjoyed without discrimination⁵.

These international norms create obligations for States: the non-compliance of an international obligation by a State makes it responsible to the international community, which has an obligation to repair the damage caused by the violation of the international norm (CARVALHO RAMOS, 2022, p. 32). This was precisely the sense adopted by the Inter-American Court of Human Rights.

In the *Castañeda Gutman v. Mexico* case,⁶ the Court emphasized that political rights are fundamental human rights within the inter-American system and are closely related to other rights enshrined in the American Convention, such as freedom of

4 UN Commission on Human Rights, Res. 57/1999, ‘Promotion of the right to democracy’, UN Doc. E/CN.4/RES/1999/57, adopted on April 28th, 1999.

5 Literally, in the text, “without any of the forms of discrimination mentioned in Article 2 and without unfounded restrictions”. According to Article 2, “The States Parties to the present Covenant undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” International Covenant on Civil and Political Rights, arts. 2 and 25.

6 Interamerican Court of Human Rights (ICHR), August 6th, 2008. Serie C N°. 1842. 140.

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expression, freedom of assembly, and freedom of association, which together make democratic play possible. The Court condemned Mexico for violating political rights, understanding that “representative democracy is crucial for the entire system of which the Convention is a part” and constitutes “a ‘principle’ reaffirmed by the American states in the OAS Charter, a fundamental instrument of the inter-American system.” The decision followed the position already adopted in the *Yatama v. Nicaragua* case⁷.

In the *Escaleras Mejía v. Honduras* case,⁸ the State itself recognized that it was responsible for violating Article 23 of the American Convention on Human Rights. The Court emphasized that this mentioned article protects not only the right to be elected but also the right to have a real opportunity to exercise the office for which one was elected. In this sense, the Court considered that, in the development of representative political participation, elected persons exercise their function as a representation of a collective, which is expressed both in the right of the individual who exercises the mandate or appointment (direct participation) and in the right of the collective to be represented.⁹

Gender-based political violence directly undermines the right to political participation since it prevents women from fully participating in political life; thus, it is crucial to ensure that all people have equal access to political participation and can engage in political activities without fear of violence or intimidation based on their identity or gender expression.

3. International human rights mechanisms to classify and combat political gender-based violence: a model of the Cooperative Constitutional State

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), (ORGANIZAÇÃO DOS ESTADOS AMERICANOS, 1994) establishes in its Article 1 that violence against women shall be understood as any act or conduct based on gender that causes death or physical, sexual, or psychological harm or suffering to women, whether in the public

7 Interamerican Court of Human Rights (ICHR), June 23rd, 2005. Serie C Nº. 127 p. 192.

8 Interamerican Court of Human Rights (ICHR), September 26th, 2018. Serie C Nº. 361.

9 ICHR September 26th, 2018. Serie C Nº. 361. Available at: https://www.corteidh.or.cr/docs/casos/articulos/resumen_361_esp.pdf. Access on: Mar. 13th, 2023.

or private sphere¹⁰. According to Article 2, this definition of violence encompasses both violence perpetrated in the family, in the domestic unit, or in any interpersonal relationship, in the community, and in the State.

Article 4(j) of the Convention expressly enshrines every woman's right to have equal access to public functions in her country and to participate in public affairs, including in decision-making. This article must be understood in conjunction with Article 5, which determines that every woman may freely and fully exercise her civil, political, economic, social, and cultural rights and will have the full protection of those rights enshrined in regional and international human rights instruments. The article also explicitly states that "the States Parties recognize that violence against women impedes and nullifies the exercise of these rights."

Within the UN framework, the Convention on the Elimination of All Forms of Discrimination against Women - CEDAW¹¹ (ASSEMBLEIA GERAL DAS NAÇÕES UNIDAS, 1979), Article 7 requires States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure, on equal terms with men, the right to vote and be elected. Article 8 also contains the obligation to take the necessary measures to ensure, on equal terms, the opportunity to represent their government on the international plane and to participate in international organizations. Recommendation 23 of the CEDAW Committee refers to the concepts of "public and political life", stating that the public life of a country is a broad concept referring to the exercise of political power - in particular, to the exercise of legislative, judicial, executive, and administrative powers. The term thus encompasses all aspects of public administration and the formulation and implementation of policies at the international, national, regional, and local levels; and also encompasses many aspects of civil society and activities of organizations, such as political parties, unions, professional or industrial associations, women's organizations, community organizations, and other organizations concerned with public and political life.

Finally, the Inter-American Model Law to Prevent, Punish, and Eradicate Violence against Women in Political Life defines in Article 3 that violence against women in political life is

¹⁰ Internalized in Brazil by Decree 1973, August 1st, 1996.

¹¹ Internalized in Brazil by Decree 4377, September 13th, 2002.

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Any action, conduct, or omission, carried out directly or through third parties, which, based on gender, causes harm or suffering to a woman or women and has the purpose or effect of impairing or nullifying the recognition, enjoyment, or exercise of their political rights. Violence against women in political life may include, but is not limited to, physical, sexual, psychological, moral, economic, and political violence, psychological, moral, economic, or symbolic violence.¹²

Lena Krook and Juliana Restrepo Sanín state that in addition to this form of political violence occurring when women are targeted with physical, psychological, or sexual violence as a way to coerce them to leave politics or limit their participation in this space, it constitutes a way to maintain male domination in politics, reinforcing gender stereotypes and perpetuating power inequalities between men and women. For the authors, this form of violence, beyond being a criminal issue, proves to be a serious challenge to democracy, human rights, and gender equality (KROOK; SANÍN, 2016).

Salete da Silva adopts the concept of symbolic political violence – which, according to the author, occurs through symbolic representations that disqualify women’s political participation, reinforcing discriminatory gender roles and stereotypes: a violence that is often subtle and invisible but can have significant impacts on women’s political participation and the construction of their political identity (DA SILVA, 2022).

Therefore, the underrepresentation of women in the political sphere reflects women’s discrimination and violence in political life. The topic was addressed in the Sixth Conference of States Parties to the Belém do Pará Convention, under the Belém do Pará Convention Follow-Up Mechanism (MESECVI), in 2015, and was reflected in the Declaration on Political Violence and Harassment against Women, which is the first comprehensive regional agreement on violence against women in political life.¹³

The document recognizes that while there has been an increase in the implementation of gender quotas and parity in the region’s countries, which has led to an increase in women’s political participation in representative positions, this phenomenon has intensified forms of discrimination and violence against women.

12 Comisión Interamericana de Mujeres. Mecanismo de Seguimiento de la Convención de Belém do Pará (MESECVI). Ley Modelo Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra las Mujeres en la Vida Política – [Preparado por el Comité de Expertas del Mecanismo de Seguimiento de la Convención de Belém do Pará (MESECVI). Comisión Interamericana de Mujeres]. OAS – Documentos oficiales: OEA/Ser.L/II.6.17, art. 3.

