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Judicialising and (de) Criminalising Domestic Violence in Latin America

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This article analyses the specific ways in which Latin American countries have judicialised domestic violence over the last decade. In particular, it highlights the new definitions of spousal abuse and procedures adopted in both criminal and non-criminal courts. The region has seen two countervailing tendencies, the first to criminalise, through penal code definitions and higher penalties, the second to divert this offence into legal arenas that tend, either implicitly or explicitly, towards effective decriminalisation and downgrading of this form of social violence due to their emphasis on conciliation and transactional procedures. This has resulted, in many cases, in a two-track, hybridised treatment of domestic violence that is ultimately unsatisfactory in meeting the various needs of women victims.

Introduction

The last decade has seen a significant shift in state responses towards domestic violence in Latin America. Where previously there had been, albeit scanty, provision in the form of specialised police stations and social assistance to victims, domestic violence cases have increasingly been 'judicialised', evidenced in a notable and sustained surge in the number of cases being brought before the courts. This article examines the implications of this development for the ability of the justice system to protect women from future harm and to obtain redress. It surveys the region as a whole, in order to give a sense of the broad regional tendencies both in terms of legislation and the approach of the justice system.

Dynamics of judicialisation

This judicialisation of domestic violence has occurred for two reasons. The first is an indirect consequence of the hemisphere-wide growth in more informal and transactional forms of justice, as additional judicial or quasi-judicial arenas have been established to handle minor social conflicts. These new or alternative forums for dispute resolution, intended to expand access to justice for the general population and promoted by both national reformers and international bodies such as the World Bank, rapidly found themselves dealing overwhelmingly with domestic violence cases, more than with the other forms of social violence for which they had been intended. This has resulted in *inadvertent* judicialisation. To illustrate: after the Venezuelan justice of the peace system was set up in 1995 to resolve disputes between neighbours, some 95 per cent of the cases it received reportedly involved domestic violence.[1] Similarly, studies of the flood of cases into the newly created Special Criminal Courts in Rio de Janeiro and Rio Grande do Sul revealed that women comprised between 60–80 per cent of plaintiffs, and mainly

came with complaints of bodily harm and threats, the typical 'minor' offences that comprise much domestic violence (Vianna *et al*., 1999: 208, 213; Azevedo, 2000: 165; Burgos, 2001). This phenomenon reveals a strong latent demand among women victims for specifically court intervention into their situations of abuse, but it also means that many domestic violence cases are being processed in legal arenas never intended for that purpose.

The second driver has been an *intentional* judicialisation process occasioned by the passage of specific domestic violence legislation. As a developing region, Latin America possesses relatively high homogeneity as regards language and legal systems[2] due to common colonial and post-colonial histories. It also has a well-developed feminist movement, making its States sensitive to shifts in the international human and gender rights regimes. In 1994, it became the first region to appoint a Special Rapporteur on Women's Rights and to draft and approve its own domestic violence norms, in the form of the Organization of American States' Convention on the Prevention, Punishment and Eradication of Violence against Women, known as the Belém do Pará Convention. This, and the Platform for Action resulting from the United Nations World Conference on Women in Beijing in 1995, prompted a flurry of legislation, with new national laws passed in virtually every country in the hemisphere. For example, the 1994 revision of Argentina's Constitution to incorporate the UN Convention on the Elimination of all Forms of Discrimination against Women was followed by federal legislation on domestic violence. By March 2001, National Courts in the Federal District of Buenos Aires had received 11,026 complaints of family violence (Consejo Nacional de la Mujer, 2002). Likewise, following the enactment of the Chilean law, the number of domestic violence cases before the courts rose from 1,419 in 1994 to 73,559 in 1999 (ECOSOC, 2003: paragraph 1323).[3]

In many ways, the laws passed in the region are quite progressive. They generally specify protection measures that the courts can apply, and provide nearly always for exclusion orders and various kinds of injunctions, and sometimes for temporary child support orders. The laws detail the powers and responsibilities of the authorities (police, courts and social services) with respect to protecting and assisting victims, and most stipulate the civil and criminal sanctions applicable to offenders. The definitions of domestic violence are often very complete, encompassing not only physical assault, but also psychological, emotional, financial and sexual abuse, including, in some cases, rape in marriage. The definition of kinship, household composition and marital union (formal and de facto) is also comprehensive. However, few of these laws employ this wide-ranging definition of domestic violence in order to characterise this abuse as a specific offence within the Penal Code. Indeed, what is striking about the laws is that most define 'low-level' domestic violence as a primarily civil offence and designate non-criminal courts or authorities – generally Family Magistrates or local Civil Courts – as the first ports of call for resolution of conflict within the home or family.

