**Logos Universality Mentality Education Novelty, Section:
Political Sciences and European Studies**

ISSN: 2284 – 5992 (print), ISSN: 2284 – 5992 (electronic)

Covered in: CEEOL, Index Copernicus, Ideas RePeC,
EconPapers, Socionet

**GENDER VIOLENCE WITHIN THE INTER-
AMERICAN SYSTEM OF HUMAN RIGHTS
PROTECTION. THE RESURGENCE OF
GENDER CULTURAL CONSTRUCT**

Maria Beatrice BERNÁ

DOI:

<http://dx.doi.org/10.18662/lumenpses.2015.0301.04>

Logos Universality Mentality Education Novelty, Section:
Political Sciences and European Studies, 2015, Volume III, Issue
1, pp: 49-65

Published by:
Lumen Publishing House
On behalf of:
Lumen Research Center in Social and Humanistic Sciences

Gender Violence within the Inter-American System of Human Rights Protection. The Resurgence of Gender Cultural Construct

Maria Beatrice BERNA¹

Abstract

Within the Inter-American system of human rights protection, the concept of gender based violence is a permanent issue that requires multidimensional approaches of cultural nature. In the present paper we aim to demonstrate the manner in which the cultural factor influences and determines the etiology of violence directed against women. In our argument, we will take into account two concepts that determines the gender roles within the Inter-American System: marianismo (the expression of the feminine gender role) and machismo (the expression of the male gender role), advancing the work hypothesis according to which, the interrelationship between those two concepts determines social behavioural and mental conducts which designate an inferior position to women.

In the same token, we will develop the hypothesis according to which, the cultural factor was recognized as a primary source of the gender based violence phenomenon at the legal level, in this sense being prescribed the legal approach advanced by the Belem do Para Convention which connects the cultural factor with gender and with the forms of violence that are addressed to women. From the methodological perspective, we will apply the deductive reasoning by first indicating the peculiarities of the two concepts that are auxiliary in constructing gender roles (marianismo and machismo) and secondly demonstrating, by means of the hermeneutical method, the manner in which, the interaction between the two concepts may generate the social and juridical reality of femicide – which is an extreme form of violence against women. The deductive method will also be implemented in order to ensure the structure of the paper; meanwhile, the hermeneutical method will be applied at a substantial level, facilitating the demonstration of the hypothesis and, overall, the entire argument.

Keywords: *violence, gender, marianismo, machismo, femicid, the Belem do Para Convention.*

¹ PhD. candidate, Titu Maiorescu University, Romania, berna.beatrice@yahoo.com.

Preliminaries

The issue of human rights represents, first of all, a *mixed, hybrid* aspect which cannot be strictly circumscribed to the legal sphere, as it claims a multidisciplinary approach. Through a *multidisciplinary approach* we understand an integrative perspective through which may be assessed the specific aspects of existence as well as the intangible aspects. From this point of view, we have advanced in the present study, the *cultural factor* as relevant instrument for analysis due to the fact that it evokes, simultaneously, the tangible (by means of practices and customs imposed *illo tempore*) and intangible (through the created *behavioural and mental patterns*). By applying this analysis upon the Inter-American system of human rights protection and, in particular upon the violations brought upon women's rights through violence, we will demonstrate that cultural factor is a classical determinant of violence against women, manifesting mostly into the intangible dimension.

In other words, we think that, unlike other regional law systems (like the African system) in which the concrete cultural practices have resulted in imposing a certain pattern of thinking at the level of the community, within the Inter-American law system the relationship of mutual determination was established in a reverse manner. Mental patterns-as an intangible dimension of cultural factor-, have generated gender roles and their applications in society, hence the appearance of an inequity situation for the female segment of the population.

Our speech will be characterized through the bivalent description of the relation culture- gender; thus, we will not limit our analyse to the presentation of the way in which women's rights are violated by the patriarchal culture, thus we will expand our research upon the manner in which the patriarchal culture was imposed on a regional level. Essentially, the *gender issue* is a two-way (Schneider, 2010) problem as it treats both gender constructs-male and female-, the two being in an interconditionality relationship.

