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The Maria da Penha Law: Between Norm and Practice, Intersectionality and the Limits of
Gender Justice in Brazil

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If Brazil intends to assert itself as a sovereign country, it must begin by acknowledging the barbarity it perpetrates in the favelas, on street corners, in alleys, in the headlines and against the bodies of trans people it insists on violating. A sovereign Brazil is a country free of transphobia, racism and misogyny.

Bruna G. Benevides

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ABSTRACT

This thesis examines the extent to which the Maria da Penha Law has been effectively implemented in Brazil two decades after its enactment, with particular attention to its origins in the Inter-American Human Rights System and its application to groups facing intersecting forms of discrimination. The law emerged as a direct response to Brazil's international responsibility recognized in *Maria da Penha Maia Fernandes v. Brazil*, which revealed the State's failure to exercise due diligence in preventing and responding to domestic violence against women. Although the law represents a landmark legal and institutional framework for addressing gender-based violence in Latin America, significant challenges continue to undermine its material effectiveness. Adopting a Human Rights-based and intersectional approach, the research employs qualitative doctrinal and jurisprudential analysis with particular emphasis placed on the experiences of black women, indigenous women and LGBTQ+ individuals, whose exposure to domestic violence is shaped by overlapping forms of discrimination, such as racism, coloniality, socio-economic marginalization and heteronormativity. The analysis demonstrates that, while the law has produced important formal advances, its application remains uneven and insufficiently responsive to structural inequalities. The thesis argues that Brazil has only partially fulfilled the reparative and preventive obligations established by the Inter-American system and that the internalization of international Human Rights standards has prioritized formal compliance over substantive equality, resulting in selective protection. The study concludes by proposing measures to strengthen the inclusive and intersectional effectiveness of the Maria da Penha Law.¹

Keywords: gender-based violence; Maria da Penha Law; intersectionality; Inter-American Human Rights System; domestic violence.

¹ Disclaimer: AI was used for translations and grammar corrections.

TABLE OF ABBREVIATIONS

ADC - Declaratory Action of Constitutionality (Ação Declaratória de Constitucionalidade)

ADI - Direct Action of Unconstitutionality (Ação Direta de Inconstitucionalidade)

ANTRA - National Association of Travestis and Transsexuals (Associação Nacional de Travestis e Transexuais)

APIB - Articulation of Indigenous Peoples of Brazil (Articulação dos Povos Indígenas do Brasil)

CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

CEJIL - Center for Justice and International Law

CERD - Committee on the Elimination of Racial Discrimination

CLADEM - Latin American and Caribbean Committee for the Defense of Women's Rights

CNJ - National Council of Justice (Conselho Nacional de Justiça)

DEAMs - Specialized Women's Police Stations (Delegacias Especializadas de Atendimento à Mulher)

FBSP - Brazilian Public Security Forum (Fórum Brasileiro de Segurança Pública)

FUNAI - National Foundation for Indigenous Peoples (Fundação Nacional dos Povos Indígenas)

IACHR - Inter-American Commission on Human Rights

IACtHR - Inter-American Court of Human Rights

IAHRS - Inter-American Human Rights System

ILO - International Labour Organization

IPEA - Institute for Applied Economic Research (Instituto de Pesquisa Econômica Aplicada)

LGBTQ+ - Lesbian, Gay, Bisexual, Transgender, Queer and other identities

MESECVI - Follow-up Mechanism to the Belém do Pará Convention

MPI - Ministry of Indigenous Peoples (Ministério dos Povos Indígenas)

OAS - Organization of American States

STF - Federal Supreme Court (Supremo Tribunal Federal)

STJ - Superior Court of Justice (Superior Tribunal de Justiça)

UN - United Nations

UNDP - United Nations Development Programme

UNGA - United Nations General Assembly

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INTRODUCTION

Domestic violence against women remains one of the most persistent and serious violations of Human Rights in Brazil, revealing the persistence of structural gender inequalities deeply rooted in society. For a long time such practices were normalized and confined to the private sphere, which contributed to State inaction and the continuation of cycles of violence, however, with the gradual development and incorporation of Human Rights, it has been recognized that State tolerance of gender-based violence constitutes a failure of public policy and a direct violation of international obligations.

In this context, the enactment of the Maria da Penha Law (Law n. 11.340/2006) represented a legal landmark and an institutional milestone in the fight against domestic violence in Brazil, however, the law didn't emerge from internal legislative initiative, but as a response to the Brazilian State's international liability in the case of *Maria da Penha Maia Fernandes v. Brazil*, decided by the Inter-American Human Rights System (IAHRS) in 2001. At that time, the State was found responsible for its tolerance and ineffectiveness in responding to repeated acts of domestic violence, which amounted to discrimination and a violation of the victim's rights (Spieler, 2011, p. 131–134).

The Inter-American decision imposed reparatory, preventative and structural obligations on Brazil, requiring the punishment of the perpetrator and the adoption of public policies capable of addressing gender-based violence in a systemic manner (IAHRS, 2001). In this sense, the Maria da Penha Law can be understood as a paradigmatic example of domestic implementation of international Human Rights obligations, introducing protective measures, specialized courts and a multidisciplinary approach to domestic violence.

Nearly twenty years after its enactment, the Maria da Penha Law has brought undeniable progress, such as the increased public awareness, the creation of specialized institutional mechanisms and the recognition of gender-based violence as a matter of public concern rather than private conflict. However, these achievements coexist with persistent limitations that undermine the law's material effectiveness, for example, the uneven application, insufficient resources, the perpetuation of gender stereotypes within the justice system and deep social and racial inequalities reveal that the protection offered by the legislation does not equally reach all women.

At this point, debates on intersectionality become central to the analysis of the effectiveness of the Maria da Penha Law: black women, indigenous women and LGBTQ+ individuals experience domestic violence in an aggravated manner, intersected by multiple forms of discrimination. Although the law is based on a broad concept of gender, its practical

application still operates from an abstract and universal subject, which does not reflect the diversity of experiences of violence in Brazil.

Gender-based violence in Brazil is reaching alarming proportions: data from the Brazilian Forum of Public Security indicates that in 2024 more than 255.000 cases of domestic violence were recorded in the country (FBSP, 2025, pp.139). The feminicide rate remains among the highest in the world: Brazil ranks fifth in the global ranking of homicides of women, with black women representing 63,3% of feminicide victims, in this context, it is important to highlight the significant loss of data concerning race, given that the victim's race or color is not recorded in approximately 20% of femicide cases. (FBSP, 2025, pp. 155). Simultaneously, Brazil has been the country that kills the most trans people in the world for eighteen consecutive years according to the National Association of Travestis and Transsexuals (Benevides, 2026, pp. 85). Faced with this scenario, critically assessing the effectiveness of the main law addressing gender-based violence is not only an academic exercise, but a pressing social and political necessity.

This research is guided by the following central question: to what extent has the Maria da Penha Law achieved effective implementation in Brazil nearly twenty years after its creation, particularly in light of its origins in the Inter-American Human Rights System and its application to minority groups? This question is relevant because it allows for an evaluation of the law's normative design and an assessment whether the Brazilian State has substantially fulfilled the international obligations it assumed.

The general objective of this research is to critically assess the implementation of the Maria da Penha Law from an Inter-American and intersectional perspective. Its specific objectives are to analyze the impact of the Maria da Penha case on Brazilian legal development; to examine the normative and institutional advances and limitations of the law; to evaluate its application in relation to black and indigenous women and LGBTQ+ individuals; 1 to propose pathways for strengthening a more inclusive and effective framework of protection against gender-based violence.

Methodologically, the study adopts a combined doctrinal and critical legal approach, based on qualitative analysis of legislation, jurisprudence and international Human Rights documents. The research is grounded in an intersectional framework, understanding law as a set of formal norms, but also as a social practice embedded in power relations (Neves, 2008, 9-82).

The dissertation is structured into four chapters. Chapter One establishes the theoretical and normative foundations concerning gender-based violence, Human Rights and

intersectionality. Chapter Two examines the Inter-American Human Rights System and the Maria da Penha case, tracing the law's origins and its normative and institutional advances. Chapter Three analyses the limits of the law's formal universality through the experiences of black women, indigenous women and LGBTQ+ individuals. Chapter Four offers a critical assessment of the law's effectiveness from an Inter-American and intersectional perspective and proposes pathways toward more inclusive and effective protection. The thesis closes with a general conclusion.

1. GENDER VIOLENCE AS A HUMAN RIGHTS VIOLATION

Gender-based violence is not a recent phenomenon, but its recognition as a violation of International Human Rights Law (IHRL) is a relatively modern achievement (UNGA, 1993): for decades, acts such as domestic violence, sexual assault and femicide were treated as private matters, outside the scope of State accountability (MacKinnon, 1989, pp. 157-170). This recognition involved a rethinking of the boundaries of the Human Rights framework and the nature of the obligations it imposes upon States, in particular, it demanded that the traditional public/private divide be subjected to critical examination and dismantled as an obstacle to the effective protection of women's rights².

This chapter sets out the theoretical and normative foundations upon which the remainder of the thesis rests: it starts from the premise that gender violence cannot be adequately understood without engaging with the structural dimensions of inequality that produced it, tracing its conceptual evolution in international law, before turning to the specific obligations of States and the unique challenges of the region.

It argues that gender violence constitutes a Human Rights violation rooted in structural discrimination, which can only be fully understood through an intersectional lens that considers gender, race, class, sexuality and other axes of oppression to produce differentiated patterns of violence and vulnerability (Crenshaw, 1989, pp.1241-1244). Moreover, in the Latin American context, the engagement with gender violence must consider the colonial

² The characterisation of gender-based violence as a Human Rights violation presupposes a prior account of what makes something a Human Rights violation in the first place. The philosophical literature offers competing foundations: interest-based theories ground Human Rights in the protection of fundamental human interests or basic needs; will or agency theories locate their justification in the conditions necessary for autonomous self-determination; and political theories treat Human Rights as norms whose primary function is to set limits on legitimate State sovereignty (Corradetti, 2012; Cruft et al., 2015). While a full engagement with these debates falls outside the scope of this thesis, the analysis proceeds from the premise, broadly consistent with interest-based accounts, that Human Rights protect the conditions without which meaningful participation in social and political life is impossible.

legacies that continue to shape gendered and racialized hierarchies in the region (Lugones, 2010, pp. 742-759).

1.1. Defining Gender Violence

The concept of gender violence refers to acts of violence that are directed against a person on the basis of their gender or that disproportionately affect people of a particular gender due to social roles and power relations associated with that gender. This definition reflects a broader conceptual shift from understanding violence as a purely individual or pathological phenomenon toward recognizing it as a social and structural one.