The new laws in the region have therefore reassigned domestic violence cases within the justice system in three ways: from the police stations to the courts, from mainstream criminal courts to family or civil courts or to small claims/fast track criminal courts that employ procedures more typical of civil courts, and from criminal prosecution to conciliation and mediation. As a result, cases are currently handled either exclusively within the criminal courts, exclusively within the family or civil courts, or in a combination of the two. This article argues that this process of hybridised judicialisation has been highly

problematic. On the one hand, it appears to validate the victims' complaints by shifting the locus of the State's intervention into a high-status terrain, that of the courtroom. On the other hand, the new procedures adopted in both criminal and non-criminal courts for processing domestic violence incidents have effectively decriminalised and downgraded this form of social violence, despite the apparently more precise operational definitions of domestic violence detailed in law. This was not foreseen by local women's movements, which had been more focused on social policy provision and on the symbolic importance of passing new legislation than on the legal procedures that would result. It is useful to outline each of these legal pathways in turn prior to a critical analysis of this mixed, and ultimately unsatisfactory, system.

Criminalisation

Women's movements in the region, as elsewhere, have tended to view criminalisation as a means of denaturalising intimate violence, signaling societal disapproval and ending impunity, the latter a totemic idea for the human rights community in the hemisphere. Some countries (the Dominican Republic, Puerto Rico, Nicaragua, Honduras, Panama, El Salvador and Brazil) have included in their penal codes a definition of domestic violence as a discrete criminal act with particular characteristics. Elsewhere, when spousal abuse is deemed sufficiently serious to reach the criminal courts it is prosecuted using pre-existing offences in the criminal codes, such as assault, threatening behaviour or homicide. Some penal codes have been revised to make the domestic context of certain crimes an aggravating factor, thus triggering a longer prison sentence. Brazil, Latin America's largest country but still the only one without specific domestic violence legislation, relied on the generic provisions of the criminal code until June 2004, when Article 129 (Bodily Harm) was altered to include domestic violence as a specifically aggravated form of deliberate injury, specifying a penalty of six to 12 months imprisonment. Brazil is also one of the few to deal with this issue purely within the criminal justice system, either in the Special Criminal Courts,[4] set up through legislation in 1995 to provide mediated solutions to minor offences that would otherwise be punishable by up to two years in prison, or in the mainstream criminal courts.[5]

However, one of the problems raised by feminist scholars is that the criminal justice system is centred on the State, which is cast as the offended party. The victim is thus relegated to being a mere witness to her own abuse. The criminal justice system is also more concerned with due process and the assignment of blame and punishment. This makes it slow and focused on prosecution, rather than with the victims' immediate need for protection, and longer-term desire for the violence to cease and for pacific family relations to be restored.

Conciliation and alternative dispute resolution

In order to circumvent the inaction of the ordinary criminal courts, which are overloaded and unable to respond speedily and appropriately to 'everyday' forms of intimate abuse, many of the new Latin American domestic violence laws have made non-criminal courts the entry point, even when victims are referred by the police, backed by an official complaint, victim statement and police evidence or investigation. Some countries'

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magistrates, civil or family courts restrict themselves to decreeing protection orders, following a hearing with all parties, which is clearly a positive step, given the failure of the criminal justice system to take prompt preventive action. However, most of these courts also have a remit for conducting some form of 'conciliation' in domestic violence cases. As noted above, a broader aim for the introduction of new, non-adversarial and 'consensual' forms of conflict resolution, such as alternative dispute resolution in the civil courts and restorative justice in areas of the criminal justice system, was to unburden an overstretched and inefficient criminal justice system by decriminalising many offences, making them civil disputes or misdemeanours, and reducing the use of custodial sentences. For legal system operators, such as judges, this brings the advantage of resolving cases far more quickly and at less public expense, as the procedures in Latin America's civil, family and magistrate's courts now tend to stress speed, orality, informality, and a mediated compromise between the parties.