The patriarchal culture and the culture of violence against women are two constants that self-determine themselves within the intangible dimension of mental patterns. Women's subordination does not exist *in abstracto* but it exists as a result of male domination; to support male domination, over the time, within the states of Inter-American system, the cultural factor had pre-eminence but the religious dimension of the cultural factor was used equally.

By virtue of the bilateral feature of gender issues regulated within the Inter-American system of human rights protection and influenced by the cultural factor, we will approach, in the following sections of our study the concepts of *marianismo*, *machismo*, *femicid* (*feminicid*).

***Marianismo* or the cultural requirements imposed upon the female gender within the Inter-American system**

The concept of *marianismo* was imposed in the Inter-American system of human rights protection by virtue of the cultural element demonstrating how the cultural factor has led to the construction of the female gender role. Analysed in depth, the concept of *marianismo* results from the interaction of two factors: (1) the religious factor-as a peculiar application of the cultural factor and (2) the social factor which imposes the segregation *public/private* within the process of assessing the social involvement of the individual. With regard to the first factor of religious nature, it is just to affirm that *marianismo* derives the features that must characterize women from the cult of the Virgin Mary- and implies the worship of certain qualities such as: *modesty*, *fragility*, *humility*, *obedience*, *devotion to family members*. The social factor reiterates the division *public/private* of the social sphere granting the public sphere to male segment and the private one to the female segment. This creates, automatically, a state of subordination with regard to the female segment, given that, the female circumscription into the private sphere is equal to diminishing the chances of female participation in public life. By combining behaviours dictated by the two factors, *marianismo* prescribes the female gender conduct in terms of *devotion until self-sacrifice* and in terms of private sphere of the family. Women are valued for their ability to preserve the family cultural values but also for the ability to play the role of a factor of cohesion and harmony in the family sphere. The female segment is recognized as a family stability ensurer element but externally, on the level of public discourse, female abilities are contested and removed.

We feel that the *female Latino-American model* imposed by the cultural concept of *marianismo* enshrines *the paradox of the dual woman* -whose image is sacred in the private sphere and disputed in the public sphere. It is interesting to note that, the female gender role built up by the precepts of *marianismo* is mainly focused on opening up to others; nevertheless, in its turn, the distinctive female quality of opening up to others is valued as long as it moves towards the *family good and towards maintaining harmony throughout the*

private sphere. It is convicted any opening towards the external sphere of the family as long as it implies women's involvement in the public (Arango, Leon, Viveros, 1995) affairs.

The paradox subsists by promoting the male segment in the public sphere -as the latter is recognized at family level through the lack of involvement, individualism, competitiveness. We feel that it is difficult to conciliate the *competitiveness* with public affairs because the public arena sets its own objectives for the good of the whole community and those objectives are likely to be achieved through the *spirit of cooperation* (a quality derived from *marianismo*) and not through the logic of competition inside which there will be inevitably, inequities and subordinated positions. The same paradox is recognized in the specialized literature (Hernandez-Truyol, 2001) by applying a double standard when assessing the gender conduct. (1) the female gender is destined to obedience and the main feature of *marianismo* lies in *self-sacrificing to serve the needs of others* but, as a result of self-sacrifice, women acquire in reverse, the respect and admiration of society; (2) the male gender is recognised through superficiality, non-involvement, hardness and, in the absence of these features promoted by *machismo*, the male authority is only recognized as a standard for public power.

In light of the ideas mentioned above, *marianismo* is the concept which describes, within the Inter-American system of human rights protection, *the cultural construct of the female gender*. Therefore, *marianismo* designates a cultural construct because it imposes women a certain conduct which pervades the collective mentality, promoting the self-sacrifice feature as a desirable female act. In the same vein, *marianismo* is a concept that shapes the *female gender* without having relevance over *sex*- as biological criterion. We will explain the last idea as follows: *marianismo* establishes the pattern of a behavioural determinism by virtue of the image that the collective mentality projects upon women, without promoting a *biological* determinism, respectively, without promoting the idea according to which *women are essentially tributary to a peculiar behaviour pattern by birth*. More clearly, the female ideal promoted by *marianismo* exists due to the social perception of the female image, - a perception that arises from the collective mentality (the intangible dimension of culture). In the absence of the perception that the collective mentality propagates upon women, the latter would be born free of the demands imposed by *marianismo*. Finally, *marianismo* is a concept that refers to the *desirable female conduct imposed by the cultural factor and validated*

through the collective mentality; because it requires a specific conduct the term *marianismo* is a prescriptive concept (Jezzini, 2013).

