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Recently, social media and the Brazilian press were abuzz with the coverage of yet another rape trial. The victim, Mariana 'Mari' Ferrer, a young event promoter and digital influencer, alleged that she was raped by her aggressor in the bathroom of a nightclub in 2018, when she was 21 years old. The crime was reported back in 2018 and the case is still ongoing before the Brazilian judiciary. Although the proceeding is restricted from public access, the case became known to the public after the entirety of a virtual hearing involving the victim, the alleged aggressor (and their respective attorneys), the Public Prosecutor's Office, and the judge (all men except for the victim) was released online.^[1] After the footage was released, the hashtag #*JustiçaPormariFerrer* (#justiceformariFerrer) trended on social media.^[2]

Scenes from the hearing shocked viewers around the country as the victim was forced to defend herself from allegations that she was to blame for any advances because of how she presented herself. The video of the hearing went viral mainly because of the defence attorney's posture towards the victim. In his line of defence, the defence attorney tried to malign the victim's character by arguing that she often posted supposedly suggestive pictures on her social media (including oftentimes in a bikini) and relied upon the internet as her main source of income, claiming that 'he is thankful he does not have a daughter of her level' and even going so far as to show pictures posted by the victim and claiming that in them she was in 'gynaecological positions'.^[3] The defence attorney even went on to claim that she somehow benefitted from projecting a 'virginal façade' online and accused her of 'making a living from the disgrace of others'.^[4]

Viewers were also outraged to see the victim trying to defend herself against such personal attacks, pleading with the judge: 'Your Honour, I'm begging for respect, not even the defendants are being treated the way I am being treated, for God's sake. What is this?'^[5]

The case caused a collective sense of indignation, as the Brazilian justice system, represented by those in attendance at the hearing, sat idly by while the victim was attacked all over again. This case once again showed the criminal justice system's permissiveness toward the old adage of discrediting and blaming the woman, justifying the man's behaviour, and ultimately exonerating him.

Sadly, the Mari Ferrer case is strikingly familiar and brings to mind another case of violence against women that was widely featured in headlines throughout Brazil in the 1970s. The victim was Ângela Diniz, a prominent figure in Brazilian society at the time, whose reputation with men and physical beauty were so widely discussed that she became known by the media as '*a Pantera*' (the Panther). After the end of her first marriage, she became involved with Raul Fernando 'Doca' do Amaral Street, who murdered her in 1976 by firing three shots into her face and one into her neck after the couple had an argument.

Despite having confessed to the crime from day one, during his trial, Doca Street went from being a defendant to being the victim himself as a result of the narrative constructed by his lawyers. During the first trial in 1979, Doca's attorneys convinced the jury that the defendant did not deserve to be punished, by arguing that the victim provoked her boyfriend with her behaviour and practically forced him to kill (having gone so far as to argue that it was a case of legitimate defence of his honour), and even that her the murder was almost an assisted suicide, given the victim's notoriously self-destructive lifestyle. The trial was widely reported, especially since this was the first criminal case in which the trial was televised, and, initially, Doca was only sentenced to 18 months in prison for having evaded arrest after committing the crime, although he did not serve any time.^[6]

After more than 44 years of fixating on the victim's reputation and life unnecessarily,^[7] surely, it's time to look at the aggressor and at the facts and to change this structural disregard for violence against women.

According to data collected and published by the acclaimed journalist Ana Paula Araújo^[8] in her recent book *Abuso* (abuse), which is dedicated to the study of rape culture in Brazil, situations such as that faced by Mari Ferrer are common in Brazil and discourage victims from bringing their cases to the criminal justice system. The system not only fails to aid these victims, but ultimately causes them even more suffering. Araújo estimates that currently only about ten per cent of rapes are reported in Brazil.^[9]

Despite the staggering underreporting of rape cases, a recent study published in the 13th Annual Report on Public Safety in Brazil^[10] was able to identify that, in 2019, the majority of rape victims (53.8 per cent) in Brazil are girls up to 13 years of age, and the total average is approximately 180 rapes per day in Brazil (which represents a 4.1 per cent increase in relation to the past two years).

As indicated in the results presented by the Brazilian Public Security Forum, the most common profile of the aggressor is a person close to the victim – often a family member.^[11]

The difficulty in reporting the occurrence of this type of crime is often the result of the victim's emotional and/or financial dependence on the aggressor.

