Beyond carceral expansion

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Beyond carceral expansion: survivors' experiences of using specialised courts for violence against women in Ecuador

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Abstract

This article presents empirical findings addressing the gap between specialised criminal law on violence against women in Ecuador and women's needs and expectations when approaching the country's specialised penal courts. Given its comprehensive legal system, Ecuador scores highly in protecting women from violence in international rankings. However, based on quantitative data, case files and in-depth interviews with survivors, judges, case workers and judicial employees, this study reveals that in Ecuador, most lawsuits are dropped without ever reaching a resolution. Because most survivors pursue protection from ongoing violence rather than a conviction, and because advancing a lawsuit can be a source of various forms of stress and fear, survivors usually withdraw from the trial once they are granted a protection order. However, this order is lost when complainants fail to appear in court. In addition, police intervention is inadequate and seldom contributes to effective protection. The paper augments feminist debates on "carceral feminism", showing that VAW laws are not necessarily bolstering the carceral apparatus on the ground. However, law often masks the state's disregard of women's lived experiences and a lack of social services to respond to their expectations and needs.

Keywords

Ecuador, violence against women, carceral feminism, criminal law, domestic violence.

1. Introduction

This article presents a study on women's experiences of using Ecuador's criminal courts specialising in violence against women (VAW). The findings reveal a significant gap between the state's criminal law-centric responses to VAW, and survivors' expectations and needs when approaching the courts. Contemporary critiques interrogating feminist support of criminal law to address gender-based violence have often focused on the prospect of carceral-expansion caused by feminist appeals to criminalisation, as they may (re)legitimise the use of an oppressive penal apparatus. This paper, however, focuses on other, empirically identified shortcomings of criminal justice, such as the inadequacy of the proceedings to protect violence survivors, the legal system's disregard of women's needs and motivations, the lack of social services to assist them, and the ways in which lawyers misrepresent survivors' behaviour when they decide to withdraw from a criminal trial. The article discusses the implications of these findings for feminist debates on VAW and criminal justice and presents some policy recommendations.

Feminist legal theory has a long addressed the limitations of law in protecting and rederessing women (Facio, 1996; MacKinnon, 1987; Smart, 1989). Criminal justice in particular has been regarded as a mechanism that revolves around men and is created for men, by men (Naffine, 2019). It has also been argued that penal systems selectively prosecute (Carlton and Russell, 2018; Kapur, 2018; Sudbury, 2005) and, as shown here, they selectively protect. Yet, appeals to criminalise VAW and harden punishments for aggressors have become the backbone of many mainstream feminist projects (Al Sharmanied. , 2013; Molyneux and Lazar, 2003). In response, a sector of feminist scholarship has interrogated the role of feminism in contributing to bolster the state's punitive power. For instance, studies of "governance feminism" have looked at the influence of feminist actors who "walk the halls of power" (Halley et al., 2018: ix), and enhance a carceral approach to gender-based and sexual violence (Bumiller, 2008; Halley et al., 2006). Critiques of "carceral feminism" have questiond feminist

strategies that demand increased policing, prosecution, and imprisonment as the primary solution to VAW (Bernstein, 2012; Kim, 2018; Whalley and Hackett, 2017). The support of punitive policies against sexual and gendered violence, it is argued, potentially contributes to mass incarceration (Law, 2014; Terwiel, 2020) and racialized social control (Kapur, 2002; Sudbury, 2005). These carceral turns, in feminism and beyond, have analytically been connected to neoliberal reconfigurations of the global order (Simon, 2007; Wacquant, 2009).

I have argued elsewhere that, in Latin America, VAW legislation continues to be shaped, not only by feminists, but also by actors who deploy colonial narratives on the preservation of the traditional family (Tapia Tapia, 2016, 2018, 2019). This article further nuances existing critiques of carceral feminism by showing that criminal proceedings for VAW are not directly bolstering police surveillance or incarceration in Ecuador, given the high attrition and low conviction rates therein. The article centres the pitfalls of the judicial process as the pathway that women have to go down when they seek for protection. Because a conviction is not usually the goal of those who file a complaint, most lawsuits are dropped, and incarceration is not a frequent outcome of the process. There are, however, other problematic effects of centring criminal justice aside from penal expansion that are foregrounded in this article, such as women's increased vulnerability, and how the system masks their lack of access to urgent social services.

There are feminist critiques of criminal justice that do address the inadequacy of proceedings to bring women's experiences to the forefront, including its failure to attend to survivors' needs, and the re-victimisation that can occur through criminal trials (Corrigan, 2013; Douglas, 2008a; Kelly and Radford, 1990). Gartner and MacMillan have noted that "the criminal law is oriented toward prohibition and punishment, fashions individualized solutions to systemic problems, and reinforces prevailing inequalities" (1995, page 423). These critiques note that penal systems have their roots in adversarial justice, meaning that criminal law can only treat the parties as adversaries within a "battle" (Orenstein, 1998; Smart, 1989).

Compared to more informal controls, law is more adversarial and punitive; it disrupts close ties, can bring intimate problems to the attention of a broader social circle, and may encourage further vengeful conducts by the punished party (Gartner and Macmillan, 1995). Moreover, because a criminal trial's main goal is to establish criminal responsibility, protecting and redressing the complainant is oftentimes sidelined (Goodmark, 2012, 2018). Along these lines, rather than emphasising feminist sponsorship of penal laws as a factor that enhances carcerality, this study probed the idea that the abandonment of women that is enabled when the state can show "action" via the enactment and implementation of specialised laws and proceedings, while failing to offer the services and resources that are materially required to protect women. Here, I argue that the state neglects women not just despite, but *through* the very laws in place to protect them. The value of criminal justice in terms of keeping violence survivors safe is, therefore, extremely limited.