***Machismo* as reverse and correlation of the *marianismo* concept**

Machismo designates the male gender construct, prescribing, attributes such as *individualism*, *authority*, *hardness*. It corresponds to the male ideal whose role is to assure the domination of the female segment of the population by imposing authority both in the family and in the public domain. In doctrine (Moises, 2012), *machismo* equals the male archetype that dominates the social relationships, proving intransigence and hostility in dealings with the opposite sex. We have mentioned in the previous section of our paper that the term *machismo* is in intrinsic correlation with the *marianismo* doctrine arguing the idea that women's subordination does not exist *in vacuo* but is produced by the male prototype derived from *machismo*. The imposing of the male authority upon family members and within society is sustained through the *machismo* concept according to which among the male features must be retrieved the responsibility towards family and assuming the role of main family provider (Vazquez, 2013). Another doctrinaire's (Derks, 2009) opinion underlines the negative aspects brought by the the concept of *machismo* upon the male personality, introducing the male prototype as an oppressive entity in social relations that is infantile and ruled by sexual impulses. From our point of view, the paradox state drawn from applying the *machismo* concept is bivalent: (1) on one hand, the concept of *machismo* comprises in its content, antagonist meanings -representing both the prototype of the aggressive men and also the ideal of the man who will assume responsibilities; (2) on the other hand, within social relationships, the concept of *machismo* implies the recognition of authority at the family level and in society, despite the recognition of the dual nature - that is both infantile and non-spiritual of the male prototype. In the frame of the difficulty in establishing the content of the concept of *machismo* we deem that a strict definition may be determined through the delimitation of *marianismo*. Consequently, the ideal male evoked by *machismo* may not be the equivalent to an individual who will assume responsibilities-this feature being the privilege of *marianismo* and the two concepts-*machismo* and *marianismo* describe an interconditioning relationship that does not support overlapping meanings. *Per a contrario*, *machismo* is a term whose content is limited to male aggression and to imposing male authority through force. However, one cannot surpass the paradox connected to superpositioning the

nonconformist man with the status imposed by *machismo* in social and family relations. Indeed the following question becomes legitimate: why are men who subscribe to the *machismo* pattern granted social superiority and/or family superiority, as long as the feminine ideal prescribed by *marianismo* has recognized the spiritual superiority and, in extenso, the superiority of human features?

Even if the question is rhetoric, we feel that the solution must be searched into the *taxonomy of social values imposed on by the cultural factor*. Applying the criterion of classifying social values existing in the collective mentality, we observe that the spiritual superiority proposed by *marianismo*-although recognized at family level, it is not reckoned as real value in the public sphere because of the patriarchal culture which imposes the male referential and its virtues at the social level. By parity of reasoning, in the private sphere, the values imposed by *machismo* will have preeminence over the female ones.

The femicid

The concepts of *marianismo* and *machismo* -although culturally pre-determined and generated by the intangible dimension of the cultural factor, produce concrete consequences on social level. In the present section of our paper we will argue the idea according to which *femicid* -or the extreme violence against women is the cultural response of men -who are loyal to the roles prescribed by *machismo*.

The specialized literature (Carcedo, 2000-2006) qualifies *femicid* as a violent manifestation against women, regardless the domain in which it occurs (physical, emotional, sexual, economic), whose causality is determined solely by the *gender* criterion and whose purpose is, ultimately, to produce the death of the victim. We believe that the *femicid* is more than just a phenomenon- it is a process where are evolving a number of acts of violence against women (different or identical in content) that lead to the murder of victims for their belonging to the female gender.