Central to this understanding is the concept of gender itself, which must be distinguished from biological sex: gender is not a natural given, but a social construction, a set of culturally and historically specific norms, practices and expectations that regulate the behavior of individuals categorized as men, women or otherwise (Butler, 1990, pp. 9). These norms are not neutral, they are organized around hierarchical relations of power in which femininity is systematically subordinated to masculinity.

Therefore, gender violence is constitutive of gendered social order, it functions as a mechanism by which gender hierarchies are enforced and reproduced. The work of R. W. Connell (1995, pp. 67-86) on hegemonic masculinity has been important in explaining the structural nature of gender-based violence, showing that dominant models of masculinity are built through the control and subordination of women, as well as through the marginalization of men who do not conform to these norms. Catharine McKinnon (1989, pp. 171-183) and Angela Harris (1990, pp. 581-616) have further developed this perspective arguing that gender-based violence functions as a tool of social control, rather than as individual behavior, their analyses place violence within wider systems of power that are shaped by gender, class, race and sexuality. These theoretical approaches have influenced the development of international Human Rights norms on violence against women, although transforming complex feminist critiques into legal rules has involved challenges and limitations.

In the 1990s, legal scholars such as Hilary Charlesworth, Christine Chinkin and Shelley Wright (1991, pp. 613-645) challenged the traditional IHRL that was built on a clear separation between the public and the private sphere, which allowed many forms of violence that take place within the home to be ignored. They argued that the public/private distinction was not neutral, but shaped by gender: it reflected a social order in which men dominated public life while women were confined to the private sphere. Because of this, domestic violence, marital rape and other forms of gender-based harm committed by private

individuals were treated as invisible and States were not considered responsible for addressing such violence, leaving victims without protection.

The critique of this distinction demanded a reconceptualization, the recognition that the State is involved in what happened within the private sphere, both by its active structuring of the conditions under which domestic life is organized and by its failure to extend protection to those who suffer violence within it. This understanding influenced IHRL, particularly through the development of the doctrine of due diligence, in which States can be held internationally responsible for acts of violence committed by private individuals when they fail to take adequate measures to prevent, investigate, prosecute and provide reparations for such acts (Hasselbacher, 2010, pp. 190-193).

Understanding domestic violence as a form of structural discrimination rather than as a series of isolated criminal acts has been central to the development of IHRL on gender-based violence: this approach shifts the focus away from individual perpetrators and toward the social, cultural and institutional conditions that allow violence to occur and prevent victims from receiving effective protection and remedies (Fredman, 2011, 1-37; CEDAW, 2017).

Structural discrimination refers to patterns of disadvantage that are built into social institutions, laws and customs, these practices can harm certain groups even without explicit discriminatory intent, for example in the case of domestic violence it can appear in several ways: long-standing hesitation of legal systems to treat violence within the family as a serious crime; weak or inaccessible protective measures and support services; social stigma that discourages victims from reporting abuse; economic dependence that makes it difficult for women to leave abusive relationships; cultural norms that justify male authority and expect female submission within the home (Fredman, 2011, pp.177-190).

Recognizing this structural dimension has important consequences for States obligations since it means they must do more than criminalize domestic violence and punish offenders: they are also required to take comprehensive measures to address the conditions that enable violence and sustain impunity. Such measures include reforming procedural rules that disadvantage victims; training police offices, prosecutors and judges in gender-sensitive approaches; ensuring access to shelters and support services; promoting public education campaigns aimed at challenging cultural norms that normalize violence.

1.2. Gender Violence in International Human Rights Law

The international protection of women's rights is, in historical terms, a relatively recent achievement, and the recognition of gender-based violence as a matter of international

concern more recent still (Stearns, 2022, pp. 110-130; Iriye et al., 2012, pp. 3-24). Its foundations were laid in the aftermath of the Second World War: the Charter of the United Nations was the first international instrument to affirm, in its preamble and in Article 1, the equal rights of men and women (UN, 1945; Hunt, 2008, pp. 272), and the Universal Declaration of Human Rights proclaimed that all human beings are born free and equal in dignity and rights and prohibited distinctions of any kind, including those founded on sex (UNGA, 1948; Ishay, 2008, pp. 215-260). Yet these early instruments expressed equality in formal terms and, reflecting the public/private divide discussed above, remained silent on the violence that women experienced within the home and the family. The Human Rights framework that emerged in this period was, in this sense, organised around an implicitly male subject whose paradigmatic experience of rights violation was the abuse of public power by the State, leaving the harms inflicted in the private sphere outside its field of vision (Charlesworth et al., 1991, pp. 613–645)³.

The institutional architecture for advancing women's rights developed gradually thereafter: in 1946 the United Nations established the Commission on the Status of Women as the principal global body dedicated to promoting gender equality, and over the following decades it drove the adoption of a series of sectoral instruments addressing discrete dimensions of women's legal subordination, among them the Convention on the Political Rights of Women (1953), the Convention on the Nationality of Married Women (1957) and the Convention on Consent to Marriage (1962) (Edwards, 2011). These treaties advanced the principle of equality in specific domains but did not amount to a comprehensive response to discrimination, a gap that the non-binding Declaration on the Elimination of Discrimination against Women sought to address as a precursor to a binding convention (UNGA, 1967).

The decisive shift came in the mid-1970s: the proclamation of 1975 as International Women's Year, the convening of the First World Conference on Women in Mexico City that same year and the designation of 1976-1985 as the United Nations Decade for Women placed gender equality firmly on the international agenda and generated the political momentum for

³ The evolution of IHRL is often described through the generational framework proposed by Vasak (1977, 1982, p. 29-32), which distinguishes first-generation civil and political rights, second-generation economic, social and cultural rights, and third-generation solidarity rights, including the right to development and to a clean environment. While the generational model has been criticised for implying a hierarchy or a teleological sequence of recognition (see Cruft et al., 2015), it remains a useful heuristic for situating women's rights within the broader trajectory of international law: the progressive move from formal equality (first generation) toward substantive, socio-economic and collective dimensions of protection reflects the same shift that feminist scholarship identified as necessary to address the structural conditions of gender-based violence. López Baroni (2024) has more recently argued for a fourth generation encompassing rights arising from digitalisation and biotechnology, though that extension falls outside the scope of the present analysis.

a comprehensive treaty (Cook, 1994). That process culminated in the adoption by the General Assembly, in 1979, of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which entered into force in 1981 and remains the cornerstone of the international legal regime on women's rights (UNGA, 1979).

Even CEDAW, however, did not initially name violence against women as such, and it was only in the 1990s that gender-based violence was explicitly incorporated into the international Human Rights agenda. The CEDAW Committee's General Recommendation No. 19 characterised such violence as a form of discrimination (CEDAW Committee, 1992); the World Conference on Human Rights held in Vienna affirmed, in a now-canonical formulation, that the Human Rights of women are an inalienable and indivisible part of universal Human Rights (World Conference on Human Rights, 1993), a framing anticipated by feminist scholarship of the period (Bunch, 1990); and later that year the General Assembly adopted the Declaration on the Elimination of Violence against Women, the first international instrument dedicated specifically to the subject (UNGA, 1993). The appointment of a Special Rapporteur on violence against women in 1994 and the adoption of the Beijing Declaration and Platform for Action at the Fourth World Conference on Women in 1995 consolidated this trajectory, establishing gender-based violence as a distinct and central concern of IHRL (United Nations, 1995; Reilly, 2009, pp. 31-60; Ross, 2008, pp. 1-53).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the United Nations General Assembly in 1979, constitutes the primary international treaty on women's rights. While the Convention does not address violence against women explicitly, the CEDAW Committee has interpreted its non-discrimination provisions as encompassing gender-based violence, for example, with General Recommendation No. 19, adopted in 1992, it stated that gender-based violence is a form of discrimination that seriously impairs the equal enjoyment of Human Rights by women and that States parties have obligations in relation to violence perpetrated by State actors and private individuals.

General Recommendation No. 35, adopted in 2017, affirmed that gender-based violence is rooted in gender-related factors, such as ideologies of male entitlement and privilege, social norms regarding masculinity and efforts to maintain power over women. It also addressed intersecting forms of discrimination, acknowledging that some groups of women face particular risks of violence due to factors such as their race, ethnicity, migration status, disability, sexuality or other characteristics.

The work of the CEDAW Committee in individual communications and reviews of States parties has clarified the scope of State obligations under the Convention: in cases such as *Şahide Goekce v. Austria* (2007) and *Fatma Yildirim v. Austria* (2007), the Committee found that the States had violated the Convention by failing to exercise due diligence to protect women from lethal domestic violence, even though the authorities were aware of the risk and legal protection measures were available. These decisions have helped establish a body of jurisprudence that requires States to take effective preventative and protective action in cases of gender-based violence, rather than simply relying on the formal existence of laws and procedures.

1.3. Intersectionality

The concept of intersectionality was introduced by Kimberlé Crenshaw in her article “Demarginalizing the Intersection of Race and Sex” and further developed in her article “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color”. Drawing on critical race theory and black feminist thought, Crenshaw argued that the experiences of black women in the United States could not be fully understood by examining race and gender separately, instead, she showed that discrimination and gender-based violence result from the combined operation of race and gender. Crenshaw explained that these overlapping forms of oppression create experiences that are not simply the sum of racism and sexism, but qualitatively different from those faced by white women or black men.

This insight challenged dominant approaches in feminist theory and anti-discrimination law, which generally treated race and gender as independent categories of analysis and had important legal consequences: anti-discrimination law, as interpreted by courts in the United States, often failed to provide redress for the forms of discrimination most specifically directed at black women, on the grounds that their claims could not be made to fit either the gender discrimination or the race discrimination box. Intersectionality emerged as a way to name and analyze this gap, offering a framework that recognizes how different forms of oppression interact and reinforce one another.

Since its introduction, this concept has expanded beyond the original focus on race and gender to include other factors such as class, sexuality, disability, age, immigration status, religion and broader structural conditions such as environmental harm and armed conflict. These intersections produce specific forms of violence and institutional invisibility that the justice systems, when operating on the basis of a universal subject, frequently fails to

recognize these differences, thereby reproducing the very inequalities it is meant to combat (Fineman, 2008, pp. 1-23)⁴.