Furthermore, this study shows that standard definitions of access to justice as access to litigation[1] are insufficient to convey what most violence survivors envision as justice: that is, the possibility of obtaining immediate, effective and durable protection from ongoing violence. Complainants may "only" want the defendant to leave and cease to hurt them, not his prosecution and incarceration. Being legally enabled to pursue and obtain a conviction does not, for most survivors, equate access to justice. In order to contextualise these findings, a brief description of Ecuador's specialised legal system is offered next.

1.1. Setting the context

Ecuador's laws on VAW are largely the result of a global and regional "turn" to criminal justice to address gender inequalities, often framed as hindrances to development and security. Such turn is most evident from the 1990s, in connection with the mainstreaming of

[1] For instance, TH Marshall outlined the right to justice as "the right to defend and assert all one's rights in terms of equality with others and by due process of law" (Sommerlad, 2004: 346).

international discourses that framed VAW as a human rights and development issue (Bedford, 2020; Bunch and Carrillo, 1991; UNIFEM, 2003). The turn to law in Latin America is also related to the "boom" of women's NGOs in the 1990 (Alvarez, 1999) and the emergence of regional human rights instruments addressing women's status.[2]

In Ecuador, laws on VAW have largely been promoted by international organisations, NGOs and state offices that were created since the 1980s to work on "women's affairs." Other, non-feminist actors have also been able to shape a narrative of protecting women and the family (Cuvi, 2006; Tapia Tapia, 2019).[3] In 2008, a new national Constitution was enacted, proclaiming the human right to a life without violence, with a specific mention of gender-based violence. With this background, courts specialising in "violence against women and the family" were established in 2013. In 2014, a new Penal Code passed, transforming some infractions that had been treated as misdemeanours, into criminal offences with harsher punishments. In 2018 a "Law To Prevent And Eradicate Violence Against Women" passed, replacing an older 1990s Act. Ecuador, thereby, possesses a notable legal apparatus dedicated to VAW. In fact, according to the World Bank's Women, Business and the Law (WBL) datasets, the country scores 100 in protecting women from violence (see Table 1), based on the existence of sufficient laws to protect women (Iqbal, 2018).

Table 1
Ecuador's score in protecting women from violence (World Bank, 2018)

Is there legislation specifically addressing domestic violence? If not, are there aggravated penalties for crimes committed against a spouse or family member?	Yes

[2] In 1994, the Organisation of American States (OAS) approved the first treaty specialising in VAW, known as the "Belem do Pará Convention", which sparked the creation of national laws on VAW across Latin America. For instance, these Latin American countries enacted laws on violence against women in the 1990s: Perú: 1993; Ecuador: 1995; Bolivia: 1995; Colombia: 1996; Venezuela, 1998.

[3] Historically, the collectives that have promoted legal reform on VAW have been upper-middle class and white-mestizo. These networks have shaped a more or less unified agenda regarding gender violence, which has sometimes been criticised for not sufficiently integrating the views o indigenous, Afro-descendant and peasant women, among other non-hegemonic groups (Cucurí, 2009; Tapia Tapia, 2016).

Is there legislation on sexual harassment in employment?	Yes
Is there legislation on sexual harassment in education?	Yes
Are there criminal penalties for sexual harassment in employment?	Yes
Are there civil remedies for sexual harassment in employment?	Yes
	Score: **100/10 0**

Table 1: Ecuador's Score in protecting women from violence. Source: ECUADOR in Women, Business and the law 2018. Word Bank Research.

Even though feminist researchers have shown that indicators of law reform do not necessarily account for the protection of women on the ground (Albiston and Sandefur, 2013; De Aquino, 2013; Goodmark, 2012; Merry, 2006; Smart, 1989; Snider, 1994), international assessments of a country's progress in counteracting VAW are often based on the existence and/or reform of laws (Davis et al.eds , 2012; UNIFEM, 2003). At the same time, researchers have shown that indicators can strip phenomena off their context by presenting information in a way that is often taken out of their local systems of meaning (Davis et al.eds , 2012; Merry, 2016). Privileging legal reform may thus sideline women's lived experiences, especially in the absence of contextual qualitative information regarding their lives and the reasons why they decide to approach a court.

In Ecuador, in-depth qualitative studies of how the specialised legal system works, are scarce. It is therefore a priority to ask whether the specialised system is being responsive to the lived experiences of survivors. Some relevant empirical questions in this regard are: how and why do survivors of gender-based violence approach the specialised justice system? What expectations do they have in doing so? Does the judicial system respond to survivors' expectations? What is required to provide an effective response to the experienced needs of survivors of violence? To address these questions, this study used a feminist socio-legal approach (Hunter, 2019), looking at the role of law in the lives of violence survivors who seek legal help to address their situation, and taking the gendered nature of judicial systems into

account. The study centred women's narratives of their encounters with courts and lawyers, highlighting how law produces distinctive effects, which are at odds with women's own priorities. Emphasising the meaning that complainants attribute to the legal mechanisms they have encountered, enabled a grounded account of the turn to criminal law in gender-based violence.

In this case study, neither enhanced incarceration nor increased police surveillance of racialised or otherwise stigmatised groups was observed. Instead, attrition and indifference emerged as part of an almost complete lack of effective resources for women who seek protection. The study also identified how lawyers construct the meaning of women's behaviour during a trial, and how these representations contribute to masking the system's blindness to survivors' experiences and needs, by placing the responsibility for not accessing justice on survivors themselves. Paying attention to the social meaning of engaging in a formal legal battle means recognising that litigation often translates into affective and economic costs that women are not always willing to bear. This is, in turn, crucial if feminist scholarship is to contribute to producing knowledge that can inform policymaking in practicable ways.