Although the data presented above relates only to Brazil, the scenario described above do not seem to be unique to the country.^[12]

Analysing the stories briefly summarised above, we are left with a feeling of frustration towards the unquestionably inadequate institutional responses to very serious and recurring cases. The structural misogyny of Brazilian society and its legal system is evident throughout the entire process – ie, from the undertaking of reporting sexual violence to (if the case goes to trial) the moment a final judgment is rendered. The recurrence of reports and portrayal of cases similar to those involving Mari Ferrer and Ângela Diniz over the past decades in the mainstream media is definitive proof of the so-called rape culture and its deep roots.

The (very valid) fear of retaliation results in the perpetuation of violence and reliance on informal support networks. The institutional violence bolstered by the legal system in Brazil can be observed in various ways and at different times, such as when the credibility of the victim is challenged when she reports a case of violence or is attacked on the stand by her aggressor, or even as a result of the time and money required to prosecute a sexual offender due to excessive bureaucracy and delay by the Brazilian judiciary and its multiple levels of appeal, as well as the further delays caused by the police and health departments and even the Public Prosecutor's Office, all of whom have to be involved in cases of this nature.

Truth be told, no matter how much of a sterling reputation the aggressor has or how 'immoral' the representation of the victim's reputation may be, this should not be a deciding factor or even be taken into consideration by the court of public opinion and much less by the criminal justice system.

However, in order for there to be a real transformation in the collective mindset about the credibility of women in cases of sexual violence, it is essential that we first integrate women in all phases of this process, so that female victims are not made to feel even worse and/or alienated as they relive their suffering before a panel of men. It is also fundamental to expedite these proceedings, so that the victims do not have to endure reliving such traumatising experiences over and over for years on end. Finally, actions such as those carried out by the defence attorneys in the cases cited above, and even failures to act by the presiding judges who do not intervene to ensure the wellbeing of the victims (or at least prevent any feeling of humiliation or degradation) cannot be overlooked.

In the case of Ângela Diniz, it took two years to annul the first trial of Doca Street and no real effort was made to preserve the victim's memory. In the Mari Ferrer case, not only was the judge's conduct immediately reported to the National Council of Justice for review,^[13] but the defendant's attorney was also reported to the Brazilian Bar Association.^[14]

Although there have been advances in Brazilian legislation since the time of Ângela Diniz, the past is repeating itself over and over again and situations like the one that occurred in the case of Mari Ferrer are much more common than one can imagine, making it evident how difficult it still is to be a woman in the Brazilian criminal justice system and how, even after an irremediable trauma, there is still a social effort to exonerate the aggressor. Regardless of the relation or absence of a relation between the victim and the aggressor, the question that remains is: what makes them believe they are entitled to harm the victims and get away with it? Is it only a cultural heritage of gender discrimination perpetrated through various generations? Is it a matter of criminal enforcement?

Although the answers to such questions are not yet clear, it should be noted that a new approach is arising to address cases of violence against women in Brazil, which focuses on trying to restore broken relationships and values that ultimately led to the crime by: (i) including all parties in the process; (ii) taking into account the other side; (iii) making amends; and (iv) reintegrating the parties into their communities.

This restorative justice approach is bringing the aggressor to the table (when they and the victim agree to this), to discuss the harm caused and how to repair it and prevent similar episodes. This approach is not mandatory or framed in Brazilian legislation, but it has been applied to cases in which both parties agree. In a way, restorative justice is an effort to deconstruct the misogyny deeply rooted in Brazilian society and build an improved community in its place, in which men might better understand gender violence and its various forms and work alongside women to prevent it.

Recently, a bill was also submitted to the House of Representatives with a proposal to create a 'Victim's Statute' (*Estatuto da Vítima*),^[15] which will provide a legal definition of a direct or indirect victim of a crime or of a public disaster and set out guidelines for how such victims should be treated as a result of their vulnerability. Among the provisions set out in the draft, the Bill provides that, in cases of sexual and/or domestic violence, victims have the right to be heard by someone of the same sex, to be accompanied by a designated public servant during any hearings, and not to have to sit on the stand facing their aggressor (Section 19 of the Bill). The Bill also provides that all health and safety professionals as well as judges, public prosecutors and public defendants who may come into contact with such victims will be subjected to sensitivity training (Title IV of the bill). The explanation provided by the proponents of the Bill states that the Statute seeks to ensure 'recognition of the victims' dignity, implementation of rights, and assurance of effective and integrated access to essential public services'.