In the approach revealed to be developed *-the interaction between machismo and marianismo leads to the femicid phenomenon* -the connection between the three constants seems clear: if women renounce to the ideal described by the percepts of *marianismo* this will lead to the violent reaction of men who comply with the principles of *machismo*, the reaction being concretized in *femicid*. The premise of estranging women from the concepts of self-sacrifice and devotion towards family members symbolizes, at the cultural level and

by reference to the collective mentality, the de-construction of the female gender role translated into the phenomenon of female emancipation. Correlative, reserving male gender role and the reaffirmation of *machismo* in the context of denying *marianismo* leads to male aggressiveness concentrated against the female segment because once the coordinates were modified, male dominance is devoid of object. Specialized studies (IACHR, 2014) have customized the situation of the female segment in neutral terms, without resorting to the cultural constructs *marianismo* and *machismo* the result being captured in the following observations: (1) women subjected to male authority are in a precarious financial situation (the *feminization of poverty* is the self-evident concept to illustrate this situation); (2) male domination can be applied at the emotional level by forbidding women's contact with the outside world, and by ceasing all social relations; (3) the forms of male violence against women are favoured by the lower level of female education derived from the social perception attached to women-that of non-actors in the public sphere. The above mentioned situations are the consequence of applying the *marianismo* typology, and, in particular, the consequence of the exigence of female isolation from the public sphere together with the effects that follow from this: (1) financial dependence, (2) the failure to professionally evolve, (3) social and psychological vulnerability. These being illustrated, women's detachment from the behaviour indicated by *marianismo* is a source that threatens the authority promoted through *machismo* and the reaction of *machismo* is materialized by promoting gender violence.

Gender based violence or violence against women promoted for the mere fact of being women, constitutes the response of male authority contoured by the *machismo* pattern. It is worth noting that, although the concepts *marianismo* and *machismo* are interdependent-whereas we have previously established that, there is not female submission in the absence of the male correlative authority- the consequences produced by the two concepts are *asymmetrical*, knowing different developments. *Asymmetry* is obvious to the extent that, the evolution of socio-economic conditions produced the *re-configuration of the female gender role imposed by marianismo concept* while the masculine role assumed by *machismo* has not understood the re-modelling corresponding to the female model. The cause *Gonzales and others against Mexico*-also known in doctrine under the denomination *Campo algodnero (the cotton field)* (IACHR, 2009) represents a starting point in the research undertaken by the authorities in order to establish the causes of femicide in Central America. In the given case is analysed the disappearance, sexual torture and the killing of

three women Claudia Ivette Gonzalez, Esmeralda Herrera Monreal and Laura Jesson Ramos Monárrez, -all workers in *maquila* factory set up in Ciudad Juarez. The national authorities have impassibly treated the research in this case by unduly slowing down investigations. Authorities have argued in front of family members that their involvement in this kind of circumstances cannot be total because the acts of violence to which women were subjected are due to victims who, through their behaviour, have provoked the potential aggressors.

For omissions and delay in the investigation, the case was brought before the Inter-American Court who, further a careful examination, decided that the State of Mexico is guilty for failure to lodge the necessary diligences in order to protect women's rights as human rights. The indolent attitude of the national authorities and the lack of involvement in the investigation and settlement of the case have been assigned to the mental patriarchal patterns under which women are guilty for the extreme acts headed against them because, by their conduct and indecent clothes displayed in society, they assume a vulnerable position, risking to become victims. The specialized literature (Sáenz Andujo, ****; CLADEM, 2010; Simmons, 2006) has identified the context in which occurred the assaults and murder against those three women, highlighting some common stereotype aspects: the women who were abused were younger, were active in the labour market, have attractive features and they have endured a similar treatment from the aggressors, being subjected to sexual assaults and finally killed. Also, the general context of the crimes against women cannot be omitted: the crimes were produced on the background of the *revolution of the labour market* following which men have lost their jobs and implicitly their status of family providers and women took over the latter role, thus becoming active in the labour market. We deem that the aforementioned situation, finds its etiology by reporting to the relationship *marianismo-machismo-femicid*. Specifically, women's insertion into the labour market has represented both the refusal of the status allocated to women by *marianismo* and women's orientation towards the public sphere – allocated to men by *machismo*. In this point we observe that, the voluntary de-construction of the female ideal imposed by *marianismo* has generated the maintenance of the positions of the male authority prescribed by *machismo* –with the amendment that, men have chosen a negative form of manifesting their authority by violence – a form that is contrary to the respect of women's rights as human rights.