This concept has also been the subject of methodological debate, raising questions about how intersecting oppressions are to be identified and measured, how intersectionality is to be operationalized in legal and policy analysis and whether the proliferation of intersection categories risks fragmenting political solidarity while multiplying analytical complexity. In IHRL, the use of intersectionality has become increasingly visible, for example, CEDAW General Recommendation No. 28 acknowledged that discrimination against women is compounded by other forms of discrimination and affirmed that States parties must address it in the implementation of the Convention (CEDAW, 2010). General Recommendation No. 35 similarly recognized that certain groups of women face multiple and intersecting forms of discrimination and that the causes, consequences and remedies for gender-based violence must be analyzed with attention to this complexity (CEDAW, 2017).

Within the IAHRs, intersectionality has been most clearly applied in cases involving indigenous women and afro-descendant women. In the case of the Indigenous Communities of the Lhaka Honhat Association v. Argentina (2020), the Inter-American Court addressed the particular vulnerabilities of indigenous women within communities affected by environmental degradation and land dispossession, recognizing the intersection of gender, ethnicity and cultural identity as relevant to the analysis of the rights at stake. Similarly, *Dos Santos Nascimento and Ferreira Gomes v. Brazil* (2024) the country was held responsible for failing to investigate a case of racial and gender discrimination that occurred in 1998, recognizing a pattern of institutional racism and a lack of due diligence on the part of the authorities involved in the judicial proceedings.

Despite these advances, the use of intersectionality in international legal reasoning faces significant limitations, since, in many cases, it is treated in an additive way, with decision-makers simply listing multiple identity categories rather than examining how they interact to produce distinct forms of harm. There is also a risk that it remains a symbolic

⁴ Closely related to intersectionality is the concept of vulnerability, which increasingly informs both Human Rights doctrine and feminist legal theory. Rather than treating vulnerability as an attribute of particular "weak" or "special" groups, Fineman (2008, pp. 1-23) reconceives it as a universal and constant feature of the human condition, one that institutions distribute unevenly through the resilience they afford to some and withhold from others. Understood in these terms, vulnerability is not synonymous with inequality or discrimination but stands in a distinct analytical relation to them, designating the structural exposure to harm that discriminatory arrangements produce and entrench (Mayrhofer, 2025, pp. 1589-1591). For legal analysis this distinction matters, since an intersectional and vulnerability-sensitive reading directs attention away from comparisons between similarly situated individuals and toward the institutional structures that render certain women systematically exposed to violence and underserved by protection (LEAF, 2020, pp. 21-22).

concept, acknowledged in legal texts without influencing legal reasoning or State obligations in a meaningful way, meaning it is a challenge to move from formal recognition of intersectionality to its effective integration into legal analysis and decision-making.

Applying intersectionality in legal practice presents several methodological challenges. At the level of legal doctrine, it requires rethinking traditional concepts of discrimination, instead of focusing on comparisons between individuals who are considered similarly situated, an intersectional approach examines how legal and institutional structures produce systematic disadvantage for groups located at the intersection of multiple social hierarchies (Ajele & McGill, 2020, pp. 15-25).

This shift also affects how facts and evidence are assessed: intersectional analysis depends on the availability of disaggregated data, including both quantitative and qualitative information that captures how gender interacts with other relevant factors. When States fail to collect such data, it becomes difficult to identify patterns of unequal treatment or to evaluate whether State responses to violence and discrimination are effective.

Intersectionality also has important implications for remedies and reparations: measures designed for a generalized category of “women” may overlook the specific harms experienced by women who face multiple and intersecting forms of disadvantage. In this context, as noted above, transformative reparations are important as they aim not only to compensate for harm but also to address and dismantle the structural conditions that made the violations possible.

1.3.1 Colonial Legacies and the Structuring of Gender and Race

The analysis of gender violence in Latin America must take into account the lasting effects of colonialism and slavery on the region’s social, political and legal structures, since the European colonization of the Americas was not only an economic and political process, but also a deeply racialized and gendered one. Colonial rule relied on rigid racial hierarchies that classified individuals according to ancestry and skin color, granting rights and privileges to those identified as Europeans and their descendants born in Latin America while subjecting indigenous communities and people of African descent to forced labor, land dispossession and cultural erasure.

Gender and sexuality played a central role in maintaining colonial power: sexual violence against indigenous and enslaved African women was part of the logic of the conquest itself, turning women’s bodies into sites of domination. The system of *mestizaje* (the mixing of populations) was regulated through gendered norms that governed which

bodies could reproduce the colonial social order and which were to be excluded from it, therefore, the control of women's sexuality served as a means of controlling the reproduction of racial categories and the distribution of property, privilege, power and social position.

The concept of the "coloniality of power", developed by Peruvian sociologist Anibal Quijano (1993, p. 193-238), offers an important framework for understanding how these hierarchies persist today. He argued that colonial domination did not end with formal independence, but continues through a global system structured around racial classification, meaning that race operates as a fundamental axis of social organization, shaping access to labor, resources, knowledge and political recognition. Quijano explained that colonial power relations are reproduced through institutions and social practices that normalize racial hierarchies and marginalize non-European forms of knowledge and identity (2000, p. 342-386).

1.3.2. The Coloniality of Gender

María Lugones extended and transformed Quijano's theory through her concept of the "coloniality of gender", which argues that gender itself is not a neutral or universal category, but a product of colonial domination since the modern gender system, organized around a rigid male/female binary and hierarchical gender roles, was imposed on societies that had previously structured social life through different understandings of gender and sexuality.

This argument has important consequences for the analysis of gender violence in Latin America because if gender categories are themselves shaped by colonial power, then analyzing violence only through a universal notion of "women" risks reproducing colonial ways of thinking. Indigenous and Afro-descendant women do not experience violence in the same way as women situated within dominant social groups, their experiences are shaped by histories of land dispossession, racialization and cultural exclusion that continue to define their social position.

A feminist legal analysis that seeks to address these realities must therefore examine how colonial legacies operate in contemporary institutions, including property regimes, family structures, State practices and legal definitions of violence and harm. Lugones' (2010, pp. 742-745) decolonial feminism has been criticized for its tendency toward essentialism in the attribution of particular social forms to pre-colonial indigenous societies, for drawing sharp contrasts between colonial and non-colonial gender systems and for raising difficulties for political solidarity among women, but while these critiques are important, the core insight

of the “coloniality of gender”, that gender violence cannot be separated from colonial history, remains essential for any transformative analysis.

1.3.3. Sexuality, Heteronormativity and the Coloniality of Power

An adequate analysis of gender violence in Latin America must also address sexuality, particularly the colonial imposition of heteronormativity as a social and legal standard (Curiel, 2007, pp. 93-99). Many pre-colonial indigenous societies recognized diverse forms of gender identity and sexual expression that did not conform to the binary and heterosexual model introduced by European colonization, because the civil and religious authorities actively suppressed this diversity by criminalizing non-heterosexual practices and enforcing moral and legal norms that defined heterosexuality as the only legitimate form of sexuality.

These colonial norms continue to shape contemporary law and social attitudes in Latin America, including within feminist movements and Human Rights institutions that have not always fully incorporated LGBTQ+ perspectives (Viveros Vigoya, 2015, pp. 39-54). As a result, gender-nonconforming and queer individuals face heightened vulnerability to violence and discrimination, in particular, transgender women, experience high levels of violence in several countries, including Brazil, and this violence cannot be understood solely as gender-based violence in the traditional sense, it is also shaped by the interaction of gender with other intersection form of discrimination (IACHR, 2015).

Within the IAHRs, important progress has been made in recognizing the rights of the LGBTQ+ community, for example, advisory opinion OC-24/17 affirmed that discrimination based on sexual orientation and gender identity is prohibited under the American Convention on Human Rights and in the case Vicky Hernández and others v. Honduras (2021), the IACtHR recognized that violence against a transgender woman was shaped by the intersection of gender identity and economic marginalization. These developments reflect a growing, though still incomplete, incorporation of intersectional and decolonial perspectives into IHRL.

1.3.4. Indigenous Women and the Multiple Axes of Vulnerability

Indigenous women in Latin America face particular vulnerability to gender violence due to the intersection of gender, ethnicity and socioeconomic marginalization within a context of ongoing colonial dispossession, especially in regions where State protection is weak, inaccessible or openly discriminatory. Indigenous women are also disproportionately

affected by extractive industries and large-scale development projects, which generate displacement, environmental harm and social breakdown (Segato, 2016, pp. 13-42).

The relationship between indigenous women and State institutions is marked by distrust and communicative barriers rooted in linguistic barriers, cultural differences and a long history of State violence and neglect. Access to justice for indigenous women who have experienced gender violence is impeded by a range of structural obstacles: geographic isolation, lack of interpreters, culturally insensitive legal and health systems and the absence of mechanisms for recognizing and coordinating with indigenous legal systems that may have their own forms of conflict resolution and social sanction.

At the international level, there has been growing recognition of the specific rights and vulnerabilities of indigenous women: instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (2007) affirm collective rights to land, cultural and self-determination and Article 22 specifically addresses the rights of indigenous women and children. Within the Inter-American system, jurisprudence on indigenous land and community rights has increasingly recognized the gendered dimensions of dispossession and cultural violence, however, the recognition of indigenous women's rights in International law has often proceeded in ways that subordinate gender to community or that fail to engage with the internal hierarchies and dynamics of power within indigenous communities, tensions that remain unresolved.

1.4. State Obligations to Prevent, Protect, Investigate and Provide Redress

The concept of due diligence⁵ has emerged as the primary mechanism through which IHRL holds States responsible for gender-based violence committed by private actors. Under this standard, States must act with an appropriate level of care, taking into account how serious the harm is: this duty applies to preventing violence, investigating it, prosecuting

⁵ The due-diligence standard does not operate uniformly across all women: its demands intensify in proportion to the vulnerability of those the State is obliged to protect. In this context, it is important to distinguish vulnerability from the related but distinct concepts of inequality and discrimination. Mayrhofer (2025) clarifies that while inequality designates a measurable disparity in the distribution of resources, opportunities or outcomes between groups, and discrimination refers to the differential and unjustified treatment of individuals on the basis of a protected characteristic, vulnerability denotes something structurally prior: the exposure to harm that arises when institutional arrangements fail to provide the resilience necessary to withstand it. Understood in these terms, vulnerability is not a fixed property of particular groups but a condition produced and reproduced by the legal, social and economic structures within which individuals are situated (Fineman, 2008). For the due-diligence standard this distinction has concrete implications: a State that formally prohibits discrimination and guarantees legal equality may nonetheless breach its obligation of due diligence if it fails to address the structural conditions that render certain women disproportionately exposed to violence and systematically underserved by protective institutions.

those responsible and providing reparations to victims, even when the violence is not directly committed by the State.

Building on general principles of State responsibility, it is possible to identify four main duties to how States can be held accountable for failing to respond to acts of gender-based violence: preventing violence; protecting women at risk; investigating and prosecuting acts of violence and ensuring adequate reparations for victims.