The various modes of transactional justice have different applications and outcomes. Mediation aims at easing the dialogue between the two parties, allowing them to reach an agreement on their own, without the imposition of an outside decision. In family-related cases this is most often used for divorce. In arbitration and adjudication the third party can give a decision, either at the behest of the parties, or without their consent. In the domestic violence legislation in Latin America, justices of the peace, family, civil or criminal court judges and sometimes lay mediators are involved, and procedures include mediation/conciliation, in the first instance, which then progresses to arbitration when the two parties do not agree.

A number of countries (Argentina, Bolivia, Chile, Ecuador, Mexico, Peru, Venezuela and Colombia) made conciliation between the two parties in conflict an obligatory first stage and primary aim of court intervention. For example, Argentina's federal law provides that, within 48 hours of adopting preventive measures, the judge must summons the public prosecutor and the individuals involved for a hearing of compulsory mediation that generally results in the couple being sent to educational or therapeutic programmes.[6]

Whilst most of the region's laws frame domestic violence implicitly as a public health issue or explicitly as a rights violation, the legal good being protected under conciliation-oriented laws is not the integrity and human dignity of the victim, but rather the well-being of the family unit. Article 14 of the Colombian law requires that, 'Before and during the hearing the judge should use all legal means at his or her disposal to find formulas for resolving the domestic conflict between aggressor and victim in order to guarantee the unity and harmony of the family, and especially to make the aggressor change his behaviour.' The phrase 'harmony and unity of the family' echoes the language of that country's Constitution, and forms the recurrent motif of the law. Mexico's and Chile's laws employed similar language and aims. In some cases, the prescription of conciliation reflects the political influence of the Catholic Church. In Chile, conservative Catholic legislators objected to imprisonment for abusive spouses, which was a key component of the original draft bill submitted by two socialist deputies. In consequence, the bill spent three years in transit, despite being declared urgent and having the backing of the Women's Ministry. There, the centre-left legislators were obliged to agree to a more 'family-focused' approach, in which family unity was to be paramount (Macaulay, 2005a).[7] The Right also made strenuous efforts to delink domestic violence from potential grounds for divorce, then still illegal in Chile.[8] In Peru, the emphasis on conciliation stemmed from the influence of a conservative commission of women lawyers and politicians who

sought to prevent domestic violence from opening the door to increased divorce and separation.

Domestic violence cases are also subject to mediated resolution by non-state actors. Often informal intervention from local non-judicial officials, community leaders or authority figures (including local criminal bosses or armed groups) occurs in remote rural areas, as well as in urban areas where the presence of the State is weak or patchy. However, the increased recognition of the pluri-ethnic and multi-cultural character of the various countries has led to the incorporation of parallel forms of indigenous justice into the national legal apparatus. The domestic violence legislation of Colombia, Bolivia and Nicaragua all designate the respective indigenous authority as competent to hear and resolve such cases in indigenous communities according to their custom and practice, as long as this is not contrary to the Constitution or national law.

While the domestic violence law of Peru, an Andean country with a significant largely rural, indigenous population, mentions the responsibilities only of the police, family judges and prosecutors, and justices of the peace, in reality community leaders and authorities also play a significant role in conflict resolution. Peru's 1993 Constitution recognised the special jurisdiction of 'peasant and native communities', supported by the so-called 'peasant patrols' (*rondas campesinas*), to pass legally binding decisions 'in accordance with customary law as long as this does not violate fundamental human rights'. Over 60 per cent of conflicts handled by the *rondas campesinas* were family disputes. These community mediators' preferred 'resolution' was often conciliation in which the man promised to stop the violence, whilst the wife agreed to forgive him and 'meet her household obligations', implying that some failure on her part was a contributing factor in the violence (Revilla, 1999).[9] However, a study of the 5,000 Justices of the Peace in Peru – a parallel, much older and more institutionalized form of community-based justice – notes that local magistrates are less willing now to conciliate, more willing to use sentencing powers, and no longer require the victim to 'forgive' the aggressor, or agree to a set of household duties. This seems to be the result of gender-sensitivity training and the wider debate on domestic violence among the Peruvian population (Ardito Vega, n.d.).