The legal approach of gender-based violence

The cultural factors that promote gender-based violence require a legal approach. We believe that the legal perspective upon women's rights must include the cultural aspects of the discrimination phenomenon otherwise, its effects are futile. Restricted to the purely legal aspects, the legal regulatory approach risks a distorted women's rights regulation; in the same vein, assuming that the cultural causes of discriminating against the female segment shall not be taken into account in the formulation of legal solutions, the latter tend to propose a wrong and non-comprehensive approach.

Violence against women as a form of aggression deeply misogynistic, having as sole justification the punishment of the female segment of population for denying the ideal female role granted by *marianismo* concept, requests a multidisciplinary regulation. The regulation will be *multidisciplinary* because when ensuring gender equality, the legal and cultural factor are twined, validating the following assertions: (1) the process of regulating gender equality that excludes legal aspects connected to the psychological etiology of the discrimination phenomenon is incomplete, (2) although the implementation of the cultural perspective upon women's rights within the legal perspective is a first step in ensuring the protection of women's right at the highest level, this endeavour must be carried out under the conscience of progressivity.

In the Inter-American system of law, gender based violence has represented the object of regulation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (IACPPEVW, 1994) -a regional legal instrument specialized in women's rights issues.

The gender based violence constitutes a real problem systematically multiplied over time within the framework of the Inter-American system of law, given that, the legal instrument represented by the Convention of Belem do Para is the only legal initiative adopted at the regional level that is designed to solve the peculiar problems of women. Profile studies (Ministerio de Desarrollo, ***) have qualified the Belem do Para Convention as the *crown jewel* of the Inter-American human rights protection system due to the particularity of the regulations comprised in its content and due to the legal perspective promoted through it. It is a perspective that recognizes *women's rights as an inherent part of the human rights category* and in correlation, it promotes the idea according to which *violence against women is a*

particular form of human rights violations. The merit of the Belem do Para Convention is the determination of a complex remedy for re-addressing violence against women, - a remedy which combines legal measures with cultural measures, with psychological implications-able to produce changes at the level of collective perception concerning gender roles.

Specialized literature (Mejia Guerrero, 2006) draws attention to a change of paradigm in guarantying women's rights brought by the rules of the Belem do Para Convention- respectively *blurring the public/private segregation* and affirming the idea that the acts of violence produced in the private space is the responsibility of the State and its agents as long as the authorized public bodies have not submitted the required diligences for protecting the potential victims. The same doctrinaire opinion underlines what we called *the extensive effect of violence against women* in the sense where the violence against women does not constitute strictly an issue which affects only certain rights depending on the typical form that the act of violence is en clothed with. In other words, *physical* violence does not produce exclusively physical consequences but also affects the psychological or social segment of the victim, being accordingly injured the victim's associated prerogatives. The awareness of the violence extensive effect against women is beneficial to the process of inclusion within the legal paradigm, of the cultural factor. Observing the multitude effects of violence against women, it is acknowledged the comprehensive approach (legal and cultural) of the the issue of violence and it is proved the complexity of the aetiology of the phenomenon of gender based violence.

The Belem do Para Convention-aspects related to the principle framework

The preamble part of Belem do Para Convention enshrines the guidelines of obtaining an efficient process of combating with the phenomenon gender-based violence. The third paragraph of the Convention Preamble links two essential aspects that define the phenomenon of gender violence, aspects that are useful in shaping our speech-*violence against women as a form of violation of human dignity* and violence against women as *a manifestation of unequal power relations between women and men.* It is interesting to note that the ideas contained in the third paragraph of the Convention preamble establish the *causality* of violence directed against women (inequality power relations) and the *consequence* of violence against women-*violating the human dignity that is inherent to women.* Referring to the