The preventive duty of the State includes both immediate actions and long-term structural measures: States must respond properly when there is a known risk of violence and create change aimed at addressing the conditions that allow gender-based violence to continue. Beyond these formal measures, this obligation extends to social and cultural intervention such as public awareness campaigns and curriculum reform (CEDAW, 2017). While they may appear to fall outside the traditional legal duties, they are an important part of a comprehensive State response to structural discrimination, since legal prohibitions must be combined with continuous efforts to address the social and cultural factors that create and normalize violence.

Impunity is both a result of structural discrimination and a factor that allows such violence to continue, when perpetrators are not held accountable, the State sends a message that violence against women has no serious consequences, which encourages further violence and deepens the harm suffered by victims who are denied justice (IACHR, 2015). Superficial investigations, reliance on gender stereotypes or procedural rules that disadvantage victims undermine accountability and constitute institutional discrimination, therefore, States must take all reasonable steps to investigate, identify those responsible, ensure their prosecution and prevent similar violations from happening again (IACtHR, 2009).

Victims of gender-based violence have the right to reparations, which may include restitution, compensation, rehabilitation and guarantees of non-repetition. International standards emphasize the need for adequate reparations, taking into account the specific circumstances and vulnerabilities of victims and limiting redress solely to financial compensation is insufficient since gender-based violence causes complex harm, such as psychological trauma, social exclusion, economic loss and damage to family and community life. In this context, transformative reparations are important as they aim not only to repair individual harm but also to address the structural inequalities that enable gender violence through long-term measures (IACtHR, 2018).

These duties, however, do not operate in the abstract, they acquire concrete force only when a particular legal system translates them into binding obligations and holds a State

accountable for failing to meet them. It is precisely this passage from general principle to enforceable responsibility that gives the Brazilian case its significance. The following chapter therefore turns from the normative framework to the institutional mechanism that activated it in Brazil, examining how the IAHRs, through the case of Maria da Penha Maia Fernandes, transformed these international duties into a specific finding of State liability and into domestic law.

2. THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AND THE MARIA DA PENHA CASE

The Maria da Penha Law did not emerge from an ordinary legislative process, its origins are directly linked to an international finding of liability against the Brazilian State by the IAHRs, resulting from repeated inaction in the case of Maria da Penha Maia Fernandes. Understanding the origin of the law is essential to assess the degree of effectiveness it has achieved nearly twenty years after its enactment, because a law born of international accountability carries a distinct standard of accountability: it is not only a matter of verifying whether the norm exists formally, but of assessing whether the State has fulfilled the reparative and preventative commitments it assumed under the international legal order.

This chapter reconstructs this trajectory: it presents the architecture of the IAHRs and its mechanisms for State accountability; it examines the case of Maria da Penha Maia Fernandes v. Brazil, its facts, legal grounds and recommendations; it analyzes the Belém do Pará Convention as the regional legal framework that provided the structure for the response to domestic violence

2.1. The Inter-American Human Rights System: Structure and Mechanism for State Accountability

The IAHRs constitutes the principal regional mechanisms for the protection of Human Rights operating within the framework of the Organization of American States (OAS). The system articulates a set of normative instruments, monitoring bodies and accountability procedures that allow individual and civil society organizations to submit to international scrutiny State conduct that violates the rights recognized under the system's instruments.

Its central normative instrument is the American Convention on Human Rights, also known as the Pact of San José, Costa Rica, adopted in 1969 and in force since 1978, and supplemented by specialized treaties, most notably the Convention of Belém do Pará, which

explicitly recognizes violence against women as a Human Rights violation and a form of structural discrimination (Mazzuoli, 2025, pp. 890–912).

By ratifying the American Convention, States parties assume both negative and positive obligations, particularly those set in Articles 1(1) and 2, which establish the duty to respect, ensure and give domestic legal effect to the rights enshrined in the Convention. The Inter-American Court has consistently held that these obligations include the prevention, investigation, punishment and reparation of Human Rights violations, even when committed by private actors.

The IAHRs is recognized by its emphasis on structural inequality and contextual analysis of Human Rights violations, progressively incorporating categories such as gender, race and social vulnerability into its jurisprudence. This approach has proven particularly relevant in addressing domestic violence, which has historically been relegated to the private sphere in many national legal systems (Piovesan, 2022, pp. 315–342).

The system is composed of two main bodies: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). While the Commission promotes observance and defense of Human Rights, advises member States, produces thematic and country reports, conducts on-site visits and receives and processes individual petitions alleging Human Rights violations attributable to OAS member States, the IACtHR is the system's judicial body. Its contentious jurisdiction is limited to States that have recognized it, and can only be invoked by the Commission or by States parties, never directly by individuals. Brazil recognized its jurisdiction in December 1998, meaning that from that date forward cases against the country could be submitted to the regional tribunal for adjudication (Mazzuoli, 2025, pp. 890–912).

The procedure before the IACHR follows these steps: initially, the Commission examines the admissibility of the petition, verifying whether it complies with the formal requirements established under the Inter-American system, such as the exhaustion of domestic remedies, the submission of the petition within the six-month time limit and the absence of duplication with another international proceeding. Once the petition is declared admissible, the Commission places itself at the disposal of the parties with a view to facilitating a friendly settlement, encouraging dialogue and negotiation as a means of resolving the dispute consensually. If no friendly settlement is reached, the Commission proceeds to examine the merits of the case and issues a report assessing whether the facts disclosed constitute a violation of the American Convention on Human Rights. When a violation is found, the Commission formulates specific recommendations addressed to the

States, aimed at remedying the harm and preventing future violations. Should the State fail to comply with these recommendations within the established timeframe, the commission may decide to submit a case to the IACtHR, whose judgments are legally binding on the States that have recognized its jurisdiction (Piovesan, 2013, pp. 100–150) .

In the *Maria da Penha* case, as will be seen, the process did not reach the IACtHR because Brazil agreed to comply with the IACHR's recommendations, including the enactment of a specific law on domestic violence.

2.2. The Belém do Pará Convention as a Regional Normative Framework

Beyond the petitionary mechanism, the IAHRs includes specific conventional instruments that expand protection for groups in situations of particular vulnerability, in this case, the most relevant of these is the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, adopted in 1994 and known as the Belém do Pará Convention. This is the first international treaty specifically addressing gender-based violence to be endowed with supervision and accountability mechanisms and its influence on the development of Brazilian law in this area is direct and noticeable.

Article 1 of the Convention defines violence against women as “any act of conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere”. This deliberately broad definition transcends the public/private dichotomy that historically served as a shield for domestic abusers and establishes that the State bears active duties both with respect to violence committed by State agents and with respect to violence committed by private actors (Cook, 1994, pp. 3-36).

Article 7 of the Convention enumerates the concrete obligations of States parties, which constitute the core of Inter-American duties in the area of domestic violence. Among these obligations are: to refrain from committing any act of violence against women; to act with due diligence to prevent, investigate and punish violence against women; to adopt legal measures requiring the aggressor to refrain from harassing, intimidating and threatening the woman; to take all appropriate measures, including legislative ones, to amend or repeal laws and regulations in force that tolerate or permit violence against women; and to establish just and effective legal procedures for women who have been subjected to violence.

Article 8, in turn, establishes obligations of a progressive nature, relating to specific preventative measures such as educational programs, training of officials and public awareness campaigns. The distinction between the obligations of Article 7 (immediate

compliance) and those of Article 8 (progressive implementation) is relevant to the assessment of the Maria da Penha Law's effectiveness: the law satisfies the immediate requirements of Article 7, but compliance with the progressive obligations set out in Article 8 varies considerably.

The Belém do Pará Convention was ratified by Brazil in November 1995, thereby becoming part of the domestic legal order. Under the jurisprudence of the STF, international Human Rights treaties ratified by Brazil prior to Constitutional Amendment No. 45 of 2004 carry supra-legal status, placing them hierarchically above ordinary legislation but below the Constitution. Therefore, the Convention served as the central normative parameter both for the Inter-American Commission's decision and for the drafting of the law that resulted from it.

It is important to note that Belém do Pará Convention established its own petitionary mechanism, distinct from the general regime of the American Convention, which allowed the Inter-American Commission to exercise jurisdiction in the case of Maria da Penha even though Brazil had not, at the time, recognized the contentious jurisdiction of the IACtHR.

The follow-up mechanism (MESECVI) is the body created to monitor States parties' implementation of the Convention: through periodic reports, recommendations and assessments the MESECVI tracks the degree of compliance with conventional obligations offering an external benchmark for evaluating the effectiveness of national policies.

2.3. The Case of Maria da Penha Maia Fernandes v. Brazil

2.3.1. The Facts

Maria da Penha Maia Fernandes, a pharmacist and mother of three daughters from the state of Ceará, was a victim of two attempted homicides committed by her then husband, Colombian economist Marco Antônio Heredia Viveiros, inside the couple's residence in Fortaleza in 1983. In the first attempt, in May of that year, Maria da Penha was shot while she slept, sustaining an irreversible paraplegia. Having survived the attack, Maria was hospitalized for four months and during her recovery her husband tried to kill her again, first attempting to electrocute her while she bathed and subsequently attempting to suffocate her, only the intervention of her eldest daughter, who was seven years old at the time, prevented the attempt from succeeding (IACHR, 2001).

The criminal proceedings instituted against the perpetrator followed a trajectory that is emblematic of impunity: the first conviction by a jury in 1991 was annulled on procedural grounds; the second, in 1996, resulted in a sentence of ten and a half years, but the defendant

remained at liberty owing to appeals before the higher courts. By 1998, when the petition was filed with the Inter-American Commission, the case had been unresolved for fifteen years and there was a real risk of the criminal action becoming time-barred. Marco Antônio was finally arrested in 2002, more than nineteen years after he committed the crimes, serving only two years before being released (Calazans & Cortes, 2011, pp. 39-40).

As the IACHR report would later summarize: “Although the Brazilian State has formal procedural mechanisms to punish the perpetrator, in practice these mechanisms proved ineffective, given the unjustified delay in resolving the case”.

2.3.2. The book “I Survived... I Can Tell” and Civil Society Mobilization

Amid the frustrating delays in the Brazilian justice system, Maria da Penha decided to tell her own story. In 1994, she published the book “Sobrevivi... posso contar” (I survived... I can tell), in which she detailed the attempted homicides, the paraplegia, her struggle for survival and the judicial battle. The book, written in accessible and deeply emotional language, had a significant impact on mobilizing civil society nationwide.