Conflict resolution procedures that reflect 'custom and practice' can be very problematic for the protection of women's rights, when the former have naturalised domestic violence. However, such social conservatism should not be laid uniquely at the door of indigenous communities, for it is also evident in studies of informal forms of urban conflict resolution, whether community-based or conducted by formal legal system operators (Human Rights Watch, 2000). Inevitably, social attitudes are slower to change than the normative or procedural aspects of the justice system.

The two-track system

In many countries, a two-tier system has emerged, with several laws on domestic violence distinguishing between non-criminal misdemeanours and criminal felonies. The former are processed in family courts, small claims courts such as the Special Criminal Courts in Brazil or before justices of the peace, generally using a conciliation procedure, whilst the latter are referred to the mainstream criminal courts. In El Salvador, misdemeanours are referred to family courts, justices of the peace and the Attorney General's office for a conciliation procedure. The Public Prosecutor's Office only becomes involved if the

aggressor breaches the protection orders, or if the violence is categorised as a felony. In some cases it is not clear which court has jurisdiction, and this bifurcated procedure allows the plaintiff to choose between judicial arenas that operate with quite different procedures, logics and outcomes, thus creating anomalies.

In Peru, rape was defined as a crime and the exemption for rape in marriage removed from the penal code in 1991. However, as marital rape is absent from that country's definition of domestic abuse, women who have suffered sexual assault in the home must choose to file a complaint of either psychological harm under the Family Violence law, *or* of rape. This excludes them from the fast-track process applied via the Family Violence law. They are also obliged to pay for a sexual violence forensic examination, whereas in a domestic violence case this would be conducted free of charge (Human Rights Watch, 2000). Although Colombia's law specifies rape in marriage as a criminal act, it is the only component of domestic violence where prosecution can only be initiated by the victim, rather than ex officio by the criminal justice agencies. Bolivia's law also makes sexual assault of a competent adult a matter for private, rather than public, prosecution.

The impact of hybrid judicialisation

Since these laws have been implemented and modified, women's groups in the region have slowly begun to evaluate their effectiveness in practice and uncovered mixed results (Campos, 2001, 2003; Hernández Reyes and Solano, n.d; Larraín, 1999; Gramont, 2002).[10] Undoubtedly, some of the impact of the laws is related to the way in which they define the legal good to be protected, which generally falls either under the rubric of human rights, or under protection to the family. A number make explicit references to the State's international obligations, and a few refer to gender power relations as the context for domestic violence. The preamble to Guatemala's law is most explicit, recognising the 'social aspect of the problem of intrafamily violence, due to the existing unequal relations between men and women in the social, economic, legal political and cultural domains'. Uruguay's 2002 legislation goes even further in characterising domestic violence as a liberty crime, a perspective pioneered by Sweden (see Leander in this Themed Section). The law guarantees human 'freedom and personal security' (article 9) against acts 'illegally limiting the free exercise of or enjoyment of the human rights of another person'.[11] However, only Venezuela's law captures the 'coercive control' aspect of domestic violence (Stark, 2004) in detailing 'acts resulting in the dishonouring, discrediting or undermining of personal self-worth and dignity, humiliating or hurtful treatment, constant monitoring, isolation, threats to remove the children or deprive the victim of vital financial means' (article 6).