inequality of power relations between women and men, the cultural context of existence cannot be overlooked. Power relations between women and men are asymmetrical and continue to be identified under this character because of the mental patterns established by the two gender roles *marianismo* and *machismo*. Similar to the phenomenon of violence, the concept of *power* is multidimensional concerning not only the physical relationship sphere but rather the domination established throughout the economic relations and in generic way, within the public sphere. We deem that, beyond the considerations listed above, the genuine male power manifests itself through the intangible dimension of culture invoked in the preliminary part of our study, according to which the cultural and civilizational patterns applied into the Inter-American system of law are the patriarchy product. From this point, the appreciations upon female segment, the qualification of the behaviour assumed by women in positive or negative terms are emerging issues within the patriarchal culture. Since violence against women is legitimated by calling patriarchal standards, violence against women is seen as a form of discrimination by restricting the rights of this segment. Anticipating this situation, paragraph 5 of the Convention preamble certifies that *eliminating violence against women is essential for the individual and social development and for the complete and equal participation of women in all areas of life*. The idea that violence against women imposes gender discrimination by denying the rights and freedoms of women by virtue of being female is pointed-out into the second paragraph of the preamble in the form of the following principle: *violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms*.

Chapter 1-*Definition and Scope of Application*, articles 1 and 2 are fundamental in tracing the guidelines mentioned at the beginning of this section by *setting the meaning and the content sphere afferent to phenomenon of violence against women*. We think that, the definition assigned to *gender based violence* resembles to the explanation stipulated in doctrine in order to grasp the specific of the femicide phenomenon having the particularity of annulling the *public-private* differences in ensuring women's rights. The legal definition given by Article 1 of the Belem do Para Convention is comprehensive, *any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere*. By eliminating the public- which is a necessary criterion for acknowledging violence against women as a violation of human rights, it is caused a mutation in the sphere

of the responsibilities assumed by the public authorities thus allowing, in these parameters, the possibility to hold the State responsible for inconsistencies in guarantying women's rights.

Article 2 develops the circumstances in which violence against women is brought about, discerning between three hypotheses: (1) *violence arised in family or domestic premises or at the level of inter-personal relationships, regardless of whether the abuser shared or shares the same residence with the aggressed woman*; (2) *the violence committed within the community by any person including rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place*; (3) *violence perpetrated or condoned by the state or its agents regardless of where it occurs*. The legal progress registered through the content of Article 2 of the Convention consists, on one hand, in blaming violence regardless of where it is produced (the public sphere or the private one) and, on the other hand, in achieving a distinction in the public sphere, in this case being established the difference between *the public space of the community and other acts perpetrated/condoned by the State or its agents*. Within the wording identified in article 2- *acts perpetrated/condoned by State* it is implicitly regulated the State responsibility for actions and omissions contrary to women rights guarantee. Therefore the provisions of article 2 develop the protection of women against violence through the extensive interpretation of the principle of respecting human rights. According to the above mentioned extensive interpretation, guaranteeing women's rights as human rights involves from part of the State and its agents both positive aspects (actions) as well as negative aspects (non-actions).

Overcoming the public-private dichotomy in guarantying women's rights lead to the consecration, at the main level, of the State involvement into gender issues. Chapter III- *Duties of the States* determines, in the content of its 3 articles, a legal framework aimed to render responsible the signatory States to the Belem do Para Convention concerning the matter of women's rights protection at the highest standard through the adoption of specific measures in this regard. Article 7, letter b of the Belem do Para Convention is the most relevant regulation regarding the *due diligence* principle imposed into the Inter-American system for human rights protection. Within the context of the Belem do Para Convention the *due diligence* principle is presented as a legal instrument intended to protect women's rights, an instrument that has, according to the text of the Convention, the purpose to *prevent, investigate and impose sanctions for violence against women*. We should keep

in mind that article 7, letter b of the Belem do Para Convention does not establish a clear definition of the *due diligence* principle, resuming at mentioning the elements included in its application domain-*the prevention, investigation and punishment of violence against women*. Starting from the premise that *the effectiveness of the due diligence principle in guarantying women's rights is in close connection with the correct understanding of the meaning of the principle*, the specialized literature (Abramovich, Villaran, 2012) found that, the significance of the *due diligence* principle results from corroborating the texts of articles 1 and 2 of the American Convention on Human Rights (IACHR, 1969).