13 MESECVI. Declaración sobre la violencia y el acoso políticos contra las mujeres – Lima, 15 de octubre de 2015. Available at: <https://www.oas.org/es/mesecvi/docs/declaracion-esp.pdf>. Access on: Mar. 14th, 2023.

The Declaration states that tolerance for violence against women in society makes violence against women in political life invisible, making it difficult to develop and implement policies to eradicate it.

Political violence can manifest itself in explicit acts such as preventing a woman from voting, the use of sexual violence against women candidates in elections, the burning of women's campaign materials, violent messages, and threats that many women in public office receive through social media – which often also affect their families – as well as in acts such as continuous trials against women in the media and pressures to resign from office, in the aforementioned symbolic violence that, based on prejudices and stereotypes, undermines the image of women as effective political leaders. These manifestations are some of the ways political violence against women can appear and are listed, among others, in Article 6 of the inter-American model law.

Recognizing that violence against women in political life is a serious violation of women's rights, the Inter-American Commission of Women and the Follow-Up Mechanism to the Belém do Pará Convention (MESECVI) developed the Inter-American Model Law mentioned above to Prevent, Punish, and Eradicate Violence against Women in Political Life¹⁴. The document highlights the urgency of States adopting all necessary measures to eradicate political violence against women as an essential condition for democracy and governability.

It is important to highlight the provisions in Section III of the inter-American model law directed at the Public Agencies of States: Article 17 states that it is the responsibility of the respective Public Ministries and the courts of each country, as determined by law, to guarantee and protect the rights of women victims of violence in political life and to act in constitutional, civil, administrative, and criminal actions in cases provided for in this law. Furthermore, it establishes that human rights defense agencies may file any constitutional, civil, or administrative actions necessary in cases of violation of the model law and the rights enshrined therein, with the aim of guaranteeing and protecting the human rights of women victims of violence in political life (Article 18).

14 Comisión Interamericana de Mujeres. Mecanismo de Seguimiento de la Convención de Belém do Pará (MESECVI). Ley Modelo Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra las Mujeres en la Vida Política – [Preparado por el Comité de Expertas del Mecanismo de Seguimiento de la Convención de Belém do Pará (MESECVI). Comisión Interamericana de Mujeres]. OAS – Documentos oficiales: OEA/Ser.L/II.6.17.

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The document also addresses the “body responsible for budget policy” (Article 19), requesting an economic assessment of the law to be included in the General Budget. It recommends that the bodies responsible for educational policy include the principle of equality and women’s rights in early childhood, primary, and university education programs (Article 20).

The document also includes a mandate for criminalization, in Article 43, which requires the criminalization of actions that: (a) cause the violent death of women because of their participation or political activity (femicide); (b) physically assault one or more women with the purpose or effect of prejudicing or annulling their political rights; (c) sexually assault one or more women with the purpose or effect of prejudicing or annulling their political rights; (d) make unwanted sexual proposals, touches, approaches, or invitations that influence a woman’s political aspirations and/or the conditions or environment in which women engage in their political and public activities; (e) threaten, scare, or intimidate one or more women and/or their families, with the purpose or result of annulling their political rights, including resigning from the position or function they hold or for which they are running; (f) restrict or annul women’s right to vote freely and secretly; and (g) defame, slander, insult, or express any other degrading comments about women in the exercise of their political functions, based on gender stereotypes, with the objective or result of harming their public image and/or limiting or annulling their political rights.

Following André de Carvalho Ramos, when we talk about protecting human rights, State accountability is essential to reaffirm the legality of the set of norms aimed at protecting individuals and affirming human dignity (CARVALHO RAMOS, 2022, p. 32). In fact, the international obligations that arise from the State’s adherence to international instruments for the protection of human rights only have real content if there is an effective mechanism of accountability for violations.

Thus, the international texts that we have discussed above, which seek to address the violation of women’s rights through political violence, are particularly relevant because they are accompanied by mechanisms that avoid the merely programmatic character of these international norms (CARVALHO RAMOS, 2022). After all, internal law generally reproduces the international list of protected human rights. Thus, institutional mechanisms for determining State international responsibility (whether recommendation or decision-making mechanisms) are also essential for deepening the international defense of women’s rights.

In this context, collective mechanisms contribute to the fight against gender political violence through the accountability of States that violate their obligations to protect women's political rights – and also through political pressure, awareness-raising, and sensitization of society as a whole. States can be held accountable for human rights violations related to gender political violence through condemnatory decisions, with sanctions and reparatory measures that have a preventive character for future violations, with a strong message that gender political violence will not be tolerated. But not only that. By making their decisions and recommendations public, collective mechanisms can help raise awareness and sensitize public opinion about gender-political violence. In addition, the publication of reports, recommendations, and texts such as the aforementioned model law is also a way to pressure governments to adopt measures to address gender political violence, as they recommend legislative changes, strengthening of the criminal justice system, training of professionals, among other actions aimed at preventing and combating gender political violence.

Thus, we see that international human rights texts and their mechanisms require States to criminalize certain conduct that violates women's rights, which they protect. All of this is part of what Carvalho Ramos conceptualizes as a new paradigm of the relationship between criminal law and the protection of human rights, in which international human rights law, while advocating proportionality, strict legality, prior punishment, and safeguards for the accused, orders States to criminalize and punish perpetrators of human rights violations, especially concerning the restoration of the dignity of the victim of human rights violations – who, in the new paradigm, has the right to demand that the State criminalize the conduct, investigate, and punish those responsible for human rights violations (CARVALHO RAMOS, 2006).

Following the trend of countries in the Inter-American region, Brazil has voluntarily complied with some of the mandates for criminalization to respect its international commitments and promote international cooperation in addressing violence against women.

In the model of the Cooperative Constitutional State, in fulfilling international commitments, it is necessary to ensure that the laws criminalizing conduct that violates women's political rights and policies related to political violence against women are in line with international human rights standards, with the participation of different actors and instances that guarantee the effectiveness of these rights.

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4. Measures to Combat Gender-Based Political Violence in Brazil: An Initial Construction

“Violence, set apart from power, is mute; violence begins where speech ends.” Hannah Arendt’s famous quote¹⁵ correlates violence and politics. In this context, there is an equivalence between political action and discourse, and violence is the opposite of political action.

Contemporary democratic systems, however, have failed to curb structural, normalized, and camouflaged political violence, which has a permanent presence in social relations. While structural, with beneficiaries who are not necessarily identifiable perpetrators (MIGUEL, 2016). The perpetuation of violence is a way to silence and block transformational achievements that groups that do not typically occupy positions of power attempt to impose. This is precisely the phenomenon of gender-based political violence.