That said, the definition and understanding of domestic violence as a distinct harm, rights violation or offence are also shaped by elements of the legal arena in which it is processed. The results of criminalisation per se have been as disappointing as in other countries, because of a continuing reliance on apparently neutral and generic categories of criminal offence (bodily injury, threat, homicide). One of the problems is Latin America's civil law system, which relies heavily on written codification. For instance, the parameters of 'bodily injury', a key criminal offence for domestic violence cases, are very positivist and limited. The criminal justice system also operates on a 'snapshot' model, assessing the harm caused by the specific incident reported to the authorities. The law will thus classify each punch or kick as a 'minor' injury, although it may have been repeated a hundred

or thousand times. Although the laws have attempted to capture the multiplicity of types of harms involved in domestic violence, none explicitly describes the two core elements of domestic violence: its cumulative and complex character, extending over time, or the very real possibility of a sudden escalation from apparently 'low-level' harms to grievous injury, even homicide. In Brazil and elsewhere, the severity of harm is defined by the number of days of medical treatment that the victim requires and is therefore prevented from working. El Salvador's penal code describes 'serious injury' as that preventing the victims from going about their normal activities for a period of at least 20 days.[12] This has the effect of greatly reducing the number of cases passing into the criminal justice system (Hernández Reyes and Solano, n.d.). In 2002 the Office of Crimes against Women and Children in El Salvador's prosecution service initiated 1,168 criminal proceedings, of which only 1 per cent were classified as being domestic violence (ibid.: fn.5).

Although Uruguay's 1995 revision of the criminal code defines domestic violence as 'violence and threats carried out over a period', this could, of course, be interpreted to mean that a single assault did not constitute domestic violence. This highlights the key role of legal system operators in interpreting cases brought to them, and exercising their personal judgment as to the severity of harm and the most appropriate form of resolution. For example, the police stations in Brazil that record women's complaints in the first instance show a marked tendency to record as a simple 'threat' both serious death threats and attempted murder. 'Threats' are deemed a minor offence, and handled through the conciliation process in the Special Criminal Courts. Prosecutors in El Salvador were similarly reluctant to take seriously threats to the victim, even in cases where the aggressor had a criminal record or was drug-dependent (ibid.: 18).

Although this process of judicialisation has transferred the locus of conflict resolution from the police to the courts, the former are often reluctant to relinquish this role. After the introduction of Nicaragua's domestic violence law in 1996, which transferred responsibility to the courts, police continued to resolve around half of all cases through 'Extra-Judicial Arrangements' (EJAs), that is, brokered agreements at the police station level, preventing them from proceeding to the criminal court (Jubb, 2001). Here, the police are essentially taking a role similar to that of the family, civil or magistrate's courts. Even after the EJAs were abolished, police have persisted in the practice of verbally agreed conciliation. In Brazil, where the Special Criminal Courts have adopted civil-style, transactional procedures, the police were similarly reluctant to hand over their conciliation function. Thus we see that where domestic violence is handled exclusively by the criminal justice system, a two-track system of conciliation and prosecution exists *informally*, just as it exists *formally* in systems which use both the civil and criminal courts.

Whether enshrined in law or operated in practice, this dual system is very problematic. Firstly, there is no clear distinction between 'cases of physical, psychological or sexual violence that do not constitute criminal acts' (article 11 of Ecuador's law) and those that do. This sets up an implicit economy of violence, where a certain level of abuse is accepted as inherent to family relations, beyond which it constitutes a criminal offence. Inevitably, it is the officials to whom victims turn who act as filters and decide in which forum the woman's complaint is to be considered, depending on their subjective perception of the severity of the abuse. In systems where domestic violence complaints may be presented to both legal and non-legal authorities (in Venezuela cases may be decided by family and magistrates courts, lower level criminal courts, police agencies, the prosecution services, and the city hall and civilian authorities), there is unlikely to be

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much consistency of interpretation. With two tracks, one leading to criminal prosecution, the other to a brokered conciliation, there is a strong preference for the latter.

However, the conciliation model brings its own problems. Firstly, it re-naturalises domestic violence by implying that a couple can, or should, be reconciled even when one systematically abuses the other. It also reprivatises the offence, as victims are sometimes required to take the initiative at several stages as to whether to proceed with charges and prosecution. For example, in the Brazilian Special Criminal Courts, the offender is given veto power at several stages to decide whether or not to accept the conciliation offer, or a form of plea bargaining that enables him to admit the assault and accept a non-custodial penalty, but releases him from a criminal record.