The book’s title encapsulated its central message: survival as a political act, narrative as a tool for denunciation and refusal to remain silent as a form of resistance. Maria da Penha presented herself not as a passive victim but as an active survivor transforming her pain into an instrument of collective effort.

The book quickly drew attention of feminist and Human Rights organizations across Brazil: Maria da Penha’s narrative resonated with the experiences of thousands of women who suffered domestic violence but never received justice. Therefore, the book functioned as a catalyst, transforming an individual case into a national symbol of the State’s failure to protect women against domestic violence (Barsted, 2005, pp. 75-77).

2.3.3. The Petition and Report No. 54/2001

The transformation of Maria da Penha’s case from a domestic complaint into a case before the IAHRs would not have been possible without the work of two civil society organizations: the Center for Justice and International Law (CEJIL) and the Latin American and Caribbean Committee for the Defense of Women’s Rights (CLADEM). CEJIL is a NGO headquartered in San José, Costa Rica, with offices in several Latin American countries, that has the mission of litigating before the Inter-American system in cases of Human Rights violations. In turn, CLADEM is a regional network of feminist organizations working to

promote and defend women's rights in Latin America and the Caribbean (Calazans & Cortes, 2011, pp. 40-41).

It was through these organizations that Maria da Penha in 1998 filed a petition with the Inter-American Commission on Human Rights, invoking violations by Brazil of rights guaranteed under the American Convention on Human Rights and the Belém do Pará Convention, such as negligence, omission and tolerance of domestic violence.

The organizations constructing the complaint not only documented Maria da Penha's concrete case but also gathered statistical and qualitative evidence of domestic violence in Brazil, demonstrating that the treatment of this case was not an exception but the rule: low conviction rates, police stations that refused to register incidents, judges who treated domestic violence as a "private matter".

The Commission admitted the petition and requested information from the Brazilian State on four separate occasions between 1998 and 2001, receiving no response whatsoever, which was noted in the final report as an aggravating circumstance of State responsibility. On April 16 2001, the Commission published Report No. 54/2001, concluding that Brazil had violated, to detriment of Maria da Penha, the following rights protected under Inter-American instruments: the rights to life, to personal integrity and to judicial protection (Articles 4, 5 and 25 of the American Convention) in conjunction with the general obligation to respect and guarantee conventional rights (Article 1.1) and Articles 3, 4, 5 and 7 of the Belém do Pará Convention (IACHR, 2001).

The Commission identified a systematic pattern of tolerance by the Brazilian State toward domestic violence, manifested not only in Maria da Penha's case but in an entire tradition of lenient treatment of this form of violence by the justice system and it recognized that the delay of over fifteen years in concluding the criminal proceedings, combined with the real risk of prescription, constituted a denial of justice that was itself a Human Rights violation (IACHR, 2001). It also affirmed that State tolerance of domestic violence constitutes a form of discrimination prohibited by the Belém do Pará Convention, to the extent that it disproportionately affects women and is the expression of a patriarchal power structure that the State has a duty to combat (Campos, 2011, pp. 93-101).

This meant that it was not enough to punish Maria da Penha's aggressor, it was necessary to transform the institutions, practices and cultures that produced and reproduced violence against women, hence the IACHR's emphasis in its recommendations on measures of systemic nature and not merely on individual reparative measures. The case marked the transition from an individualistic and isolated conception of violence against women to a

structural and systemic conception, which holds the State responsible not only for the aggressor's act but for the context of tolerance that makes that act possible (Piovesan, 2018, pp. 64).

The decision was ground breaking in affirming that domestic violence constitutes a form of gender-based discrimination, dismantling the traditional public-private dichotomy. This was the first condemnation of a State for domestic violence within the IAHRs, establishing an important legal precedent for the entire region, since, until then, the system had dealt with violations traditionally associated with the State, such as torture, forced disappearance or arbitrary imprisonment, but this case innovated by holding the State responsible not for an act directly committed by its agents but for its omission in protecting a woman against violent acts committed by a private individual in the domestic sphere.

This legal innovation was based on the understanding of IHRL that the State has a duty not only to refrain from violating rights but also to act positively to prevent violations committed by private individuals, investigate them, punish those responsible and provide compensations to victims. This duty of due diligence, although implicit in the American Convention, was made explicit and reinforced by the Belém do Pará Convention, which the Commission invoked as an interpretative parameter.

The precedent established by the Maria da Penha case would later be applied by the IACtHR in cases such as González et al. ("Cotton Field") v. Mexico (2009), which dealt with the disappearances and murders of hundreds of women in Ciudad Juárez examining the broader context of gender discrimination and impunity in which the crimes occurred. The Court decided that Mexico had breached its duty of due diligence by failing to take effective measures to prevent the ongoing pattern of violence and by allowing a climate of impunity that encouraged perpetrators, ordering reparations for the victims and change of the systemic conditions that enabled the violence. It further held that the murders constituted femicide, a concept used to describe killings motivated by gender and carried out within a context of structural discrimination.

2.3.4. The Recommendations

Report No. 54/2001 addressed to the Brazilian State a set of recommendations that unfold across measures of individual reparation and structural reform: in the individual sphere, the Commission recommended that Brazil conclude the criminal proceedings against the perpetrator effectively, adopt administrative and judicial measures to compensate Maria

da Penha for the unjustified delays in the proceedings and conduct a serious investigation into the irregularities that had caused the delay (IACHR, 2001).

In the structural sphere, the Commission recommended that Brazil continue and intensify the reform process to avoid State tolerance of discriminatory treatment in regards to domestic violence against women, adopt specific legislation on domestic violence, simplify criminal judicial procedures, train judicial and police officials specialized in these issues to understand fully the importance of not tolerating domestic violence, include in pedagogical programs curricular units aimed at fostering a culture of respect for women and establish alternative, quick and effective forms of conflict resolution for intra-family disputes (IACHR, 2001).

The recommendation to adopt specific legislation on domestic violence is the one that directly materialized in the Maria da Penha Law, but the remaining recommendations define the full scope of the obligations assumed by Brazil and it is against all of them that the effectiveness of the State's response must be evaluated.

2.4. The Maria da Penha Law

Brazil's compliance with the IACHR's recommendations was neither immediate nor linear: between the approval of Report No. 54/01 in 2001 and the enactment of the Maria da Penha Law in 2006 there was a complex process of negotiation between the federal government, the Congress, the feminist movement and Human Rights organizations. This part investigates the process of incorporating international obligations into Brazilian Law and it demonstrates how the Maria da Penha Law represents a direct, even if belated and partially fulfilled, response to Brazil's international responsibility.

2.4.1. The Process of Internalizing Reparative and Preventative Obligations

The relationship between IHRL and Brazilian domestic law has historically been marked by tensions and ambiguities: on one hand the Federal Constitution of 1988, promulgated after the military dictatorship, assigns Human Rights a prominent place in the legal order, establishing in Article 4, section II, that Brazil's international relations are governed by the principle of the prevalence of Human Rights and recognizing in Article 5, paragraph 2 that the constitutional rights and guarantees do not exclude others arising from international treaties to which Brazil is a party. On the other hand, the practical fulfillment of international obligations has been historically deficient, marked by an institutional culture that tends to treat international instruments as declaratory documents without binding force.

The case of Maria da Penha is a great example of this tension: Brazil has ratified the American Convention on Human Rights in 1992, the Belém do Pará Convention in 1995 and had recognized the jurisdiction of the Inter-American Court in 1998. Therefore, it has formally assumed a robust set of international Human Rights obligations, but the justice system continued to operate as if those obligations did not exist, treating domestic violence as a matter of lesser gravity, tolerating the impunity of abusers and leaving victims unprotected.

The petition to the Inter-American Commission functioned as a mechanism of "shaming", compelling the Brazilian State to confront on the international plane the distance between the commitments it had assumed and the reality it was producing. The process of drafting the law itself is a relatively successful example of the internalization of international obligations since it was a product of participatory and technically rigorous process involving a consortium of feminist organizations, university research groups and representatives of the Executive branch.

The preliminary bill sought to overcome the limitations of prior legislation: before the Maria da Penha Law, women who were victims of domestic violence were protected under Law No. 9,099/95, which governs crimes of lesser severity, in other words, almost always, the perpetrator's sentence was converted to community service. This critique echoed directly the IACHR's recommendations, which had identified the judicial trivialization of domestic violence as one of the structural factors of impunity (Calazans & Cortes, 2011, pp. 39-40).

The law was approved by the National Congress and signed by President Luiz Inácio Lula da Silva on August 7, 2006. At the signing ceremony, the President acknowledged the law's international origins, stating that the country was honoring a historic debt to Brazilian women and to the commitments assumed before the international community.

It is crucial to highlight that Maria da Penha's trajectory is not limited to being a victim of domestic violence: over the following years she became an important women's rights activist, transforming her personal pain into a collective fight. As she declared that she didn't want justice only for herself, she wanted no woman to have to go through what she went through.

However, the internalization process is not exhausted by the promulgation of the law: to internalize an international obligation means not only enacting the corresponding norm, but also equipping it with the institutional, financial and cultural means necessary for it to produce real effect. It is in this second dimension, that of substantive effectiveness, that the most pronounced gaps reveal themselves, as the subsequent chapters will demonstrate.

2.4.2. The Maria da Penha Law as a Direct Response to Brazil's International Responsibility

Law No. 11,340/2006 represented an unprecedented leap in the legal treatment of domestic violence in Brazil: its normative innovations are significant and deserve to be better described before turning to a critical analysis of their limitations.

The law defined domestic violence and family violence against women in a broad and multidimensional manner, recognizing five forms of violence: physical, psychological, sexual, patrimonial and moral⁶. This goes well beyond the reductionist view that identified domestic violence solely with physical assault, which reflects the definition adopted by the Belém do Pará Convention and represents a fundamental conceptual advance.

Furthermore, the law removed the domestic violence from the jurisdiction of the Special Criminal Courts, prohibiting the application of Law No. 9,099/1995 and with it the possibility of resolution through derisory alternative penalties, such as the donation of food baskets (Brazil, 2006, art. 41). It also creates an articulated system of emergency protective measures that may be granted by a judge within 48 hours without the need of a prior hearing, these measures include, among others, a prohibition on the aggressor approaching the victim, suspension of the right to carry firearms, removal from the family home, provisional child support payments and enrollment of children in educational institutions.

Moreover, the law mandates the creation of Domestic and Family Violence Courts against Women, with both civil and criminal jurisdictions, and of Specialized Women's Police Stations (DEAMs), seeking to build an integrated and specialized protection network. Complementary, it provides for the creation of shelters, multidisciplinary integrated service centers and health services for victims (Brazil, 2006; Instituto Maria da Penha, 2021).