A study by the IPU (Inter-Parliamentary Union) and the PACE (Parliamentary Assembly of the Council of Europe) on sexism, harassment, and violence against women in parliaments in 39 countries across five regions and 42 parliaments concluded that 81.8% of women suffered psychological violence; 46.7% feared for their safety and that of their families; 44.4% received death, rape, beating, or kidnapping threats; and 25.5% suffered physical violence¹⁶.

In Brazil, the data is also alarming. The Alzirias Institute produced in 2018 the report “Profile of Mayors in Brazil”, which presented data on the female mayors elected in 2016. According to the report, the lack of campaign resources and support from the party or allied base, together with harassment and violence in the political space and the lack of visibility in the media, compared to male politicians, are the main barriers that prevent access and permanence of women in politics, especially for female mayors. Additionally, more than half of the elected women (53%) reported having suffered harassment or political violence simply for being women¹⁷.

15 ARENDT, H. *A dignidade da politica*. 3. ed. Tradução Helena Martins, Frida Coelho, Antonio Abranches, César Almeida, Claudia Drucker e Fernando Rodrigues. Rio de Janeiro: Relume Dumará, 2002, p. 41.

16 INTER-PARLIAMENTARY UNION (IPU) AND PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (PACE), 2016. Available at: [http://C:/Users/Usuario/Downloads/en_2018-issues_brief_web%20\(1\).pdf](http://C:/Users/Usuario/Downloads/en_2018-issues_brief_web%20(1).pdf). Access on: Mar. 14th, 2023.

17 INSTITUTO ALZIRAS. Mulheres no poder. Available at: <http://alziras.org.br/projetos#PrefeitasBrasileiras>. Access on: Mar. 15th, 2023.

As observed by Matos, Brazilian politics is marked by violence. However, for women in general – especially those from peripheral, non-white areas who criticize inequalities, challenge traditional standards, and engage in the struggle for social justice – political violence motivated by gender is a constant and impactful reality (MATOS, 2020). Recent cases involving death threats and/or other types of violence against Manuela D'Ávila, Eliana de Jesus, Isa Penna, Benny Briolly, Duda Salabert, Carolina Iara, and Erika Hilton are just a few examples.

It should be noted that women also suffer political violence within their own parties. Not only political opponents but also colleagues within the same party structure often act to limit women's access to internal positions of power and organization. Marielle Franco's homicide, in this context, should have been seen as a commitment by Brazilian authorities to our democratic State, a milestone for Brazilian justice in defending human rights, and a symbol of significant transformation. However, that has not yet happened.

Following the international trend and meeting the mandates of criminalization in international texts, on August 4th, 2021, Brazil promulgated Law N°. 14,192 (BRASIL, 2021), which establishes norms to prevent, repress, and combat political violence against women and provides for the crimes of disseminating false facts or videos during the election campaign period, to criminalize political violence against women, and to ensure women's participation in electoral debates proportionally to the number of female candidates in proportional elections.

Under the law, political violence against women is considered any action, conduct, or omission aimed at impeding, obstructing, or restricting women's political rights. Any distinction, exclusion, or restriction in the recognition, enjoyment, or exercise of their fundamental political rights and freedoms, based on gender, is equally an act of political violence.

The regulations to prevent, repress, and combat gender-based political violence in spaces and activities related to the exercise of women's political rights and public functions, as well as to ensure women's participation in electoral debates and the disposition on the dissemination of false information during the electoral campaign, are established in Law N°. 14,192 (BRASIL, 2021), which also guarantees women's political participation rights, with discrimination and unequal treatment based on sex or race being prohibited in accessing political representation and exercising public functions.

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The competent authorities shall prioritize the immediate exercise of violated rights, giving special importance to the victim's statements and circumstantial evidence.

This law introduces important changes to the Electoral Code - Law N^o. 4,737 (BRASIL, 1965), the Political Parties Law - Law N^o. 9,096 (BRASIL, 1995), and the Electoral Law - Law N^o. 9,504 (BRASIL, 1997) regarding the fight against gender-based political violence, with the criminalization of electoral crimes committed due to this practice.

The first modification concerns propaganda that will not be tolerated if it denigrates women's condition or stimulates their discrimination based on their female sex or their color, race, or ethnicity (BRASIL. Law N^o. 4,737, 1965, Article 243, X).

In addition, the propaganda must be immediately withdrawn from the communication medium where it is being disseminated under penalty of aggravated conduct. Women who feel offended by slander, defamation, or insult may, without prejudice and independently of the competent criminal action, demand in the civil court the compensation for moral damages, with the offender being responsible and jointly liable with their political party, if responsible for action or omission, and whoever benefited from the crime and contributed to it in any way. Moreover, the right to reply through the press, radio, television, or loudspeaker is guaranteed proportionally to the suffered harm.

The second modification introduced by Law N^o. 14,192/21 was the aggravation of the penalty from 1/3 up to half, in case of divulging, in the electoral campaign propaganda or during the election campaign period, facts that the perpetrator knows to be untrue regarding political parties or candidates and that can influence the electorate, involving contempt or discrimination against women's condition or their color, race, or ethnicity - Law N^o. 4,737, Article 323, §2o, II (BRASIL, 1965).

Article 326-B, EC, criminalizes the act of harassing, with the penalty of imprisonment from 1 (one) to 4 (four) years and a fine, to constrain, humiliate, persecute, or threaten, by any means, a candidate for elective office or holder of an elective mandate, using contempt or discrimination against women's condition or their color, race, or ethnicity, to hinder or impede their electoral campaign or the performance of their elective mandate. The penalty is increased by 1/3 (one-third) if the crime is committed against a pregnant woman, a person over sixty years old, or with a disability.

The crimes of slander, insult, and defamation in electoral propaganda will have the penalty of detention plus the payment of a fine increased by 1/3 up to half when

committed, in accordance with Article 327, IV, EC, with contempt or discrimination against women's condition or their color, race, or ethnicity.

Regarding the Law of Political Parties, Law N^o. 14,192/21 included the provision in item X, Article 15, which provides that the party statute must contain rules for the prevention, repression, and combat of political violence against women, and also establishes a period of 120 days for statutory adaptation, a deadline that has already expired considering the date of publication of the law on August 4th, 2021.

The Electoral Law, also affected by the amendment introduced by Law N^o. 14,192/21, received new wording in Article 46, II, which establishes that in proportional elections, debates must be organized in a way that ensures the presence of an equivalent number of candidates from all parties for the same elective position and may be spread out over more than one day, respecting the proportion of men and women.