As a procedure deployed in conflicts of a civil nature, the conciliation model presumes one-off, non-recurrent conflicts between two parties that are equal in terms of their power relations and ability to negotiate. Although Costa Rica introduced in 1998 a new criminal code that allowed the criminal justice system to pursue conciliation between adults in first offence cases that carried a maximum penalty of three years imprisonment, that same year a new Children and Adolescent's Code strictly prohibited conciliation in cases of domestic violence (Parker, 2002: 20). In the criminal courts this discrepancy in social power is at least counter-balanced by the presence of the prosecutor, who represents the power of the State of behalf of the victim. However, where the defendant and complainant represent themselves directly to the judge-mediator, women feel subtly pressured to accept conciliation. The majority of cases (90 per cent) in the Brazilian special courts end at the first stage of conciliation, either because the woman is intimidated by the presence in court of her abuser, or because the judge has pressed forcefully for both sides to conciliate and to close the case (Campos, 2001, 2003). The laws fail, in general, to recognise the dynamics of fear and that in domestic violence cases women arrive at the courts only after years of assaults on their self-esteem.[13] The Colombian and Bolivian legislation states that if the victim does not appear at the hearing, it will be assumed that she wishes to drop the suit 'unless she is under-age or disabled' in which case she is represented by the public authorities. Panama's law allows the victim to stop criminal proceedings only if the accused is a first-time offender, and if he can present a favourable psychiatric evaluation and a certificate of 'prior good conduct'.

The Peruvian law is one of the few that recognises the pressure often put on the victim to withdraw charges, obliging the prosecutor to suspend the conciliation process 'if the victim is frightened and feels unsafe, or does not participate' (article 13). In Argentina, judges in the province of Buenos Aires hear the offender and victim separately, thus removing the pressure of intimidation from the latter. Costa Rica's law goes still further, noting the potential incapacity of the victim who is 'in no fit state to attend to her own interests', a responsibility that then passes to the judge. Statistics there show that 30 per cent of victims did not show up to hearings in 2001 (Reilly, n.d.). Some of the region's laws require mandatory reporting or investigation of domestic violence cases, although they stop short of mandatory prosecution. This represents a swing away from outdated criminal code provisions that frequently required women to initiate proceedings in domestic violence and rape cases, and establishes women's right to physical integrity as being in the public interest. However, balancing the preservation of women's agency and choice against the effects of systematic disempowerment of the victim that is a core characteristic of domestic violence, is not only delicate, but also shaped by the traditions and resources of local justice systems. In a region where all courts, even the

new community-based ones are bursting at the seams, the onus remains, in practice, on the victim or her representatives to demand a response from the justice system.

The obligation to pass first through conciliation has the effect of dragging out these cases, exposing women to violence between hearings, achieving quite the opposite of the rapid, effective resolution for which such informalised justice was intended. In Peru, every time the victim retracts her complaints, prosecutors are able to reinitiate conciliation proceedings from scratch, and violations of agreements between the couple go unpenalised (Human Rights Watch, 2000), reproducing the cyclical character of domestic violence itself. This can, of course, be offset by properly applied sanctions if the offender breaks conciliation agreements or protection orders.[14]

The sanctions imposed by civil courts or civil-type procedures tend to range from therapy orders, community service and fines to prison, with some imposed in the initial stages, as part of a package of protection measures and reparation orders. Following the logic of civil court proceedings, redress and restitution frequently consists of offenders being ordered to pay compensation for injury and damage. In Colombia, the offender is also required to pay for his own therapy and for the victim's medical bills out of his own pocket. The sanctions for violation of the terms of any injunctions and protection measures laid down by the court are also of a non-penal nature, often a fine or community service. However, the usefulness of financial penalties is inappropriate in a situation where the offender and victim share the same home and have joint financial commitments. The costs borne by the offender will likely come out of the household budget, whilst simultaneously commodifying and trivialising the violence. In some cases, however, violation of court orders can result in short-term detention, followed by an automatic transfer of the case to the criminal justice system.