1.2. Methodology

Fieldwork for this study was carried out over the course of five months in Cuenca, the third largest city of Ecuador, and the capital of Azuay, the province with the highest incidence of VAW, at 79,2% (INEC, 2019). Ethical clearance was provided by the University of Birmingham. Semi-structured interviews were conducting with the following groups:

12 violence survivors who had filed a complaint at a specialised court.

6 judges from the specialised courts for VAW.

3 "first-contact" judicial officers working at the specialised courts.

6 case workers from a pro-bono Law Clinic (Universidad del Azuay).

All interviewees participated voluntarily and were offered the possibility to withdraw from the study within a month after the interview. They were duly informed of the project's objectives through an informative handout and a consent form. All real names were eliminated from the interview transcriptions and field notes. One section of the survivors' group was approached through the staff of two NGOs that assist and advise women. Most women that the NGOs support come from low-income sectors. The project was presented to women who had overcome a crisis phase and were taking part in NGOs' projects, such as capacity-building workshops. Survivors were then invited, either in person or by phone, to voluntarily participate in one interview. Other interviewees were approached through the pro-bono law clinic run by the University of Azuay, where lawsuits are sponsored free of charge with the accompaniment of caseworkers who are last-year law students in-training. The Law Clinic only sponsors people with limited economic resources, as the service is part of the university's community engagement programmes. All participants were interviewed face-to-face.

Judges, who are lawyers who have undergone a public selection process, were approached by phone or email and invited to participate in one interview. All but one out of those working at the specialised courts in Cuenca, accepted. They were then interviewed in person, at the courthouse. Judges were made aware that, although the interviews would be anonymised, there is a possibility that they may be identified, due to their notoriety and the sample size. First-contact judicial officers (*funcionarios de primera acogida*) are lawyers who first see women when they come to court, listen to the complaint, and adapt it to formal requirements in writing. The complaint is then sent to a judge, who may issue protective measures. First-contact officers can also refer the complainant to a forensic physician, psychologist and/or social worker. All first-contact officers were interviewed at their workplace, after learning about the project from the administrative coordinator of the courts. An agreement of cooperation had previously been subscribed between the University of Azuay and the Judicial Council to facilitate this phase.

In addition to the interviews, we analysed 80 case files that were sponsored by the Law Clinic from 2013 to 2018 and processed by the specialised courts. While all case files have an official number assigned by the Court, we replaced those numbers with the project's own numbering system to ensure confidentiality. All names of persons and institutions were removed. Finally, we requested and organised dispersed statistical information from the Judicial Council of Ecuador, including the total number of complaints filed and resolved at the courts in Cuenca during the 2013 - 2018 period.

Interview data was analysed and coded using a qualitative analysis software package (NVivo). Some analytical language was taken from the data itself. For instance, the definition of "access to justice" emerged from women's experiences rather than traditional definitions. Frequent codes that formed patterns included: lawyers representations of complainants as persons who "abandon" the proceedings; the importance, to survivors, of social services; their feelings of alienation from state institutions; their negative experiences interacting with police; and, in particular, their various layers of fear: of not being believed by the authorities, of being hurt by the aggressor, of losing child custody, of losing their sustenance, and of being ostracised by family and friends. The case files from the Law Clinic were coded manually and used to produce a dataset containing information such as the main reason for complaints, the procedural phase up to which proceedings were carried, apparent reasons of attrition, and the decision made by the judge when the process was carried through.

The main limitation during fieldwork was the continued refusal from the Judicial Council to let the research team access the case files held by the courts, due to their data protection policy. Despite repeated efforts to reassure the Council -in writing- that the team would proceed with rigorous ethical protocols, access was never granted. As a consequence, the Law Clinic's archive functioned as an alternative source of information, albeit smaller. However, access to judicial statistics was granted, which revealed comparable patterns to those found at the Law Clinic in terms of unfinished cases. Another limitation was the sample size in the

group of survivors. This was due to our ethical concerns regarding the feelings of obligation that may arise if survivors were invited repeatedly or via the staff of the NGOs and the Law Clinic. As a result, only those who voluntarily approached the team were interviewed.

2. Main findings: the specialised system does not respond to women's needs

Specialised courts for VAW hear misdemeanours and criminal offences categorised as "violence against women or members of the family nucleus" in the Penal Code (Article 155 onwards). Most cases in this study reported physical or psychological domestic abuse. Sanctions can vary depending on the gravity of the infraction: for instance, psychological abuse is categorised as a crime and can result in a maximum of 3 years in prison, while misdemeanours can result in a maximum of 10 days in prison and/or community work. In principle, there is a "unified, specialised and expedited" procedure for VAW (Article 651.1 onwards), which, in practice, can be difficult to navigate. Oftentimes, complainants come and go from one office to another due to lack of clear information regarding the procedures. Also, most interviewees did not know the status of their lawsuit at the time of the interview, nor were they aware of the phases that a penal process involves. Even the differences in nature and attributions amongst offices such as the courts, the law clinic, NGOs, and the police, were not obvious to many survivors. Although the law indicates that complaints can be informal, in practice they are put in writing by either a private attorney or a public employee such as a first-contact officer at court. Pro-bono attorneys often sponsor VAW lawsuits as well.