Not only was electoral legislation amended to absorb political violence as conduct to be repressed, even in eventual propaganda content or as an electoral crime, or even in situations of aggravation of penalties for already established typifications; the criminal law itself emphasizes the need to combat violence against women. Through Law N^o. 14,197 (BRASIL, 2021), it adds Title XII in the special part of the Penal Code, relating to crimes against the Democratic Rule of Law, and more precisely in Chapter III, typifying political violence in Article 359-P as a measure that restricts, hinders or makes it difficult, through the use of physical, sexual, or psychological violence, the exercise of political rights by any person due to their sex, race, color, ethnicity, religion or national origin, and establishes a penalty of imprisonment for three to six years, and a fine, in addition to the corresponding penalty for the violence.

In addition to the movement within the legislative sphere, from the perspective of judicial action, the National Council of Justice¹⁸, through the Working Group established by CNJ Ordinance N^o. 27, of February 2nd, 2021, developed the protocol for gender perspective judgment, establishing, among other good practices, that when analyzing compliance with the minimum quota by sex in candidate registrations, through the DRAP (Demonstrative of Party Acts Regularity), the electoral judge should adopt an active and sensitive attitude towards reality to eliminate subterfuges, such as fictitious candidacies, with the determination, to the political parties, to exhibit the

18 Available at: <https://www.cnj.jus.br/wp-content/uploads/2021/10/protocolo-18-10-2021-final.pdf>. Access on: Mar. 17th, 2023.

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candidate registration form to verify the veracity of the information. Moreover, if the authorization is found to be lacking, it becomes necessary to disregard the quantity in the calculation, and if the remaining number does not reach the legal minimum, the denial of the registration request of the entire party is an appropriate measure.

The provision of reserved seats for proportional candidacy contests was extended to the composition of executive committees and national, State, and municipal directories of political parties. Hence the indispensability of the assistance of Electoral Judicial Schools in complying with the determination, as they are responsible for training judges, servers, and party leaders as replicators of feminist education for critical consciousness.

The protocol also recommends ensuring or regulating the launching of candidacies and effective participation in the electoral process is necessary, legitimate, and urgent, including those of transgender individuals, counted in gender quotas based on self-declaration. In case of fraud, an immediate response from the institution responsible for ensuring the effectiveness of legal norms, the Electoral Justice, is essential.

Regarding the distribution of free electoral advertising time, the Superior Electoral Court, recognizing the prevalence of the principle of human dignity and gender equality (Articles 1, III, and 5, *caput*, respectively, both of the Federal Constitution), and the asymmetry in the occupation of seats due to gender, imposed a minimum percentage in the distribution of free electoral advertising time (Consultation Nº. 0600252-18/DF), adopting the same ratio decidendi of the Supreme Federal Court in Direct Action of Unconstitutionality (ADI) 5617, that is, the advertising time should correspond proportionally to the percentage of registered candidates based on gender, starting from a minimum of 30%.

The protocol recognized that programs for the creation or maintenance of female political participation are essential for the adequate equal, plural, and multiracial insertion of women in spaces of power and decision-making, highlighting the importance of the monitoring and encouragement by the Electoral Justice, effectively enforced by the application of sanctions, including the suspension of party funding transfers for non-compliance with the legal minimum, to be verified in the annual accountability report of the political party. Eliminating practices that hinder female insertion in the democratic environment is also a priority, as they imply political violence against women, making the use of affirmative policies essential for this purpose, a conclusion reached in light of the new compositions of neighboring countries' parliaments, which pioneered the reservation of seats in legislative assemblies.

It is necessary to recognize the importance of awareness-raising measures promoting access to education regarding political violence against women, such as the elaboration of a booklet by the Federal Public Prosecutor's Office¹⁹ in conjunction with several other entities, such as the Observatory of Political Violence Against Women, and bodies of the Judiciary, Legislative, and Executive, aiming not only to repress but also to prevent this violence, often repeated and institutionalized, from perpetuating itself in spaces of power.

5. Parliamentary immunity and gender political violence: limits and prohibitions

The legislative function, one of the three exercised by the State, encompasses predominance attributes related to the oversight activity (BRASIL. CRFB, 1988, Article 49, X, for example) and lawmaking (BRASIL. CRFB, 1988, Article 59 and following), among others, of an atypical or non-predominant nature, concerning its judging competence, such as in cases where the Chamber of Deputies authorizes, by two-thirds of its members, the institution of proceedings against the President and the Vice-President of the Republic (BRASIL. CRFB, 1988, Article 51, I), and the Federal Senate processes and judges them in cases of wrongdoing (BRASIL. CRFB, 1988, Article 52, I); or even when performing administrative activities.

These and other attributes of the Legislature are the responsibility of the elected representatives, directly elected by the people, in a manifestation of popular sovereignty, characterizing the representativeness of indirect democracy, one of the foundations of the Brazilian Social Democratic Rule of Law, whose foundations and limits are constitutionally defined and, therefore, must be respected, whether because the Federal Constitution is the norm that legitimizes socially, legally, and politically such a manifestation of power, or because the principle of the separation of powers or the functions of the State, and the system of "checks and balances", another axiom that subsidizes the formation of the Brazilian State, constituted from the promulgation of the Federal Constitution, on October 5th, 1988, establishes parameters that must be followed for the effectiveness of balance and independence among the three powers. Parliamentary immunity represents one of these parameters.

19 Available at: <https://www.mpf.mp.br/pgtr/documentos/Cartillabras11compactado.pdf>. Access on: Mar. 17th, 2023.

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Stipulated in the constitutional normative text from Article 53, parliamentary immunity, as a guarantee for the free exercise of legislative competencies, is not a prerogative of subjective ownership, a right or even a privilege of each popular representative; at least, that was not the reason for its provision, so much so that they are inalienable.

Parliamentary immunity presents as an institutional guarantee and is designed to protect freedom and non-subjection to authoritarian and exogenous pressures beyond the popular will.

This immunity manifests itself from different perspectives – material or formal – and its beginning is marked by the diploma, or inauguration, in the case of material immunity of the popularly elected representative.

On the occasion of the reflections brought in this essay, it is incumbent upon us to point out some biases that accompany it regarding material immunity from the perspective of gender-based political violence.

Article 53 (BRASIL, CRFB, 1988) states that deputies and senators are inviolable, civilly and criminally, for any of their opinions, words, and votes. Although the constituent did not demarcate the initial period of validity of this immunity, it is evident, from the drafting of the normative text, that it is the inauguration that marks this moment, and therefore from when words, opinions, and votes will be issued due to activity in the legislative chamber.

Thus, if the premise of parliamentary immunity is to guarantee the exercise of the legislative function, therefore, from the material perspective, this institutional guarantee will begin with the start of legislative activities, marked by the inauguration.