Lastly, the law establishes that criminal prosecution for domestic violence offenses is unconditionally public, that is, it may be initiated by the Public Prosecutor's Office regardless of the victim's wishes, a provision confirmed by the Supreme Court in the judgment of ADI 4424 and ADC 19 in 2012. This provision responded to the documented situation of victims who, out of fear or economic dependence, withdrew their complaints, interrupting proceedings that the international system considered a duty of the State to conclude.

These innovations directly incorporate the IACHR's recommendations: the simplification of judicial procedures is present in the provision for protective measures within

⁶ The Maria da Penha Law defines psychological violence as any conduct that causes emotional harm and reduced self-esteem, including threats, embarrassment, exploitation and restriction of the right to come and go. Moral violence, in turn, consists of defamation, slander or injury to honor (Brazil, 2006).

48 hours and the allocation of resources is provided by Article 9, which establishes shared responsibility among the Union, states and municipalities.

The law has been internationally recognized as one of the most advanced of its kind in the world: the CEDAW Committee, in its observations on Brazil, praised the law and identified it as a model for other States and the United Nations Development Programme (UNDP) highlighted it as an example of gender-based violence legislation in Latin America.

And yet, the existence of a formally advanced law is not synonymous with effective protection: between the norm and practice, between the legal text and the reality of the women who turn to police stations and courts, there lies a distance that the chapters that follow to measure and understand. The benchmark against which that distance will be assessed is the one established by Brazil's obligations before the Inter-American System, the question is not whether the State has achieved perfection, but whether it has acted with due diligence to fulfill the reparative and preventive commitments it assumed before the international community as a consequence of its responsibility for the case of Maria da Penha.

In interviews over the years, Maria da Penha herself has stated on numerous occasions that the problem is not the law, but its application. Despite its normative advances, the application of the law reveals significant limitations that demonstrate that the internalization of international obligations remains partial and selective, often reproducing pre-existing structural inequalities.

2.4.3. Achievements and Progress of the Maria da Penha Law

A decisive step forward in ensuring the law's effectiveness was taken in 2012 when the STF jointly ruled on Declaratory Action of Constitutionality (ADC) No. 19 and Direct Action of Unconstitutionality (ADI) No. 4,424, both reported by Justice Marco Aurélio (STF, 2012). In ADC No. 19, filed by the Presidency of the Republic, the Plenary unanimously declared the constitutionality of Articles 1, 33, and 41 of the law, dismissing allegations of violation of the principle of equality and recognizing the legitimacy of the differentiated treatment afforded to women in vulnerable situations (STF, 2012).

In ADI No. 4,424, filed by the Office of the Attorney General, the Court interpreted Articles 12, item I, and 16 of the law as consistent with the Constitution, establishing the unconditional public nature of criminal prosecution for crimes of bodily injury committed against women in the domestic environment, regardless of their severity (STF, 2012). As a

result, criminal prosecution no longer depended on a complaint by the victim, thereby making state protection more effective (Cavalcante, 2014).

Another relevant advance lies in the dynamic character of the legislation, which has been systematically improved over time. According to the National Council of Justice (CNJ), between 2017 and 2024 alone, fifteen new laws were enacted that introduced or amended approximately fifty provisions of the Maria da Penha Law (CNJ, 2024). This continuous legislative activity reflects an effort to respond to emerging forms of violence and to correct practical shortcomings identified in the law's application.

Among the most significant milestones in this process is Law No. 13,104/2015, which included femicide as a qualifying circumstance of homicide and classified it as a heinous crime, thereby recognizing the gravity and gendered nature of lethal violence against women (Brazil, 2015). This was followed by Law No. 13,641/2018, which created an autonomous criminal offense for the breach of urgent protective measures (Article 24-A), overcoming prior jurisprudential controversy regarding the alleged atypicality of such conduct (Brazil, 2018).

Subsequent reforms further strengthened preventive and institutional mechanisms. Law No. 13,827/2019 authorized the granting of protective measures directly by police authorities in urgent situations and required their registration in a national database maintained by the CNJ, enhancing both immediacy of protection and institutional coordination (Brazil, 2019). In 2021, Law No. 14,149 instituted the National Risk Assessment Form, developed by the CNJ in partnership with the National Council of the Public Prosecutor's Office, aiming to standardize and improve risk evaluation in cases of domestic and family violence (Brazil, 2021). In the same year, Law No. 14,188 created the "Red Signal Against Domestic Violence" program and criminalized psychological violence against women, formally acknowledging non-physical forms of abuse as deserving of penal protection (Brazil, 2021).

An important advance can be identified in the constitutional debate currently before the STF regarding the possible application of the Maria da Penha Law to situations of gender-based violence that occur outside domestic, family or intimate-affective relationships (Migalhas, 2026). By examining whether the protective measures established by Law No. 11,340/2006 may be applied in community or public contexts, the STF directly confronts a longstanding interpretative limitation that has produced significant gaps in protection. A restrictive reading of the law, confined to the domestic or familial sphere, risks excluding women who experience gender-based violence perpetrated by neighbors, coworkers, supervisors or even strangers. Such exclusions are difficult to justify in light of contemporary

understandings of gender violence as a structural and pervasive phenomenon, not confined to the private sphere but reproduced across multiple social spaces.

In light of Brazil's international human rights commitments, extending the protective logic of the Maria da Penha Law beyond traditional relational boundaries may contribute to overcoming situations of underprotection and to consolidating the Maria da Penha Law as a comprehensive instrument against gender-based violence, capable of responding to its contemporary and multifaceted manifestations.

More recent amendments have reinforced the scope and coherence of the protective framework. Law No. 14,550/2023 clarified that the Maria da Penha Law applies to all situations described in Article 5, regardless of the motivation or the personal condition of the aggressor or the victim, thereby preventing restrictive interpretations (Brazil, 2023). Finally, Law No. 14,994/2024 transformed femicide into an autonomous criminal offense (Article 121-A of the Penal Code), establishing a penalty of 20 to 40 years of imprisonment and further consolidating the legal response to gender-based killings (Brazil, 2024).

Taken together, this process of continuous refinement demonstrates that the Maria da Penha Law operates as a normative system in permanent evolution, capable of incorporating new demands for protection without losing sight of the core principles that underpin it (CNJ, 2024).

According to the CNJ, in 2024 alone, 959,228 new cases related to domestic violence were filed, along with 827,990 proceedings regarding emergency protective measures, of which 578,849 resulted in decisions granting such measures (CNJ, 2025). A previous assessment, conducted in partnership between the CNJ, the Avon Institute and the Maria da Penha Law Consortium, found that most courts grant requests for protective measures within the legal 48-hour deadline, with approximately nine out of ten requests being granted (CNJ, 2022). While these figures also reflect the persistence and magnitude of the problem, they demonstrate the social acceptance of this legal tool and the creation of a previously nonexistent pathway to justice.

This chapter identified the decisive tension that animates the remainder of the thesis: between the formal advance of the norm and its substantive reach, between the legal text and the reality of the women who turn to police stations and courts. The law is formally universal, addressing "women" without racial, ethnic, cultural or sexual qualification. The question that this formal universality leaves unanswered is whether it produces equality of protection in practice. The next chapter takes up that question directly, examining whether the law's

promise of universal protection holds for those situated at the intersections of multiple structures of subordination: black women, indigenous women and LGBTQ+ individuals.

3. THE LIMITS OF UNIVERSALITY: BLACK WOMEN, INDIGENOUS WOMEN AND LGBTQ+ INDIVIDUALS UNDER THE MARIA DA PENHA LAW

The Maria da Penha Law was designed to protect all women in Brazil, that is why its text is deliberately broad: it defines domestic and family violence without racial, ethnic, sexual or cultural qualifications, extending its reach to any woman who experiences violence within an intimate or family relationship, regardless of her background or the configuration of that relationship, in this formal sense, the law is universal. The question this chapter investigates is whether this formal universality⁷ translates into substantive equality of protection using the concept of intersectionality, first systematized by Kimberlé Crenshaw (1989, 1991) and deeply resonant with the Brazilian feminist tradition represented by Lélia Gonzalez (1988) and Sueli Carneiro (2003), as the analytical framework to examine the implementation of gender-based violence protection policies in Brazil across different social groups.

Intersectionality holds that different axes of subordination do not operate independently but interact to produce specific and compounded forms of vulnerability. Therefore, what unites these three groups (black women, indigenous women and LGBTQ+ individuals) is that the barriers they face are qualitatively different, rooted in distinct histories of exclusion, distinct structural positions within Brazilian society and distinct relationships to the State institutions responsible for implementing the law. Treating them as a single undifferentiated category of "marginalized groups" risks flattening the specificity of each group's situation and producing generic recommendations that address none of them adequately.

The approach adopted in this chapter is therefore one of structured comparison: examining each group's situation in sufficient detail to capture its specificity, while maintaining a common analytical thread, intersectionality, that allows the patterns across groups to be identified and theorized. The chapter argues that the effectiveness of the Maria da Penha Law cannot be assessed as a single, aggregate phenomenon, it must be assessed intersectionally because the law's protection is not experienced uniformly. Achieving the standard of due diligence that Brazil committed to before the IAHRs when it enacted this law

⁷ As Linhares (2012) argues, law's claim to universality is not a neutral given but a cultural project whose pretension to speak for everyone can obscure the particular standpoint from which it is articulated; recognising this does not require abandoning universal protections, but rather holding them open to intercultural translation, so that the guarantee against violence is realised across, rather than in spite of, cultural difference.

requires not only the formal extension of its protections to all women, but the substantive transformation of the institutional conditions that determine whether those protections are actually accessible to the women who need them most.

The selection of black women, indigenous women and LGBTQ+ individuals as the three focal groups of this chapter reflects both theoretical and empirical considerations. Theoretically, each of these groups occupies a distinct position within the intersectional framework developed in Chapter 1: black women embody the intersection of gender and race within the context of Brazil's specific history of slavery and structural racism; indigenous women bring into relief the additional dimension of coloniality, cultural differences and the tension between collective and individual rights; and LGBTQ+ individuals challenge the law's foundational assumptions about gender identity and sexual orientation, raising questions about the boundaries of legal protection. Empirically, the choice is also justified by data availability and doctrinal development, since the situations of these women under the Maria da Penha Law have generated a sufficient body of research and judicial decisions to sustain the depth of analysis this chapter requires.