Findings have been grouped into three main themes: 1) the limitations of the protection/restraining order as the legal measure that complainants request the most; 2) the inadequacy of police intervention; and, 3) The discourses deployed by lawyers regarding women's decision not to pursue a criminal conviction. These findings lead to the article's

broader contention that there are considerable gaps between women's expectations from the system and what it delivers, which results in most complaints never being resolved. As mentioned before, law reform indicators seldom account for the risk, fear, or alienation that violence survivors may experience. There is a clash between law's construction of gender-based violence as a criminal offence, and women's understanding of legal protection as an urgent service. Becoming involved in a criminal trial can bring about consequences that women do not expect nor want. The findings that follow also suggest that feminist critique should recognise that the ways in which criminal law in practice impacts on people's lives are nuanced and diverse. As we will see, it is the unresponsiveness of the penal system, rather than the surveillance it enables in other contexts, that is salient in Ecuador.

2.1. The protection order: sought-after and short-lived

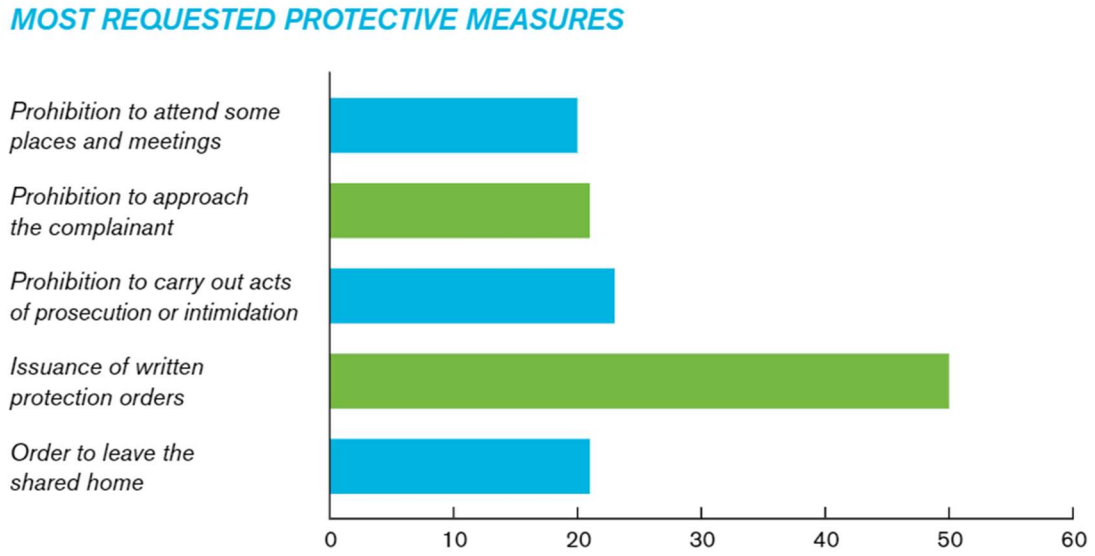

Figure 1: Protective measures that are most frequently requested as part of the protection order issued by the specialised courts. Source: Database built from the Law Clinic's case files.

Protection orders (*boletas de auxilio*) were introduced in Ecuador and Latin America in the 1990s. Researchers have known for some time that they are sought-after protection instruments in the field of VAW (Camacho and Hernández, 2011; De Aquino, 2013; Jubb,

2008). Presently, the protection order is regulated in the Penal Code (Art. 558 N.4). Protection orders are usually requested alongside measures such as the prohibition for the aggressor to approach the complainant at her place of work or study, or an order for him to leave the shared home. All survivors we interviewed approached the courts or the law clinic seeking protective measures (See Figure 1).

In the words of a first-contact officer: "When we receive the complaint, what the complainants asks for is that the aggressor leaves the house... yes, that is the most requested thing" (personal communication, July 1, 2019). One of the interviewed survivors was ecstatic when she found out the aggressor would be ordered to leave the house:

> At the police station they told me [..] 'he is not coming home today'. I cried with joy, with happiness. I told myself that this could not be possible, because I did want him to leave the house (personal communication, 17 May, 2019).

According to the World Bank's Topic Note "Closing the Gap: Improving Laws Protecting Women from Violence" (Sakhonchik et al., 2015), protection orders are amongst the most effective legal remedies available to prevent gendered violence. However, the following interview excerpt shows that, while survivors may need urgent protection and are willing to request a protection order, they are not always willing to pursue a criminal trial, which can prevent them from pursuing the protection order. According to one case worker at the Law Clinic:

> This girl [...] wanted a protection against [the aggressor], but [...] I explained that it is not so simple [...]; it is a complex procedure [...], we have to submit evidence, there has to be a hearing. [...] I explained how it is, and she started crying a couple of times, then came back the next day; she gave me some information, we were going to initiate the lawsuit [...] but she left the law clinic [...] and sent me a text message telling me that she no longer wanted to

> continue, because she did not want to hurt him, that is, she just wanted the protection order; but in finding out that [the aggressor] could be imprisoned, she was afraid of the repercussions that this may have, that he or his family would want to take revenge [...] so, she withdrew" (Law clinic case worker, personal communication, February 15, 2019).

In Ecuador, protection orders are usually short-lived, since their validity is subordinated to the progress and outcome of the trial. Very often, complainants are unwilling to take the process further after filing a complaint. If a judge considers that not enough evidence has been presented (including when a complainant does not attend a hearing), protection orders are invalidated. The orders are initially issued *ex parte* —immediately and without a hearing when a person files a complaint—, but if the hearing is not carried out or the proceedings cannot move forward for any reason, the protective measures can be lifted, as there are no legal grounds to maintain them. In view of this, lawyers try to encourage complainants to follow through. One first-contact judicial officer said:

> Here, the advice given to the victims is to follow the process to set a precedent, because the victims are told that if… for example: if they file the complaint and then they no longer come to the hearing, it is like having done nothing, the administrative measures are without effect (First-contact judicial officer, personal communication, July 1, 2019).