Of all the manifestations of parliamentary immunity, the material one is the only one that accompanies the Legislature in all federative units, hence its demarcation in this article. Therefore, councilors, according to Article 29, VIII (BRASIL, CRFB, 1988), are also inviolable for their opinions, words, and votes in the exercise of their mandate and within the scope of the Municipality, a matter that had general repercussion recognized and merit judged by the Supreme Court, in these terms:

[...] within the limits of the Municipality's circumscription and if pertinent to the exercise of the mandate, councilors are immune judicially for their words, opinions, and votes (RE 600,063, vote from Justice Roberto Barroso's ac., j. 25-2-2015, P, DJE of 15-5-2015, Theme 469).

A second interesting aspect of the scope of this article refers to the horizontal reach of material immunity, which is not absolute because it is limited by the Federal Constitution that establishes it.

Regardless of where the parliamentarian is, they will be immune, from a material perspective, as long as they are exercising activities during and due to their mandate; this is because the legislative function comprises actions that are carried out beyond the limits of the parliamentary chamber, on visits to the political base, often carried out during weekends when they are in their cities.

However, unlike the understanding already outlined by the Brazilian Federal Supreme Court²⁰, parliamentary immunity, even when operating within the legislative house, is not absolute; the parliamentary function itself, which justifies immunity, must comply with the constitutional parameters, principles, and norms established by the constitutional reformer, and wherever parliamentary immunity is applied, even beyond the parliament, such limits must be observed, considering that popular representation requires the preservation of the values of freedom, security, well-being, development, equality, and justice as supreme bases of a fraternal²¹, pluralistic, and prejudice-free society, as presented in the preamble to the constitutional text.

20 The constitutional guarantee of parliamentary immunity in a material sense (CF, art. 29, VIII, in conjunction with art. 53, caput) excludes civil (and also criminal) liability of members of the Legislative Branch (councilors, deputies, and senators), for damages, eventually resulting from oral or written statements, as long as they are motivated by the performance of their mandate (practice in officio) or expressed in relation to it (practice propter officium). In the case of councilors, the constitutional inviolability that protects them in the exercise of their legislative activity extends to opinions, words, and votes uttered by them, even outside the premises of the municipal chamber, as long as within the strict territorial limits of the Municipality to which they are functionally linked. (...) EC 35/2001, by giving new wording to the caput of article 53 of the Constitution of the Republic, enshrined a guideline that had already been recognized by the STF, and it established the exclusion of civil liability of members of the Legislative Branch as a consequence of the guarantee based on material parliamentary immunity, provided certain legitimizing assumptions for the incidence of this exceptional legal prerogative are satisfied. This political-legal prerogative, which protects the parliamentarian (such as councilors, for example) regarding civil liability, assumes that there is a necessary reciprocal implication between morally offensive statements on the one hand and the practice inherent to the legislative office on the other so that it can be invoked, except if the contumelious statements were made within the legislative house, notably from the parliamentary tribune, in which case constitutional inviolability is absolute. (...) If the member of the Legislative Branch, despite being protected by parliamentary immunity in a material sense, abuses this constitutional prerogative, they will be subject to the censorial jurisdiction of the legislative house to which they belong (CF, art. 55, § 1st). [AI 631.276, Justice Celso de Mello, j. 1-2-2011, DJE de 15-2-2011.] = Inq 3.215, Justice Dias Toffoli, j. 4-4-2013, P, DJE de 25-9-2013 (*emphasis added*).

21 Federal Deputy. Crime against honor. Nexus of implication between statements and the exercise of mandate. Material parliamentary immunity. Scope. Art. 53, caput, of the CF. (...) The verbalization of parliamentary representation does not include personal offenses through ridicule or licentiousness of speech. However, Placita is a model of non-protocol expression, or even blunt, in manifestations often sharp, jocular, caustic, or even merciless, in which forceful language, even if deplorable at the level of mutual respect aspired in a civilized society, surrounds the speaker's point of view. [Pet 5.714 AgR, Justice Rosa Weber, j. 28-11-2017, 1st T, DJE de 13-12-2017].

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In the understanding expressed in Inquiry N^o. 3,932 (and Pet. N^o. 5,243)²², under the rapporteurship of Justice Luiz Fux, it was established that an interview granted to a press vehicle does not attract parliamentary immunity because, in this case, by stating that he would not rape a federal deputy because she “does not deserve it”, he gives this heinous crime the character of a prize or benefit to the woman, reinforcing a relationship of subordination of women to men, even in this political space, by pretending that he, the man, could evaluate the worthiness of a woman to be raped.

Therefore, such statements, absolutely unrelated to the exercise of legislative mandate and even to any decent social interaction, which should be imbued with a minimum degree of civility, even if the interview was granted within the parliamentary chamber, do not attenuate the gravity of the act, nor does it bring closer the incidence of parliamentary immunity, since it could not even have been invoked as a factor of protection of a subjective and unlawful interest, thus violating the premises of the guarantee's.

The fact that the parliamentarian was in their office at the time they gave the interview is a purely accidental fact since it was not there that the insults became public, but rather through the press and the internet; (i) Parliamentary immunity applies when the words have been spoken from the Chamber of Deputies: “In this case, it is unnecessary to inquire into the relevance between the content of the allegedly contemptuous statements and the exercise of the parliamentary mandate” (Inq 3.814, First Panel, rapporteur Justice Rosa Weber, unanimous, j. 7-10-2014, DJE of 21-10-2014). (ii) Acts performed in a different location escape the protection of immunity when the statements do not have relevance, through a causal connection, to the performance of the functions of the parliamentary mandate. (...) Given the above, in light of the requirements of Article 41 of the Code of Civil Procedure, I accept the complaint for the alleged commission of incitement to crime; and partially accept the criminal complaint, only as to the offense of slander. I reject the criminal complaint as to the accusation of the crime of defamation (Inquiry N^o. 3,932 (and Petition N^o. 5,243), reported by Justice Luiz Fux, j. 21-6-2016, 1st Panel, DJE of 9-9-2016).

22 Inquérito n^o 3.932 (e Pet. N^o 5.243), Justice Luiz Fux, j. 6-21-2016, 1^a T, DJE de 9-9-2016.] Vide Inq 1.958, red. do ac. min. Ayres Britto, j. 10-29-2003, P, DJ de 2-18-2005.



It should be noted that parliamentary immunity cannot be used as a protective shield against arbitrariness and violations of rights, especially since there is a political responsibility that must be borne by those who are willing to occupy positions of power and decision-making as popular representatives; furthermore, there is no obligation imposed by national or supranational legislation regarding the exercise of this manifestation that is expressed through passive electoral capacity. In other words, those who run for elective office must respect the rules of the democratic game, have political responsibility, and be familiar with constitutional terms and the limits imposed throughout this democratic journey.

Unfortunately, the Brazilian reality situates us in an even more unusual scenario when the debate about parliamentary immunity permeates gender-based political violence. Understanding politics means understanding how, through the manifestation of power, a social status quo can be (re)thought to satisfy social needs and public demands in the best way to minimize the abysmal (dis)equalities that plague us from various perspectives. Therefore, politics happens all the time, and violence accompanies it in institutionalized or non-institutionalized spaces

In this sense, one of the main issues related to the gender debate, even from a binary perspective of society, consists precisely in the relationship of oppression of men towards women: the use of power not as an aggregating element but of control, submission, and oppression.