Conclusions

Judicialisation of domestic violence has brought mixed results in Latin America. The international literature on domestic violence is ambivalent about the role of the criminal justice system and its success in protecting victims and rehabilitating offenders. However, the Latin American case shows that opting for a system more centred on mediated justice and on transactional procedures more typical of family and civil courts in that region, is equally problematic. Although the conciliation process is generally much faster and more accessible, it has decriminalised the bulk of domestic violence, reserving the mainstream criminal courts for a small number of the most egregious cases. Moreover, the Latin American domestic violence laws have ended up formally enshrining a two-track approach that legal system operators had already been informally employing, leaving women stranded between pressure to conciliate, on the one hand, and the unresponsiveness of the criminal courts on the other.

However, the real problem lies not in the designation of the competent judicial authority, but rather in the understanding of domestic violence as a distinct offence with a unique relationship between victim and aggressor, and therefore requiring a specific mix of protection, redress and rehabilitation measures. What is positive in the Latin American case is the potential for wide-ranging protection measures to be more rigorously deployed and for changing offender behaviour through therapy programmes, if resources can be diverted from the criminal justice system, which needs to be a more effective backstop. It goes without saying that justice system operators of all kinds, be they judges, prosecutors,

police, or local authorities or community leaders with a conflict resolution mandate, require training in handling domestic violence cases. Despite all the current problems, the still-rising demand from victims on the judicial arenas offered by the state looks unlikely to abate, and may well eventually drive such reforms, as women's movements in the region begin to reassess the impact of this first wave of judicialisation of domestic violence.

Notes

1 Revista Venezolana de Estudios de la Mujer website. <http://cem.tripod.com.ve/jornadasdelcem/id14.html

2 All Latin American countries have a civil law system as a result of their Spanish and Portuguese colonial inheritance. It is positivist and based on detailed written codes (family, civil, criminal, labour codes) as well as on the provisions of the Constitutions and laws drafted by legal scholars and passed by legislators. Judges are expected to apply the law, not to make or interpret it.

3 Lack of victimisation studies in the region make it hard to estimate exactly what proportion of total potential demand these figures represent.

4 Brazil has parallel Special Civil and Federal Courts to deal with low-value civil disputes and claims on the government. In other countries, the justice of the peace system handles low-level civil disputes and misdemeanours.

5 For a case study of the treatment of domestic violence in Brazil's Special Criminal Courts see Macaulay (2005b).

6 As Argentina has a federal legal structure, the national law on domestic violence is only applicable to the city of Buenos Aires, although nearly all the 24 provinces have adopted something similar. Likewise, in Mexico laws on domestic violence have been adopted in at least eight states.

7 However, by the time it passed in 1994 it had cross-party support, backed by significant feminist movement lobbying, whilst the international context lent strong legitimacy.

8 A number of countries such as Guatemala, Bolivia, Colombia and Ecuador mention divorce in their laws, accepting domestic violence as grounds for the end of the marital union.

9 In cases of theft or cattle-rustling the sanction is likely to be corporal punishment, or community service.

10 Empirically-based studies of the outcomes of domestic violence cases in the courts are, unfortunately, very scanty in the region as there is no academic tradition of criminology or of socio-legal studies. The literature is still skewed towards the areas of health and epidemiology, as well as social policy. For country reports from feminist groups see the website of CLADEM (Latin American and Caribbean Committee for the Defense of Women's Rights) www.cladem.org.

11 Colombia's law also specifies 'ill-treatment through restriction on physical freedom . . . through force and without reasonable cause' (article 24).

12 The Forensic Medical Institutes, which carrying out medical examinations of the victims, play a key filtering role as they quantify the harm done, thus designating an assault either as a misdemeanour or as a felony.

13 Yearnshire (1997) reports for the UK case that women are assaulted on average 35 times before they seek help from the police.

14 In October 2005 the Chilean law was altered to remove the obligatory conciliation stage, in response to still rising levels of domestic violence. The Peruvian law was also revised to this effect in 2001.

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