Out of 80 complaints that were sponsored by the Law Clinic during the period of study, 52 complaints explicitly requested a protection order, and 50 orders were granted by a judge. However, only 4 of these protection orders became permanent; the rest were revoked, either because the complainant did not attend the hearing, or because there was insufficient evidence of abuse. That is, only 5% of all issued protection orders were ratified.

Nevertheless, because they are the only available protective mechanisms, the orders are seen by violence survivors as the *raison d'être* of the specialised courts. From their

perspective, issuing protection orders is what the courts do. By contrast, from the perspective of lawyers, prosecution is the "real" purpose of the process. To lawyers, complainants have a distorted view of a criminal trial's nature. They see women's tendency to request the protection order and then fail to advance the process, as a lack of understanding of how law works. First-contact officers, as well as case workers at the Law Clinic coincided in stating that the main goal for complainants was to obtain a protection order, not a conviction. The following statements by two Law Clinic caseworkers illustrate such view:

> The main request: the protection order. People think of the order as a goal, not as a means to an end. They think that this is the aim of the process. They do not glimpse everything that the state apparatus sets in motion to get that order, and the procedure as a whole (Case worker 3, personal communication, February 15, 2019).

> Some [survivors] come only for the protection order. They think the protection order is a salvation. In practice, it is not what it should be. Many [women] arrive and say "I just want to get the order and that is it (Case worker 1, personal communication, February 14, 2019).

After interviewing the judges and judicial officers, it became evident that a kind of informal protocol had been put in place to try to ensure that complainants pursue the trial: this consisted of warning them, if subtly, that they are obliged to do so by law. Furthermore, legal professionals said they were careful not to stress that an outcome of the trial could be a conviction, which could in turn discourage women from advancing the proceedings. For instance, one first-contact officer admitted:

> [...] We obviously try to be professionals in that sense. We do not say "hey, your husband is going to be imprisoned", that is, we try to use a professional, legal, but subtle language at the same time. [...] They often have a strong emotional bond that in some way or another ties

> them to [the defendant] in a very strong manner, so they could say "no I don't want to file the complaint" and leave the process there (personal communication, July 1, 2019).

The short life of protection orders as a consequence of their subordination to a criminal trial, is, in turn, a serious problem that should not be regarded as a procedural matter only, given that it is one of few legal resources available to women who are at risk. When complainants decide to report violence, it is usually a last resort, when the risk of serious injury or death is high. Monica, one of the interviewed survivors, told us:

> [The psychologist] came to the house [...], I had never wanted to tell what we were experiencing, it was always "no, I live well, he does not insult me". Once, he tried to strangle me and I said he did nothing to me; then the psychologist, when I told her that he did strangle me once, she said that this one time he could have killed me, that he had to leave; [then] I came here to the NGO (personal communication, May 15, 2019).

The next example, which has been taken from a complaint sponsored by the Law Clinic, also shows how high the risk can be when women decide to take legal action:

> [The defendant] raised [the complainant] against a piece of furniture and grabbed her neck preventing her from breathing while repeating: "you are a bitch". With this, he released her neck and went to the kitchen; she tried to leave but he did not allow her to, instead, he took a knife and again took her neck with his hand while raising the knife with the other and threatening: "you don't know who you got in trouble with, you don't know what I am capable of doing" (Case 013-A01-13, Universidad del Azuay Law Clinic, 2013).

The records show that the complainant stopped coming to the Law Clinic and the protection order lost its validity. She never returned.

Even though survivors demand swift protection from ongoing violence, the Penal Code does not enable judges to issue protection orders based on an assessment of risk. Protection orders are issued based on the statements made in the complaint, which, in turn, means that said statements have to be proven to grant the permanence of the orders. In addition, judges only meet complainants during the hearing, and since most survivors do not attend, in-person interactions are almost non-existent, making even an informal evaluation of risk, very difficult. All judges affirmed that not having contact with complainants ensures "procedural impartiality", that is, contact with complainants is framed as a deviation from an objective process.

2.2. Police intervention is inadequate or ineffective

Using protection orders can be difficult even while they are still valid. The role of the police is of utmost importance because if a protection order is violated (which itself constitutes a criminal offence), survivors are meant to call the police for help. Although there is a (small) specialised police division working alongside the courts to provide assistance and protection to survivors, it is often the case that emergency calls are answered by non-specialised agents. In this context, police passivity is common:

> After I filed the complaint, they gave me the protection order, but that order has not really helped me [...] because the police, when you call them, they arrive at whatever time they feel like [...]. They simply arrived when [the aggressor] had already done everything, and I believe that when one has a protection order they should arrive right at the time when they are called [...]. They ignore a call for help, I will tell you from experience because I have already endured it. [...] What is the use of a protection order if when I call they do not come? [...] What is the use of the rights that I have on paper if they do not serve me, if the policeman does not act and the first thing the policeman tells you is "ma'am, show me where the blows are, where is

it bleeding?...". So what laws are we talking about? (Hilda, personal communication, February 15, 2019).

Similarly, Virginia recalled:

> On December 24th, I called the police and I asked them to help me get out of the house, and the police did not help me, that is, the police asked me if I had a place to stay. I said "no, I have no family, I have no one" [then the police asked]: "so where are you going to go?" And I now realise, now that I am here at the NGO, I realise that the police could have brought me here [...], but they did not help me (personal communication, May 14, 2019).