In other words, the man framed the situation as one in which his chosen victim had no rights and liberties while he had the right to control and punish her. This should remind us that violence is, first of all, authoritarian. It begins with this premise: I have the right to control you (SOLNIT, 2015, p. 26).

Bringing this perspective to the debate about parliamentary immunity is necessary from two perspectives: because women, also popular representatives, are victims of political violence, often; and also when the parliamentarian, taking advantage of what he supposes as the absolute character of parliamentary immunity, usurps the trust that was deposited in him by the people and irresponsibly, not only from a political perspective but also civil and criminal, commits gender violence against women, even when they are not in that space.

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Women's occupation of parliamentary houses, and other spheres of power, is the result of many struggles. In a society historically structured by the hierarchy of its people based on factors that imply exclusion, including political, it is a constant breaking of barriers to entry into spaces not thought for and by marginalized subjects, as in the case of women in relation to politics.

In the 21st century, and just seven years away from the fulfillment of the global agenda defined by the UN in 2015 for the achievement of the 17 Sustainable Development Goals (SDGs), gender equality (SDG 5) is still a distant reality for us, and we will probably have made little progress by 2030.

Data from the Superior Electoral Court²³ show that of the 27 governors elected in the last general elections held in 2022 - 26 states and 1 Federal District -, only two states chose women: Rio Grande do Norte and Pernambuco. The scenario does not show improvements in the Chamber of Deputies, which of the total of 513, in 2022, only 91 women were elected to exercise the Legislature that began in 2023, representing around only 18% of the total representatives.

Therefore, when women manage to enter these spaces, they are seen by many as intruders because, supposedly, they do not belong in such roles that, in a society thought under the gaze of patriarchy, must always be defined and exercised by men. Furthermore, when we present the different intersectionalities that cross the gender debate, considering the non-existence of a universal and unique woman, but rather of women, we identify that, despite being equally entitled to the same constitutional rights, they face different obstacles, more or less burdensome, to exercise what the constitutional order guarantees them, depending on where they are situated on this scale of vulnerabilities that mark the existence and construction of their being as a woman:

The material existence conditions of this black population refer to psychological constraints that must be attacked and unmasked. The different modes of domination of the different phases of economic production in Brazil seem to coincide in the same point: the reinterpretation of Aristotle's theory of natural place. From colonial times to the present, we can see an evident separation regarding the physical space occupied by dominators and dominated. The natural place of the dominant white group is spacious dwellings located in the most beautiful corners of the city or countryside and duly protected by different types of policing: from the old overseers, captains of the bush, henchmen, to the formally constituted police. The criterion

²³ Available at: www.tse.jus.br. Access on: Mar. 17th, 2023.



has always been the same, from the big house and the mansion to the beautiful buildings and current residences. The natural place of the black person is obviously the opposite. From the slave quarters to the favelas, tenements, basements, invasions, flooded areas, and “housing” complexes (whose models are the ghettos of developed countries) of today, the criterion has also been symmetrically the same: the racial division of space. In the case of the dominated group, what is observed is entire families crammed into cubicles, whose hygiene and health conditions are the most precarious (GONZALEZ; HASENBALG, 2018).

Of the 91 women elected in 2022, only 29 are Black²⁴. In a mixed society like Brazil, this number is far from the representativeness that a pluralistic and diverse democracy requires. Moreover, it reveals a lot about who we are as a prejudiced society and the difficulties faced by different segments to exercise rights recognized as fundamental in a citizen’s letter, so that self-determination as an individual and autonomy of their being can be freely exercised.

Undeniable, it seems to us the need to reaffirm a collective commitment – and more than that: to comply with constitutional dictates! – about the effectiveness of limits to the parliamentarian’s performance, in the exercise of a public function that calls for respect and punishment for the violation of more basic rights, such as gender equality and essential values to the Brazilian democratic State of law, such as citizenship and human dignity, inscribed in Article 1 (BRASIL. CRFB, 1988).

Therefore, in the civil sphere, the responsibility for compensating for moral and possibly patrimonial damages of the representative who commits gender violence is unequivocal.

As is also the case in the criminal sphere, with the support of Law N^o. 14,192/21, which establishes rules to prevent, repress and combat political violence against women, and following article 359-P of the Penal Code, which typifies political violence as a crime, with imprisonment for three to six years, and a fine, in addition to the penalty corresponding to the violence, restrict, prevent or hinder, using physical, sexual or psychological violence, the exercise of political rights of any person because of their sex, race, color, ethnicity, religion, or national origin; this, without observing other typifications of possible crimes against honor, such as slander, insult, defamation, depending on the specific case.

24 Available at: <https://www.tse.jus.br>. Access on: Mar. 17th, 2023.

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And, unequivocally, political responsibility applies, under the norm contained in Article 55 of the Federal Constitution, which determines the loss of parliamentary mandate in the situations provided for in its paragraphs, whose incidence applies to cases of political gender violence, in another constitutional hypothesis, depending on the delineation of the factual situation.

Moreover, as such, civil, criminal, and political inviolability must be set aside in the face of aggression committed by those who should serve the people and be defenders of the social good, fraternity, and justice, as supreme values of the constitutional order that legitimizes the occupation of public and decision-making spaces of power.

6. Conclusion: where are we and where are we headed?

In conclusion, gender-based political violence is a form of discrimination that affects women in their participation in political life, both in the international system and in domestic law, perpetuating a system of hierarchy based on gender in a structure of oppression. This violence can take various forms, such as harassment, intimidation, threats, and physical violence, among others.

Gender-based political violence can be characterized as an electoral crime, as it prevents or hinders women from exercising their right to vote or limiting their participation in political campaigns. This type of violence harms democracy and women's political representation, as they are often excluded from political processes and decision-making.

Protecting human rights is directly linked to the criminalization of gender-based political violence. Gender-based political violence is a violation of women's human rights, including the right to political participation and the right to equality and non-discrimination. Therefore, this form of violence must be criminalized and punished in accordance with the law.

Criminalizing gender-based political violence is important not only to hold perpetrators accountable but also to send a clear message that this behavior is unacceptable and will not be tolerated. The lack of punishment can create a culture of impunity that encourages the continuation of gender-based political violence.

Criminalizing gender-based political violence can serve as a preventive measure, deterring perpetrators and encouraging women to report such violations. Effective



protection of women's human rights requires a comprehensive and integrated approach that includes legal, policy, and social measures.