The two Articles of the American Convention describe the *due diligence* principle in terms of the obligation of the signatory States to *respect human rights* (article 1) and in terms of the obligation of signatory States to *respect the domestic legal effects* (article 2). Thus, the principle of *due diligence* in the matter of human rights will reside in *the states obligation to respect the rights and freedoms recognized in the American Convention and to ensure to all persons subject to their jurisdiction the free and full exercise of the rights and freedoms without discrimination*. In addition to the above, and in accordance with the provisions of article 2 of the American Convention, *where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms*.

Returning to the content of the Belem do Para Convention, articles 7 and 8 — aimed to ensure the legal framework of the obligations of States parties to the Convention in order to strengthen women's rights, -impose tasks relating to the adoption of relevant instruments to stop those cultural patterns that promote a position of inferiority in regard to women. *Exempli gratia*, article 7, letter e of the Belem do Para Convention establishes *the obligation of States to take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women*. In the same vein, Article 8, letter b of the Belem do Pará Convention requires States parties' obligation to *modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women*. Within the content of the two mentioned texts, the gender problem is formulated in

legal and cultural terms, being imposed a cross-compliance relationship between the adoption of the relevant measures and the amendment of the mental patterns concerning the assessment of gender roles.

The Belem do Para Convention -content issues

In this section of our paper we aim to achieve a synthetic analysis of the content of Chapter II – Rights Protected, the legal framework determined by articles 3-6. Article 4 establishes a catalogue of rights and freedoms defined according to the model provided by regional and international standards in the field of the human rights protection. Article 4 consists of re-affirming some prerogatives generally laid down in instruments of human rights protection with that amendment that they are adapted to the specific legal protection of women's rights. Consequently, *the right to life, the right to physical, mental and moral integrity, the rights to freedom and personal security, the right to be free from torture, the right to dignity or the right of equality before the law* represent general prerogatives whose general character allow their universal applicability. The reiteration of all the rights promoted through regional and international instruments in the specific context of women's rights protection, represents a manner to require the elimination of all forms of discrimination against women, including gender-based violence as a specific form of discrimination. Article 5, second thesis recognises as effect of gender violence, the limited exercise by women of the rights and freedoms that are guaranteed to them according to the regional and international documents in the field of human rights, thereby reinforcing the hypothesis implicitly of promoted in article 4.

Article 6 approaches violence against women by including the cultural factor, stating in its two paragraphs the elements included in the right of women to be free from violence: (1) the right of women to be free from all forms of discrimination and (2) the right of women to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination. From our point of view, both legal assumptions include the cultural factor in the legal process of eliminating violence against women. Firstly, the association of violence against women with gender discrimination represents a stage of awareness that the human rights of women are limited by violence thus generating the discrimination phenomenon. At this point in our study it is necessary to clarify the type of discrimination generated by violence against women. We feel that discrimination against women resulting from acts of

violence, can be framed into the category of *direct discrimination* given that, different treatment is applied only to women and the effect of discrimination consists in limiting the rights of female segment. Secondly, the imposing the condition of educating women in the spirit of gender equality is a fundamental premise in changing the patriarchal mental patterns. For the completeness and effectiveness of the provision comprised in article 6, paragraph 2, we consider that the requirement for achieving education in the spirit of gender equality must be a universal one, applicable to both women and men.

Conclusions

In the paper work we aimed to demonstrate a correlation between the *cultural factor* and the *legal protection of women's rights* in light of the legal framework of the Belem do Para Convention. The main hypothesis developed above consists in the fact that, the legal regulations in the field of women's rights have been determined by the gender roles of *marianismo* and *machismo* concepts. The collision between the female ideal prescribed by *marianismo* and the female gender role rephrased according to the present social requirements has allowed the manifestation of *gender violence*. The concepts of *marianismo* and *machismo* represent within the Inter-American system for the protection of human rights, the cultural tools meant to shape gender roles. The two tools act within the cultural intangible branch because the feminine and masculine ideals translate the collective regional mentality. Gender violence is a phenomenon that is derived from the cleavage between the feminine and masculine ideal which is subject in its turn to the legal regulations contained in the Belem do Para Convention. On the other hand, the regulations of the Belem do Para Convention are acting to eliminate all forms of violence against women but also to overtake the stereotypical mental patterns.