The testimony above reveals not only that the police did not respond to Virginia's request, but also that they either do not know of, or prefer not to suggest that the caller be taken to, other institutions to obtain help. As a migrant woman, Virginia was unfamiliar with the local NGOs that could have assisted her at the time. What was also appalling, is that we heard on more than one occasion about the police "making friends" with the aggressor:

> They came to my house, they started talking to [the aggressor], he was drinking, he invited them to drink a glass of beer; those policemen drank a glass of beer with him [...]. The policeman said 'you better talk things over' [...], that is, they said that I was doing something wrong (personal communication, May 14, 2019).

A similar pattern emerged from the analysis of the Law Clinic's case files. The following excerpt was taken from a complaint:

> [...] I managed to call the police, and when they arrived they did not arrest him, they just told him: "get out of the house, these are family problems, if you do not leave we are going to arrest you". [The aggressor] left, and around 8:30 pm, he returned, and broke the windshield of a

> friend's vehicle that was parked in front of my house and then ran away in a taxi. [Later] he started calling me on my cell phone threatening me and saying 'I'm going to kill you, I will not care, I'm following you, watch out' (Case 045-T07-5, Universidad del Azuay Law Clinic, 2013).

As we see, police do not generally provide timely protection nor useful resources or information. Clearly, the police generally reproduce stereotypes of dominant masculinities (Brown, 2007; Connell, 2009) and tend to minimise the seriousness of the incidents —especially when there are no visible physical injuries—, often encouraging survivors to "solve" the problem by reconciling with the aggressor.

2.3. It's women's fault: the "cycle of abuse" masks survivors' motivations

Feminist researchers have noted that the criminal law and its agents tend to deny women's agency, the logic of their choices, and the complexities of their relationships (Mahoney, 1994). They have also found that judges tend to consider that the cyclical nature of domestic violence leads women to withdraw charges or understate the harm during periods of calm in an intimate relationship (Douglas, 2008a). This was confirmed by this research, but it was also revealed that lawyers' perceptions can be distanced from women's real motivations to withdraw from a trial.

Many lawyers, including judges, considered that women's "desertion" resulted from their emotional attachment to the aggressor. Women's "failure" to advance a process, they said, is the consequence of the "cycle of abuse" [4], whereby preserving or resuming the relationship may be preferred over personal safety. Within this "battered woman syndrome"

[4] "Cycle of abuse" is a term coined in 1979 by psychologist Lenore Walker, in the book "The battered woman", based on interviews with 1500 women in the USA. In this model, domestic abuse develops in three stages: 1. Tensions building; 2. Acute incident, when the abuse occurs; 3. Loving-contrition or Honeymoon, when there is no abuse and the incident is forgotten (Walker, 2000).

framing, when women make a decision to report violence, they are experiencing the acute phase of the cycle of abuse, but after a while the next phase will start, in which they "forgive and forget". It is during this so-called "honeymoon", in the view of many specialised judges, that lawsuits are dropped. One of the judges said:

> Although the procedure that is applied to the misdemeanours is specialised... it is an expedited procedure that is established in the penal code, which seeks that these processes be swift, that there be timely attention, that there be speed... nevertheless, we have to consider the cycle of abuse [...]. What happens is that no matter how fast the proceedings are, many times those cycles are closed before the hearing and if there is no empowerment or assistance to the victims, many times they do not attend the hearing to finish the penal process (Judge B, personal communication, February 20, 2019).

Another judge asserted:

> In this type of emotional family relationships, there is a cycle of abuse; when there is an explosion, they come and report [the incident]. Then, it is during this stage of explosion [...] that justice really has to carry out the accompaniment and empower the victims, but that does not happen. Then, obviously, the next cycle comes, which would be [...] that they become friendly again. [...] Then the victim does not attend [the hearing] (Judge D, personal communication, March 20, 2019).

Previous studies have noted that the terms "cycle of abuse" and "battered woman syndrome" tend to pathologize women's behaviour (Douglas, 2008b) and undercut the agency and choice of women, who are depicted as in need of "empowerment". This research showed that many lawyers regard women as victims of their own emotions and dependencies and contemplate strategies to ensure that these affections do not prevent them from advancing

the criminal trial. The pervasiveness of the "cycle of abuse" explanation appears to keep lawyers from recognising that the nature of the criminal trial is itself producing attrition. Existing literature shows that there is an increased risk of aggression for violence survivors if they pursue a criminal trial, that women are afraid that they may not be able to control the legal process once the incident is treated as a "real crime", that they fear losing their home and children as a consequence of being involved in criminal proceedings, and, ultimately, they fear that they may not be protected from further violence (Douglas, 2008a; Kelly and Radford, 1990; Lewis et al., 2001). In fact, the reasons why criminal proceedings are not carried through were explained by survivors in a different way compared to judges. For instance:

> [...] husbands are imprisoned, [then] they do not work, or I have heard [other survivors] say "my husband worked, now he is in prison, now I have to break my back working, [...] better [to have a] bad husband than [none] because he brought the food. That is why I endured 18 years (Lourdes, personal communication, February 14, 2019).

None of the interviewees said that forgiving the aggressor or resuming their relationship was a reason why they had withdrawn from the trial. Instead, the main narrative that this study identified revealed that women refrained from advancing the process mainly due to *fear* (See Box 1).