To address gender-based political violence in the international system and domestic law, it is necessary to strengthen the implementation of laws and norms that protect women and promote awareness-raising and capacity-building campaigns to combat this form of violence. In addition, it is crucial to create monitoring and oversight mechanisms to ensure that legislation is complied with and that victims of gender-based political violence receive the necessary assistance.

Brazil still has a long way to go in tackling gender-based political violence. According to reports and data from civil society organizations, gender-based political violence is a reality in the country, with cases of threats, aggression, and defamation against women in political positions and electoral campaigns.

Although Brazil is a signatory to several international conventions and treaties on human rights that guarantee the protection of women's rights, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), the country still faces challenges in implementing these norms and ensuring women's rights.

To protect women's human rights and address gender-based political violence, Brazil needs to strengthen its cooperative constitutional state approach, which involves cooperation among the executive, legislative, and judiciary to ensure the implementation of international human rights norms. This includes creating public policies and programs that promote gender equality, combat gender-based political violence, and ensure adequate punishment for perpetrators of such violations. Additionally, it is important to create monitoring and oversight mechanisms to ensure that international human rights norms are respected and implemented in Brazil.

REFERENCES

ABADE, D. N. "Brazilian Sexual Harassment Law, the MeToo Movement, and the Challenge of Pushing the Future Away from the Past of Race, Class, and Social Exclusion". In: NOEL, A.; OPPENHEIMER, D. (ed.) *The Global #MeToo Movement*. New Jersey: Full Court Press, 2020. p. 85-100.

ARENDT, H. *A dignidade da política*. 3. ed. Tradução Helena Martins, Frida Coelho, Antonio Abranches, César Almeida, Claudia Drucker e Fernando Rodrigues. Rio de Janeiro: Relume Dumará, 2002.



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ASSEMBLEIA GERAL DAS NAÇÕES UNIDAS. Convenção sobre a Eliminação de Todas as Formas de Discriminação contra as Mulheres, 1979.

ASSEMBLEIA GERAL DAS NAÇÕES UNIDAS. Declaração Universal dos Direitos Humanos (217 [III] A). Paris, 1948.

ASSEMBLEIA GERAL DAS NAÇÕES UNIDAS. Resolução n. 73/148, de 17 de dezembro, 2018.

BRASIL. [Constituição (1988)]. Constituição da República Federativa do Brasil de 1988. Brasília, DF: Presidência da República, [2016].

BRASIL. Decreto nº 592, de 6 de julho de 1992.

BRASIL, Lei nº 4.737, de 15 de julho de 1965. Institui o Código Eleitoral. Diário Oficial da União: p. 6746, 19 jul. 1965.

BRASIL, Lei nº 9.096, de 19 de setembro de 1995. Dispõe sobre partidos políticos, regulamenta os arts. 17 e 14, § 3º, inciso V, da Constituição Federal.

BRASIL, Lei nº 9.504, de 30 de setembro de 1997. Estabelece normas para as eleições.

BRASIL. Lei nº 12.288, de 20 de julho de 2010. Institui o Estatuto da Igualdade Racial; altera as Leis nºs 7.716, de 5 de janeiro de 1989, 9.029, de 13 de abril de 1995, 7.347, de 24 de julho de 1985, e 10.778, de 24 de novembro de 2003. Presidência da República Casa Civil. Subchefia para Assuntos Jurídicos.

BRASIL. Lei nº 13.140, de 26 de junho de 2015. Dispõe sobre a mediação entre particulares como meio de solução de controvérsias e sobre a autocomposição de conflitos no âmbito da administração pública; altera a Lei nº 9.469, de 10 de julho de 1997, e o Decreto nº 70.235, de 6 de março de 1972; e revoga o § 2º do art. 6º da Lei nº 9.469, de 10 de julho de 1997. Diário Oficial da União: p. 4, 29 jun. 2015.

BRASIL. Lei nº 14.192, de 4 de agosto de 2021. Estabelece normas para prevenir, reprimir e combater a violência política contra a mulher; e altera a Lei nº 4.737, de 15 de julho de 1965 (Código Eleitoral), a Lei nº 9.096, de 19 de setembro de 1995 (Lei dos Partidos Políticos), e a Lei nº 9.504, de 30 de setembro de 1997 (Lei das Eleições), para dispor sobre os crimes de divulgação de fato ou vídeo com conteúdo inverídico no período de campanha eleitoral, para criminalizar a violência política contra a mulher e para assegurar a participação de mulheres em debates eleitorais proporcionalmente ao número de candidatas às eleições proporcionais. Diário Oficial da União: p. 1, 5 ago. 2021.

BRASIL, Supremo Tribunal Federal. AI 631.276, rel. min. Celso de Mello, j. 1º-2-2011, dec. monocrática, DJE de 15-2-2011.

BRASIL, Supremo Tribunal Federal, Inquérito n. 3.215, rel. min. Dias Toffoli, j. 4-4-2013, P, DJE de 25-9-2013.

BRASIL, Supremo Tribunal Federal. Inquérito n. 3.932 (e Pet. N. 5.243), rel. Ministro Luiz Fux, j. 21-6-2016, 1ª T, DJE de 9-9-2016.

BRASIL, Supremo Tribunal Federal. Inquérito n. 1.958, red. do ac. Ministro Ayres Britto, j. 29-10-2003, P, DJ de 18-2-2005.

BRASIL, Supremo Tribunal Federal (1ª Turma). Pet 5.714 AgR, rel. Ministra Rosa Weber, j. 28-11-2017, 1ª T, DJE de 13-12-2017.



CARVALHO RAMOS, A. de. Mandados de criminalização no direito internacional dos direitos humanos: novos paradigmas da proteção das vítimas de violações de direitos humanos. *Revista Brasileira de Ciências Criminais*, v. 14, n. 62, p. 9-16, Sep./Oct., 2006.

CARVALHO RAMOS, A. de. *Processo internacional de direitos humanos*. 7. ed. São Paulo: Saraiva, 2022.

COMISIÓN Interamericana de Mujeres – Mecanismo de Seguimiento de la Convención de Belém do Pará (MESECVI). *Ley Modelo Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra las Mujeres en la Vida Política*. OAS. Documentos oficiales. OEA/Ser.L/II.6.1, 2017.

CONSELHO NACIONAL DE JUSTIÇA. *Protocolo para julgamento com perspectiva de gênero 2021*. Brasília, DF: Conselho Nacional de Justiça/Escola Nacional de Formação e Aperfeiçoamento de Magistrados, 2021. 132 p.

CORES, A. G. *Estándares de protección de Derechos Humanos de las Mujeres: herramientas necesarias para la defensa de su participación política*. OEA CIM MESECVI/ONU Mujeres, [s.l.], Enero 2020. Available at: <https://www.oas.org/es/mesecvi/docs/MESECVI-EstandaresProteccion-ES.pdf>. Access on: May, 2023.