This is not to suggest that these are the only groups for whom the law's formal universality fails to translate into substantive equality of protection because other dimensions of vulnerability are equally real and equally deserving of scholarly attention. Women living in rural and remote areas face geographic barriers to access that effectively render the law's institutional infrastructure unreachable for many of them. Women in situations of poverty and economic dependence encounter structural constraints that shape their capacity to report violence, sustain legal proceedings and access support services in ways that purely legal analysis tends to obscure. Women with physical or cognitive disabilities face a distinct set of barriers rooted in ableism within institutional settings and heightened dependence on caregivers who may themselves be the source of violence. Each of these dimensions represents a legitimate and important field of inquiry and the decision to focus on three specific groups rather than attempting to map the full landscape of intersectional vulnerability is a methodological choice made in recognition of the scope constraints inherent in a master's thesis, a choice that prioritizes analytical depth over exhaustive coverage and that the author acknowledges as a limitation of the present work rather than a judgment about the relative importance of the groups not addressed.

3.1. GENDER VIOLENCE, STRUCTURAL RACISM AND BLACK WOMEN

The present chapter turns to a concrete and geographically situated reality: the experience of black women in Brazil in the face of domestic violence and femicide. Brazil constitutes a particularly revealing case for IHRL, as it concentrates many of the structural conditions identified in the previous chapters as enabling gender violence, these include racial and gender inequalities, an unresolved colonial legacy and an institutional apparatus that oscillates between formal protection and practical omission (Linhares, 2012, pp. 492-500).

Nearly twenty years after the adoption of the Maria da Penha Law, data reveal a persistent gap between the law's promises and the lived realities of black women: rates of domestic violence and femicide remain disproportionately high among black women and access to protection and justice continues to be unequal. This gap is produced and sustained by structural racism embedded in Brazil's justice system, public policies and social relations and, as a result, the law, while formally applicable to all women, operates in practice within a reality that systematically limits its protective capacity for those most exposed to violence.

Race is a constitutive element of the violence experienced by black women, it shapes who is more vulnerable, who has access to protection, whose suffering is recognized by institutions and whose experiences remain systematically ignored. When the racial dimension is absent from the application of the Maria da Penha Law and from public policies, this omission itself constitutes a form of discrimination, one that the Brazilian State is obliged, under IHRL, to recognize and remedy (Carneiro, 2003, pp. 49–58; Werneck, 2010, pp. 7-17; CEDAW Committee, 2017).

3.1.1. Structural Racism: the Historical Formation of a Persistent Inequality

Racism in Brazil is the product of a long process shaped by more than three centuries of slavery, followed by policies of exclusion, silencing and racial “whitening”, therefore, contemporary violence against black women cannot be understood without reference to the country's history. Slavery was a violent economic system where the body of the enslaved black woman was simultaneously a labor force, an object of sexual violence and an instrument for the reproduction of the enslaved work force and these expropriations continues to shape the relations of gender, race and power that organize society to this day (Davis, 1981; Saffioti, 2004).

Sexual violence against these women was a constitutive part of the slave system: slaveowners exercised legally sanctioned control over the bodies of enslaved women, a

power that post-abolition legal frameworks were slow to dismantle and even though the formal abolition of slavery happened in 1888, forced motherhood and repeated sexual violence produced deep and lasting harm. Abolition freed black women from legal condage but did not eliminate the social structures that had made their bodies available to violence, instead, these structures were reorganized and persisted through new forms of exclusion (Saffioti, 2004).

After the abolition, Brazil adopted policies aimed at whitening the population, promoting European immigration while treating black presence as an obstacle to national development, which denied them access to land, education and employment, while also producing an ideological narrative that denied the existence of racism. This narrative became known as “the myth of racial democracy”, articulated by Gilberto Freyre in *Casa-Grande e Senzala* (1933), which presented Brazilian society as racially harmonious to conceal racial inequalities and to delegitimize racism as a subject of State intervention (Fernandes, 1964, pp. 299-304; Nascimento, 1978, pp. 82-87).

Black intellectuals and activists challenged this narrative, among whom Abdias do Nascimento was prominent, along researchers like Florestan Fernandes that demonstrated empirically in “The Integration of Black Population into Class Society” (1964) that abolition did not lead to equal opportunities, but rather to new forms of exclusion that reproduced the racial hierarchies of the slave period under formally free conditions. This analysis was further developed by Lélia Gonzalez (1984; 1988), who offered a pioneering account of the interconnection between race, gender and class shaping the oppression experienced by black women in Brazil. Her work anticipated, in the Brazilian context, what Kimberlé Crenshaw (1981) would later conceptualize as intersectionality in North American legal theory.

The concept of structural racism, as developed by the Brazilian jurist Silvio Luiz de Almeida in his influential work *Structural Racism* (2019), goes beyond individual and institutional understandings of racism: rather than viewing it as a matter of isolated discriminatory acts or institutional bias that can be corrected through training or administrative reform, Almeida defines structural racism as a constitutive element of the social, political and economic order, as something embedded in the normal functioning of society itself.

An important feature of structural racism is its relative autonomy from the intentions of individual agents, an institution may be racist in its effects without any of its members being individually motivated by prejudice (Almeida, 2019, pp. 75-80). This relative independence makes structural racism particularly difficult to combat, which explains why legal strategies

focused only on prohibiting intentional discrimination are insufficient to address racial inequality, therefore, its confrontation requires active and sustained intervention in social structures, such as affirmative action measures and institutional reform (Almeida, 2019, pp.200-240; Carneiro, 2003, pp.39-58).

In the context of domestic violence, structural racism shapes the conditions that increase vulnerability to violence. Because of racial inequalities in the labor market, income distribution and access to housing, black women are more likely to experience economic dependence, which limits their ability to leave abusive relationships, moreover, they face greater obstacles in engaging with institutions such as the police, the public prosecutor's office and the judiciary, due to material barriers and to historical distrust rooted in experiences of discrimination and neglect (Almeida, 2019, pp. 200-240; IBGE, 2019).

Finally, structural racism also influences the way institutions respond to reports of violence: racial bias in policing practices, in the assessment of victims' credibility and in the allocation of institutional resources results in systematically weaker protection for black women. These dynamics demonstrate that domestic violence against black women must be analyzed as a phenomenon shaped by broader racialized structures of power and inequality (Saffioti, 2004, pp.60-90; Carneiro, 2003, 39-53; Werneck, 2010).

3.1.2. Black Women as a Disproportionately Affected Group

Data produced by research institutes and government bodies reveal in a consistent and alarming manner the disproportionate burden of domestic violence and femicide upon black women in Brazil. The Atlas of Violence, published annually by the Institute for Applied Economic Research (IPEA, 2023) in partnership with the Brazilian Public Security Forum (FBSP), constitutes the most systematic source of data on lethal violence in the country and has documented over the years a significantly higher femicide rate among black women in comparison with non-black women.

The data from the 2023 Atlas of Violence demonstrate that, while the homicide rate of white women has shown a downward trend over the past decade, the homicide of black women has remained stagnant or increased in several periods. In 2021, the homicide rate of black women was significantly higher than that of non-black women, consolidating a trend that repeats itself systematically across historical series. Importantly, this disparity cannot be explained solely by differences in income, education or geographic location: even when these variables are controlled for, race continues to exert an independent effect on the risk of lethal

violence, indicating that racial inequality plays a decisive role in shaping vulnerability (IPEA & FBSP, 2023; Cerqueira et al., 2021).

In the field of non-lethal domestic violence, the data are less complete, which is itself revealing of the structural gaps in the Brazilian information system. Available research including surveys by Datafolha commissioned by the Brazilian Public Security Forum indicates that black women are more frequently victims of physical, psychological and patrimonial violence by intimate partners and that they face greater difficulties in accessing the protection mechanisms provided under the Maria da Penha Law (FBSP & Datafolha, 2021). The research series *Visible and Invisible: the Victimization of Women in Brazil*, in its 2019 and 2021 editions, confirmed this trend, revealing that black women report proportionally more experiences of domestic violence but seek institutional assistance in smaller proportions, this combination of higher exposure and lower access to protection exposes the unequal operation of the legal and institutional frameworks.

The under-reporting of domestic violence is a well-documented phenomenon worldwide, in Brazil, it is estimated that only a fraction of incidents result in police reports and is even lower among black women (FBSP & Datafolha, 2021; Werneck, 2010; Carneiro, 2003). The reasons for under-reporting are multiple and interconnected, including fear of retaliation by the aggressor, economic dependence, social isolation, distrust of police and judicial institutions, social shame and the normalization of violence as part of daily life in the most vulnerable communities.

The distrust of black women in the justice system is historically grounded and rationally justified, Brazilian police institutions have a long history of violent relations with black populations, especially in urban peripheries (favelas): police violence, abuse of authority and impunity of these agents are common experiences for these communities. For a black woman who grew up in an environment where the police are more frequently a source of threat than of protection, engaging that same institution as a means of relief from domestic violence involves a complex risk calculation that notification statistics do not capture.

Moreover, there is a form of invisibilization that operates within the institutions themselves: the differential treatment afforded to the complaints of black women. Studies from black feminist movement organizations document cases of disbelief, minimization of the severity of reported violence and dismissive treatment by police officers and legal practitioners in the face of black victims (Werneck, 2010; FBSP & Datafolha, 2021; Carneiro, 2003). Therefore, complaints are more likely to be trivialized, credibility is more frequently questioned and institutional responses are often slower or less thorough, which reflects

institutional patterns of racism that must be recognized as such if they are to be effectively confronted.

The racial disparity in the lethality of violence against women must be understood in relation to the broader selectivity of the Brazilian penal system, as criminal justice institutions do not operate uniformly across social groups: they tend to apply punitive power more intensely against black populations in peripheral areas, while offering weaker protection when these same people appear as victims. This dynamic, greater punishment as perpetrators and lesser protection as victims, is one of the clearest expressions of structural racism within the legal system (Almeida, 2019; Flauzina, 2008).

In cases of femicide, penal selectivity becomes evident: studies conducted by institutions such as the Igarapé Institute and the FBSP indicate that femicide cases involving black women are less likely to be thoroughly investigated, less likely to be prosecuted and less likely to receive sustained media attention than cases involving white victims, even when the circumstances of the crime are similar (Instituto Igarapé, 2017; IPEA & FBSP, 2023). This disparity in institutional and public response reinforces the sense of impunity and communicates that the lives of black women are less valued by the State and society.

The concept of "necropolitics" developed by philosopher Achille Mbembe (2019) and widely deployed by Brazilian black feminist scholars such as Djamila Ribeiro (2017) and Winnie Bueno (2020) provides a useful framework for interpreting lethal selectivity. For Mbembe, necropolitics refers to the power to determine who may live and who must die, in societies shaped by colonial legacies, this power is exercised disproportionately over black bodies. Applied to the context of femicide and domestic violence, the concept helps reveal the political dimension of unequal distribution of protection, vulnerability and death among women of different racial groups.