Box 1

Main forms of fear that result in women's reluctance to advance the proceedings

- ❑ Fear of not being believed by the police or the judicial authorities.
- ❑ Fear of worsened violence once the aggressor finds out that they had initiated a criminal prosecution against him.
- ❑ Fear of being involved in an onerous criminal trial.

- ❑ Fear of the arrest and imprisonment of the defendant.
- ❑ Fear of losing the financial support provided by the aggressor.
- ❑ Fear of being ostracised by their families for breaking up the marriage/partnership.

Source: interviews with violence survivors.

Fear is evident in the following excerpt from Hilda's testimony. When asked about the reasons why she was suspicious of the legal system, she recalled her moments of doubt right before making the decision to file the complaint:

> Do I do it or not? I mean, do I file [the complaint] or not? Because [the aggressor] told me that if I do something [about the abuse] it would get worse [...]. I was dying of fear and at the same time I was afraid that [the authorities] would not listen to me, because many times they don't listen to you, they don't pay attention to it, and that has already happened to me (personal communication, February 15, 2019).

To this, she added:

> Today, as you will see, professor, there are people, women, who get the protection order and are still attacked, and [the aggressor] is sent to prison, and also the judges do not take into account that [the aggressors] just leave and then they come back with more vengeance, they even kill [women].

Similarly, Virginia said: "I was afraid of him. [...] I could not leave; that is, he was almost always controlling me. I did not have the possibility to go and file the complaint again". Virginia had filed a complaint once before and lost the protection order.

While, on the one hand, lawyers manifest a certain understanding of the difficulties women confront as part of living in an abusive relationship, on the other hand, the idea of a "cycle of abuse" returns the blame for not accessing justice to women as individuals, obscuring that the legal system is a gendered structure that does not accommodate women's own definitions of justice. The narrative of the cycle of abuse requires further interrogation regarding the extent to which it is providing a helpful explanation of gender-based violence, particularly in the context of a trial. There is a difference between attributing attrition to women's behaviour as victims of the cycle of abuse and acknowledging that their situation is complex and shaped by structural factors besides their individual affections and emotions. Still, it is fair to say that some legal professionals acknowledged fear as a crucial component of the processes' limitations. One of the first-contact judicial officers said:

> After telling their whole story, what they manifest or what is evident, let's say... they feel fear, fear of filing a complaint, fear of perhaps thinking about what will happen if perhaps they will be at greater risk, what will they do with the children, especially, with the children because many [...] think they will take away their children, then they are very restless (personal communication, July 1, 2019).

Nonetheless, there is still a significant gap between the narratives that lawyers deploy and the ways in which women experience abuse and attempt to protect themselves, which may require them to stop advancing the process, which most of the time results in truncated trials, as shown next.

2.4. Most complaints are not resolved: the gaps between the law's representation of violence and survivors needs

Largely because of the layers of complexity described above, the majority VAW complaints were not carried through to resolution. A clear pattern was identified from the information provided by the Judicial Council, which was consistent with the Law Clinic's records: most lawsuits filed at the specialised courts never reach the stage of sentencing. From the information provided by the Council, out of 14,826 initiated processes from 2013 to 2018, 6,530 were redirected to the public prosecutor (due to a then unresolved conflict of jurisdiction), and of the remaining 8,296, only 3,652 were resolved with a judgment. Of 8,296 case files processed by the specialised courts between 2014 and 2019, only 927, that is, a mere 11.1% resulted in a conviction. Approximately 56% of the cases heard by the specialised courts did not receive *any* type of judicial decision.

Table 2
VAW complaints presented in Cuenca between 2014 - 2019

Total number of complaints filed	14826
Cases redirected to the public prosecutor	6530
Cases processed by the specialised courts	8296
Judgments (final sentences) issued	3652
Convictions	927
Acquittals	1952
Other (non-disclosed by the Council)	773
Cases without a judicial decision	4644

Table 2: Complaints presented before the specialised courts in Cuenca, between 2014 and 2019. Source: Judicial Council of Ecuador (*Consejo de la Judicatura*).

A comparable pattern emerged from the cases sponsored by the Law Clinic. Here, of 80 lawsuits, 22 achieved a sentence and only 7 were convictions, that is, 8.7% of cases:

Table 3
Complaints presented at the Law Clinic 2013 - 2018

Total number of complaints	80
Number of case files redirected to the public prosecutor	16
Cases processed by the specialised courts	64
Number of sentences issued between 2013 and 2018	22
Convictions	7
Acquittals	15
Cases without a judicial decision	42

Table 3. Complaints presented at the Law Clinic of the University of Azuay (2013-2018). Source: dataset created from Law Clinic's archives.

These numbers, together with the qualitative data above, confirm that the specialised system was not useful for a majority of those who approached it. Violence survivors do not usually signify violence by an intimate partner as a crime. The penal framing of gender-based violence is based on principles, rules and instruments that women do not make use of because they are not meaningful to them. "Legal empowerment" presupposes that all women be in a position to initiate a formal lawsuit, to treat an intimate partner or close relative as an adversary, to become estranged from them (with the financial implications that may come with a breakup), and to have resources to advance a criminal trial. The criminal law does not address the social factors by which women are systematically excluded from becoming a "subject of rights".

This is corroborated by the fact that, in general, violence survivors first resorted to non-judicial mechanisms to halt violence before they decided to file a complaint. For instance, they sought for services that some NGOs and local governments offer free of charge, such as psychological counselling and refuge. Very often, it is counsellors and advisors at these agencies who help survivors see abuse as something that ought to be legally addressed. Sara, for instance, was determined to take legal action only after a psychologist from an NGO advised her to do it:

> [I decided to seek] external help because of my daughter, and also because I felt more certain of the support that they would give me in the [court of] justice, as well as the psychological part, and it was the only way to stop [the aggressor] (personal communication, 14 February 2019).