CORTE INTERAMERICANA DE DERECHOS HUMANOS. *Sentença de 23 de junho de 2005*. Série C, N. 127, par. 84. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_454_por.pdf. Access on: May, 2023.

CORTE INTERAMERICANA DE DERECHOS HUMANOS. *Sentença de 6 de agosto de 2008*. Série C, N. 184. par. 39. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_200_por.pdf. Access on: May, 2023.

CORTE INTERAMERICANA DE DERECHOS HUMANOS. *Sentença de 26 de setembro de 2018*. Série C, N. 361, par. 47. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_407_por.pdf. Access on: May, 2023.

CRAWFORD, J. *Democracy in international law*. Cambridge: Cambridge University Press, 1994.

DA SILVA, S. M. Supremacia masculina nos partidos políticos: violência política simbólica contra as mulheres? *Revista IGAL IusGénero América Latina*, v. 1, n. 1, p. 65-79, 2022.

DECLARACIÓN SOBRE LA VIOLENCIA Y EL ACOSO POLÍTICOS CONTRA LAS MUJERES. Convención Belém do Pará, 6., 2015. Lima: Mecanismo de Seguimiento de La Oea, 15 y 16 de octubre de 2015. Available at: <https://www.oas.org/es/mesecvi/docs/declaracion-esp.pdf>. Access on: May, 2023.

GONZALEZ, L.; HASENBALG, C. *Lugar de negro*. Rio de Janeiro: Zahar, 2018.

ICHR. September 26th, 2018. Series C, n. 361. Available at: https://www.corteidh.or.cr/docs/casos/articulos/resumen_361_esp.pdf. Access on: Mar. 13th, 2023.

INSTITUTO ALZIRAS. Perfil das prefeitas no Brasil: mandato 2017-2020. *Eleitas: mulheres na política*, 2018. Available at: <http://alziras.org.br/projetos#PrefeitasBrasileiras>. Access on: Mar. 15th, 2023.

INTERAMERICAN Court of Human Rights (ICHR), August 6th, 2008. Serie C Nº. 1842. 140.

INTERAMERICAN Court of Human Rights (ICHR), June 23rd, 2005. Serie C Nº. 127 p. 192.

INTERAMERICAN Court of Human Rights (ICHR), September 26th, 2018. Serie C Nº. 361.

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INTER-PARLIAMENTARY UNION (IPU) AND PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (PACE). *Sexism, harassment and violence against women in parliaments in Europe*. 2016. Available at: [http://C:/Users/Usuario/Downloads/en_2018-issues_brief_web%20\(1\).pdf](http://C:/Users/Usuario/Downloads/en_2018-issues_brief_web%20(1).pdf). Access on: Mar. 14th, 2023.

INTER-PARLIAMENTARY UNION (IPU) AND PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (PACE). 2016. Available at: [http://C:/Users/Usuario/Downloads/en_2018-issues_brief_web%20\(1\).pdf](http://C:/Users/Usuario/Downloads/en_2018-issues_brief_web%20(1).pdf). Access on: Mar. 14th, 2023.

KROOK, M. L.; SANÍN, J. R. Violence Against Women in Politics: A Defense of the Concept. *Política y Gobierno*, v. 23, n. 2. Mexico: Centro de Investigación y Docencia Económicas, p. 459-490, 2016.

MATOS, M. Mulheres e a violência política sexista: desafios à consolidação da democracia. In: BIROLI, F. et al. (orgs.) *Mulheres, poder e ciência política: debates e trajetórias*. Campinas: Editora da Unicamp, 2020.

MESECVI. Ley Modelo Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra las Mujeres en la Vida Política - [Preparado por el Comité de Expertas del Mecanismo de Seguimiento de la Convención de Belém do Pará (MESECVI). Comisión Interamericana de Mujeres. OAS, Documentos oficiales; OEA/Ser.L/II.6.17, art. 3.

MESECVI. Mecanismo de Seguimiento de la Convención Belém do Pará. *Declaración sobre la violencia y el acoso políticos contra las mujeres*. Lima, 15 out. 2015, Available at: <https://www.oas.org/es/mesecvi/docs/declaracion-esp.pdf>. Access on: Mar. 14th, 2023.

MIGUEL, L. F. Violência e política. *Revista Brasileira de Ciências Sociais*, v. 30, n. 88, p. 29-45, jun. 2016.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. Carta de São Francisco. São Francisco, 1945. Available at: <http://www.gddc.pt/direitos-humanos/textos-internacionaisdh/tidhuniversais/onu-carta.html/>. Access on: Apr. 16th, 2023.

ORGANIZAÇÃO DOS ESTADOS AMERICANOS, Convenção Americana de Direitos Humanos ("Pacto de San José de Costa Rica"), 1969.

ORGANIZAÇÃO DOS ESTADOS AMERICANOS, Convenção Interamericana para Prevenir, Sancionar e Erradicar a Violência contra a Mulher [Convenção de Belém do Pará], 1994.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS, Resolução A/RES/73/148, de 11 de janeiro de 2019.

PERFIL DAS PREFEITAS NO BRASIL: mandato 2017-2020. Instituto Alziras, [on-line], 2018. Available at: <http://alziras.org.br/projetos#PrefeitasBrasileiras>. Access on: Mar. 15th, 2023.

PROMOTION OF THE RIGHT TO DEMOCRACY. *Commission On Human Rights*, Geneva, n. 3, p. 199-196, 22 Mar.-30 Apr. 1999. Available at: E/1999/23%7CE/CN.4/1999/167. Access on: May 2023.

SEXISM, HARASSMENT AND VIOLENCE against women in parliaments in Europe. *Inter-Parliamentary Union*, Geneva, Oct. 2018. Available at: <https://www.ipu.org/resources/publications/issue-briefs/2018-10/sexism-harassment-and-violence-against-women-in-parliaments-in-europe>. Access on: Mar. 14th, 2023.

SOLNIT, R. *Men explain things to me: and other essays*. 2. ed. Chicago, Illinois: Haymarket Books, 2015.

UN Commission on Human Rights, Res: and other essays. 57/1999, Promotion of the right to democracy, UN Doc. E/CN.4/RES/1999/57, April 28th, 1999.

WHEATLEY, S. *Democracy, minorities and international law*. Cambridge: Cambridge University Press, 2005.

WORLD CONFERENCE ON HUMAN RIGHTS. Vienna, Jun 14-25, 1993. Available at: <https://www.oas.org/dil/port/1993%20Declara%C3%A7%C3%A3o%20e%20Programa%20de%20Ac%C3%A7%C3%A3o%20adoptado%20pela%20Confer%C3%A7%C3%A3o%20Mundial%20de%20Viena%20sobre%20Direitos%20Humanos%20em%20junho%20de%201993.pdf>. Access on: Mar. 14th, 2023.