Biodata

This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013

References

- Abramovich, V., & Villarán, S. (2012). *Communication to the Committee on the Elimination of Discrimination against Women Amicus Curiae The Due Diligence Principle in the Inter-American System Applied to Gender-Based Violence*, pp. 5.
- American Convention on Human Rights* was adopted at the Specialized Inter-American Conference on Human Rights carried out on 22 November 1969 in San Jose, Costa Rica.
- Arango, L. G., Leon, M., Viveros, M. (coord.), (1995). *Genero e Identidad. Ensayos sobre lo femenino y lo masculino, Tercera Parte. Sujetos sexuados, modernidad y cultura en América Latina*, Norma Fuller, *En Torno a La polaridad Marianismo-Machismo*, Ediciones Uniandes, Facultad de Ciencias Humanas, Colombia, Bogota, 1995, pp. 244-245.
- Carcedo, A., (Coord.), (2000-2006). *We will not forget nor will we accept Femicide in Central America*. Canada: Library and Archives Canada Cataloguing in Publication.
- Derks, S. (2009). *Violencia doméstica, marianismo y la rabia de la Virgen de Urkupiña en Bolivia, Papeles de trabajo*. Revista electrónica del Instituto de Altos Estudios Sociales de la Universidad Nacional de General San Martín, 2(5), pp. 5-6.
- Hernandez-Truyol, B. E. (2001). Latinas, Culture and Human Rights: A Model for Taking Change, Saving Soul. *Women's Rights Law Reporter*, 23(1), pp. 29.
- Inter-American Commission on Human Rights. (2014). *Missing and Murdered Indigenous Women in British Columbia, Canada*. ISBN 978-0-8270-6323-5, pp. 44-48.
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* was adopted in Brasil, Belem do Para, at 9 June 1994 by the General Assembly of the Organisation of the Organisation of American States. The Convention has entered into force at 5 March 1995 according to article 21 of the convention in the 30th day from the deposition of the last instrument of ratification.
- Inter-American Court of Human Rights, *The Case Gonzales and others against Mexico*, sentence given on 16 November 2009.
- Jezzini, A. T. (2013). *Acculturation, Marianismo, Gender Role, And Ambivalent Sexism In Predicting Depression In Latinas*. A Dissertation Presented to

- the Faculty of the Morgridge College of Education University of Denver, pp. 26.
- Mejía Guerrero, L. P. (2006). La Comisión Interamericana de Mujeres y la Convención de Belém do Pará. Impacto en el Sistema Interamericano de Derechos Humanos. *Revista IIDH*, 56, pp. 196.
- Ministerio de Desarrollo Social Instituto Nacional de las Mujeres Directora Lic. Carmen Beramendi, *Articulado Convención Interamericana de Belém do Pará Para Prevenir, Sancionar y Erradicar la Violencia Contra la Mujer*, pp. 9.
- Moisés, A. (2012). Sexualidad en Mesoamérica:machismo y marianismo. *Científica*, 1(1), pp. 46.
- Red Mesa de Mujeres de Ciudad Juárez, Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer – CLADEM. (2010). *Proposals for analysis and monitoring of the “Cotton Field” case sentence, regarding human rights violations committed by the Mexican State*, Lima, Peru, pp. 11-14.
- Sáenz Andujo, J. (****). The Cotton Field Case in Mexico: Setting Legal Precedents for Fighting Gender-Based Violence. In *Evidence and Lessons From Latin America*.
- Schneider, J. M. (2010). *Recreating The Image Of Women In Mexico: A Genealogy Of Resistance In Mexican Narrative Set During The Revolution*. A Thesis Submitted to the Graduate Faculty of the Louisiana State University and Agricultural and Mechanical College in partial fulfillment of the requirements for the degree of Master of Arts, Vordiplom, Johannes Gutenberg University, Mainz, Germany, pp. 19.
- Simmons, W. P. (2006). Remedies for Women of Ciudad Juárez through the Inter-American Court of Human Rights. *Northwestern Journal of International Human Rights*, 4(3), pp. 492-495.
- Vázquez, R. (2013). *Examining the Relationship between Gender Roles and Attitudes towards Rape Victims among Latino/as in the United States*. Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy under the Executive Committee of the Graduate School of Arts and Sciences, Columbia University, pp. 17-18.