In view of these realities, some lawyers did recognise that, given that punishing the aggressor is not the main goal that women pursue, alternatives should potentially be considered. One of the interviewed specialised judges said:

> Many of the users are not even satisfied with the result of the process. On one occasion, [in] a case of physical violence, the user came to my office with her daughter to protest that I had issued a conviction against her husband, because he [economically] supported her. Maybe jail is not the answer for everything [...], it was not the answer she was looking for (Judge E, personal communication, March 22, 2019).

3. Discussion and recommendations

There are several ways in which the findings of this study may illuminate debates on the resort to criminal law regarding VAW. At stake are crucial concerns such as women's denial of agency by legal professionals, the prevalence of a hegemonic masculinity that generates a "fratriarchy" whereby the police and the aggressors contribute to silencing women, the law's narrow representation of women's lives, experiences and understandings of justice, and, indeed, the multiple ways in which judicial processes are gendered. An idealised self-sufficient subject of rights is still at the centre of legal discourse, which results, among other debatable

narratives, in survivors themselves being blamed for not pursuing an criminal trial, which is implicitly equated to an unwillingness to put an end to violence.

More broadly, it is clear that learning about how legal systems play out on the ground allows us to nuance some accounts that may present feminist trends in the Global North as uniformly "downloaded" by the South, and bringing about similar consequences. In this study, for example, no significant input from feminists, inside or outside state agencies, was observed in the deployment of the specialised penal system. Not only law reform, but also law implementation are essential elements of governance. One could say that "governance feminism" (Halley et al., 2018) was all but absent from the picture.[5] Likewise, while the many limits of criminal justice to protect and redress women have been tackled in feminist literature, less has been said about the implications of this truncated system for current critiques of "carceral feminism", considering that carceral expansion may not always be the outcome of turning to criminal justice to prosecute VAW. Here, I showed that the ways in which the penal system is deployed in practice, hardly produce more incarceration or police surveillance, given that prosecutions rarely resulted in convictions, and the response of the police was often inaction or dismissal of women's calls for help. Relatedly, an enhanced racialised social control was not observed — which certainly does not mean that it is not present in other areas of criminal law enforcement.

While the high levels of attrition and the connected low levels of incarceration do not mean that feminist support of criminal law-first strategies is unproblematic, the findings of this study suggest that more attention should be paid by feminist critiques of penal expansion to the ways in which the existence of criminal laws on VAW masks the lack of more substantive state intervention in changing the conditions under which widespread gender violence is

[5] Elsewhere, I argued that "governance feminism" may not be applicable in enclaves where women's movements have less incidence than conservative sectors in steering policy. Moreover, the feminist drive to criminalise and punish VAW may not always be the result of co-option by neoconservative forces (Tapia Tapia, 2018).

possible. We should also pay more attention to how women's understanding of justice is misrepresented by criminal law. The case of Ecuador shows that many women remain unprotected despite the existence of specialised laws and specialised courts. What is more, they may be at increased risk due to the very existence of these laws, as they initiate lawsuits that may come with a backlash and no effective protection. What is most problematic, in this context, is that the state's response is centred around law, criminal proceedings, and the goal of establishing criminal responsibility, and this may be facilitating the side-lining of urgent demands for a comprehensive network of public services, and the corresponding budgetary allocations. Legal indicators, such as Ecuador's perfect score in protecting women from violence, are often posited by the state and international agencies as markers of progress in matters of gender inequality, even while the state does not offer access to what women envision as justice. In other words, centring law and criminal justice is concealing the absence of state responses that are meaningful and useful for women.

At a policy-making level, the knowledge that punishment is not the main demand that women make, and that the possibility of prosecution may actually discourage complainants from seeking legal help, should be used to move beyond the criminal law-centric response model. Similarly, the finding that once a protection order is issued, what is most likely to happen is that the complainant does not return to court, should shed light into what women's priorities are. Presently, lasting legal protection is offered only to those who can pursue a criminal trial. At the same time, most women approach the courts when they are at a very high risk, while many judges, judicial employees and case-workers explain women's tendency to withdraw from the process as lack of legal education or subjection to the "cycle of abuse". This model obscures the reasons why women distance themselves from the courts, including their fear of violence aggravation and of losing income and sustenance for themselves and their children.

At a practical level, immediate and effective protection measures that are not subordinated to the criminal trial, are urgently needed. Protection orders should be granted based on risk-assessment and be valid as long as risk persists. An exclusively protective process that is independent of criminal justice, could be the basis for the issuance of more effective protection orders. In addition, police accountability regarding their adequate intervention will be key to materialise the protection orders. Further qualitative data is required to better understand the causes of police reticence to swiftly assist survivors. Also, it is urgent to articulate, strengthen and finance social services (also independently of the criminal justice system) that can offer adequately resourced shelters with multidisciplinary divisions that provide safe spaces for women and their children. Public policy to address women's financial precarity is key to providing them with tools that allow them to escape violent contexts without fear of losing their livelihoods.

The discussion and recommendations above suggest that criminal law should be decentred or at least used with caution for reasons aside from carceral expansion. However, an objection that surfaces when it comes to taking distance from the criminalisation of VAW, is that this may be taken as implying that the problem is not serious enough to merit being considered a criminal offence. When discussing these findings with policymakers, I have often said that it is not that VAW is not important enough; rather, it is *too* important to let criminal law be the only way to address the protection of women's lives.

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