Only time will tell to what extent these measures will have any real effect on future cases, but their proposal in and of itself shows that the debate around the issue is advancing and makes us hopeful.

(International Bar Association - IBA - 12.02.2021)

[1]Although these types of hearings are normally held in person, in this case the hearing was held via videoconference (in July 2020) as a result of the restrictions imposed during the Covid-19 crisis.

[2]For the full video see: <https://www.youtube.com/watch?v=Pos9cEAPysY> accessed 23 December 2020

[3]The Intercept Brasil. Trial of the influencer Mariana Ferrer ends with the unprecedented establishment of 'wrongful rape' and lawyer humiliating a young woman ("*Julgamento de influencer mariana ferrer termina com tese inédita de 'estupro culposo' e advogado humilhando jovem*"). November 3, 2020. Available at: <https://theintercept.com/2020/11/03/influencer-mariana-ferrer-estupro-culposo/> [Last accessed on 12.23.2020].

[4]"Do you make a living from this? This is your bread and butter isn't it, Mariana, that's the truth right? Do you make a living from the disgrace of others? Manipulating this virgin story?". *Ibid.*

[5]*Ibid.*

[6]The trial was later annulled by the Court of Appeals of the State of Rio de Janeiro and the case was retried in 1981, at which point Doca Street was sentenced to 15 years in prison.

[7]In the time between the cases cited above, there has been no shortage of cases of violence against women in which the same pattern of belittling the victim and justifying the aggressor's behavior has been perpetrated not only by the aggressors' attorneys but also by the media in the coverage of the events. Some examples worth noting among the countless cases are the murders of Maria Regina dos Santos Souza Rocha and Eloísa Ballesteros (both murdered by their husbands in 1980, after asking for separation); Eliane Aparecida de Grammont (murdered in 1981 by her husband from whom she had separated); and Sandra Gomide (shot twice by her ex-boyfriend in 2000 after she ended the relationship).

[8]Ana Paula Araújo is a Brazilian journalist who reports for the Globo broadcasting group in Brazil and is based in Rio de Janeiro.

[9]ARAÚJO, Ana Paula. Abuse: rape culture in Brazil ("*Abuso: a cultura do estupro no Brasil*"). Rio de Janeiro: Globo Livros, 2020, p. 13.

[10]Page 9 of the Report. Full Report available in Portuguese in PDF format at: https://forumseguranca.org.br/wp-content/uploads/2019/10/Anuario-2019-FINAL_21.10.19.pdf accessed 23 December 2020

[11]Page 120 of the Report.

[12]For example, according to the data collected by the World Population Review, in most countries in which there is data available on rape, "less than 40% of women who experience sexual violence seek help" and "[l]ess than 10% seek assistance from law enforcement". In the United States specifically, "70% of rape is committed by someone the victim knows". These statistics and more were presented in the World Population Review's report Rape Statistics by Country 2020, available at: <https://worldpopulationreview.com/country-rankings/rape-statistics-by-country> accessed 28 December 2020

[13]CNJ. CNJ opens proceedings relating to the judge's conduct in the Mariana Ferrer case ("*CNJ abre procedimento sobre conduta de juiz em caso de Mariana Ferrer*"). November 3, 2020. Available at: <https://www.cnj.jus.br/cnj-abre-procedimento-sobre-conduta-de-juiz-em-caso-de-mariana-ferrer/> accessed 23 December 2020

[14]ESTADÃO. OAB-SC [Bar Association of the State of Santa Catarina] reviews case of lawyer who attacked Mari Ferrer ("*OAB-SC analisa caso de advogado que atacou Mari Ferrer*"). November 8, 2020. Available at: <https://brasil.estadao.com.br/noticias/geral,oab-sc-vai-analisar-caso-de-advogado-que-atacou-mari-ferrer-entidade-recebe-1-2-mil-denuncias,70003505318> accessed 23 December 2020

[15]The text of the draft bill (Legislative Proposal no. 3890/2020) is available in Portuguese at: https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1915623&filename=PL+3890/2020 accessed 28 December 2020