3.1.3. The Maria da Penha Law and its Limitations in Protecting Black Women

The Maria da Penha Law represents a major legislative advance in the protection of women against domestic violence in Brazil, however, it was developed within a feminist framework that historically tended to reflect the experiences of white, middle-class women and the demands and critiques raised by black feminist movements during the legislative process were not systematically incorporated (Carneiro, 2003; Werneck, 2010; Mendes, 2014). At the time, they already warned that a generic and formally neutral law would be insufficient to address the specific forms of violence experienced by black women and, as a

result, the law offers protection that is formally universal but materially unequal, as its mechanisms are less accessible to those women who face greater barriers.

The formal universalism of the law is both one of its strengths and one of its main limitations: by treating all women as if they were equally positioned before the law, the legal framework overlooks the deeply unequal conditions under which protection mechanisms can actually be accessed. A black woman working in the informal economy, living in a peripheral area without a Women's Police Station, lacking transportation to reach a specialized court, without financial resources to hire a lawyer and distrustful of State institutions is formally protected by the same law as a white middle-class woman who has full access to these resources. In practice, this formal equality hides a material inequality that is maintained by structural racism.

IHRL and critical legal theory have long emphasized that formal equality alone is insufficient in contexts of structural inequality, merely prohibiting discrimination is not enough if States do not actively address unequal conditions of access to rights. Both the CEDAW Committee and the IACtHR have affirmed that States must adopt specific and targeted measures to promote substantive equality (CEDAW Committee, 2004; IACtHR, 2009).

3.1.4. Barriers to Access to Justice

Institutional racism within law enforcement agencies and the justice system is one of the most significant barriers faced by black women seeking protection under the Maria da Penha Law. As explained, institutional racism refers to the collective failure of institutions to provide adequate and professional services because of race, culture or ethnic origin; it does not depend on individual intent, but is expressed through practices and routines in the decision-making processes that systematically disadvantage certain groups (Carmichael & Hamilton, 1967; Werneck, 2010).

As mentioned before, in Police Stations and specialized Women's Police Stations (DEAMs), institutional racism may appear in different forms and is also reflected in the unequal territorial distribution of protection services: DEAMs, Women's Reference Centers (CRAMs) and shelters are concentrated in central and wealthier urban areas, while peripheral regions, where the black population is disproportionately concentrated, often lack these services, which reflects long-standing political choices that have deprioritized investment in black communities (Observatório da Lei Maria da Penha, 2010; FBSP & Datafolha, 2021).

The distrust that many black women feel toward the justice system is a rational response to historical and ongoing experiences of violence and discrimination by State institutions. In many peripheral areas, policing is marked by aggressive practices and high levels of lethal violence, which leads communities to experience the police as a source of danger rather than protection.

For black women experiencing domestic violence, reporting an aggressor may involve bringing into the situation an institution that routinely treats black men with excessive force, which creates a difficult dilemma: the aggressor is someone that causes serious harm, but he is also a black man living under conditions of structural racism. Black feminist scholars have emphasized that recognizing this complexity does not excuse domestic violence, instead, it highlights the need for protection policies that reflect the real social conditions in which black women make decisions.

The absence of policies specifically designed to address the situation of black women is one of the most serious gaps in the implementation of the Maria da Penha Law, with few exceptions at the local level, national policies on domestic violence do not include clear strategies aimed at reducing racial disparities in access to protection and in violence rates, for example, the National Policy for Combating Violence against Women addresses race only in a general manner. Therefore, when policies distribute resources and services without considering differences in vulnerability and need, historically marginalized groups continue to receive inadequate protection (SPM, 2011; Observatório da Lei Maria da Penha, 2010).

This gap reflects a broader limitation of gender policies in Brazil: intersectionality is often acknowledged in discourse but not fully incorporated as an operational principle in policy design and implementation, as a result, the law remains uneven in its capacity to protect those women who are most exposed to domestic violence.

3.1.5. Jurisprudence and Public Policies: Advances and Omissions

Since the enactment of the Maria da Penha Law, Brazilian courts have made significant progress in the legal protection of victims of domestic violence, which are especially evident in the expansion of the law's protective scope and in the recognition that the State has positive obligations to prevent, investigate and punish domestic violence. The Superior Court of Justice (STJ) has played an important role in this process, for example, its jurisprudence has confirmed that protective measures may be granted even in the absence of a police investigation or criminal proceedings and that the decriminalizing provisions of Law No.

9.099/1995 do not apply to crimes committed in a domestic violence context (STJ 2015, 2017).

It is possible to identify important advances in judicial reasoning that move toward a more structural and intersectional understanding of gender-based violence. Some recent decisions have adopted an interpretive approach that recognizes violence against women as rooted in patriarchal power relations rather than contingent upon proof of individual intent or biological difference.

An illustrative example is a 2023 decision by the Court of Justice of Rio Grande do Sul, in which the Second Criminal Chamber affirmed the applicability of Law No. 11,340/2006 to a conflict involving verbal and moral violence perpetrated by a former mother-in-law against her daughter-in-law. The court explicitly held that the Maria da Penha Law is not restricted to marital or intimate partner conflicts, but extends to any form of gender-based violence committed within the domestic or family sphere. According to the ruling, all violence against women occurring in domestic, family or intimate-affective relationships must be presumed to be gender-based, as it reflects asymmetrical power relations historically constructed within a patriarchal society (TJRS, 2023) .

Significantly, the court rejected the need to inquire into the existence of a specific “gender-based motive” in the individual case. Instead, it emphasized that gender-based violence derives from structural hierarchies that attribute supremacy to men and obedience or inferiority to women. These hierarchies are socially and culturally produced and therefore generate a legal presumption of women’s vulnerability, therefore, the court affirmed that the imbalance of power is an element presumed by the Maria da Penha Law itself, rather than a factual requirement to be demonstrated in each case (TJRS, 2023) .

The decision further recognized that women may also act as agents of patriarchal norms and expectations: in the case at hand, the former mother-in-law’s conduct (characterized by racialized and misogynistic insults, including references to the victim as a “selfish Black woman” and a “shameless Black woman”) was understood as an expression of patriarchal authority exercised by proxy, grounded in the presumed superiority of her son over his wife. This reasoning allowed the court to acknowledge the intersection of gender and race as factors contributing to the victim’s condition of vulnerability.

Importantly, the court grounded its interpretation in IHRL, explicitly referencing the guidelines developed by the CEDAW Committee and the jurisprudence of the IACtHR. These sources recognize domestic and family violence against women as stemming from historical, social and cultural structures rather than merely individual conduct. By

incorporating these standards into a systematic and teleological interpretation of the Maria da Penha Law, the decision gives concrete normative effect to its human rights foundations.

This ruling represents a meaningful jurisprudential advance because it demonstrates the judiciary's potential to operationalize feminist and human rights-based interpretations of domestic violence law, recognizing structural inequality and the relevance of intersectional factors. At the same time, the exceptional character of such decisions underscores the need for these interpretive approaches to be consolidated and generalized within Brazilian jurisprudence, rather than remaining dependent on individual judicial sensitivity.

Despite these important advances, national jurisprudence reveals a significant shortcoming: the almost complete absence of racial analysis in decisions applying the Maria da Penha Law. Courts at both state and superior levels tend to treat victims of domestic violence as a homogeneous group, without considering the specific experiences and vulnerabilities of black women. By failing to address racial inequalities, judicial decisions are unable to identify or confront patterns of unequal access to protection, as a result, materially unequal situations are treated as formally identical, which reproduces and legitimizes structural racial inequality.

The STF has increasingly assumed a central role in the protection of historically marginalized groups in Brazil, its jurisprudence has advanced in areas such as LGBTQ+ rights and the criminalization of racism. In the context of domestic violence, the STF affirmed the constitutionality of the Maria da Penha Law and held that criminal prosecution for minor bodily injury committed in a domestic setting must proceed as unconditional public action (STF, 2019, 2012).

However, in contrast to its approach in other areas of anti-discrimination law, the STF has not yet developed a jurisprudence on domestic violence that explicitly addresses its racial dimension. While the Court has directly confronted structural discrimination in cases involving racism, homophobia and affirmative action policies, it has remained silent on the role of structural racism in shaping access to protection under domestic violence laws.

The incorporation of an intersectional perspective into the STF's jurisprudence on domestic violence therefore remains a key challenge, such an approach would require the Court to recognize that the equality guaranteed by the Maria da Penha Law is formally universal but materially unequal. The State's obligation would then extend beyond the equal application of the law to all women, encompassing the duty to identify and remove structural barriers that prevent black women from accessing protection on conditions of effective equality, which is consistent with the Federal Constitution of 1988, that establishes the

reduction of social inequalities as a constitutional objective, as well as with the International Human Rights treaties ratified by Brazil (Brazil, 1988, art. 3, IV).

3.2. INDIGENOUS WOMEN AND THE ACCESS TO JUSTICE

IHRL has progressively recognized the specific rights of indigenous women, although often in a fragmented and insufficient manner. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms Indigenous peoples' rights to self-determination, cultural integrity and freedom from discrimination, while explicitly recognizing the particular rights and needs of indigenous women (UN, 2007).

Similarly, International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples establishes binding obligations regarding cultural respect, participation and access to justice, emphasizing that state institutions must take into account Indigenous customs and legal traditions (ILO, 1989). However, the Convention remains limited in its gender-sensitive provisions and does not directly address domestic or gender-based violence.

At the regional level, the Organization of American States Inter-American human rights system has advanced important jurisprudence concerning Indigenous women, particularly through the Inter-American Commission and Court of Human Rights (*González et al. v. Mexico*) (IACtHR, 2009).

The Brazilian Constitution of 1988 represents a landmark in the recognition of Indigenous rights, affirming Indigenous peoples' cultural autonomy, social organization, languages, beliefs, and traditional lands (Brazil, 1988, art. 231). However, the Constitution does not explicitly address the specific situation of indigenous women or gender-based violence within indigenous communities (Villares, 2013).

Violence against indigenous women in Brazil represents one of the neglected dimensions of gender-based violence in the country and official data on this phenomenon remain fragmented and underreported, a reality that itself amounts to a form of institutional invisibility. The Special Secretariat for Indigenous Health (SESAI) and the National Foundation for Indigenous Peoples (FUNAI) have historically faced severe limitations in producing comprehensive data on domestic and sexual violence within indigenous territories. These limitations stem from the geographic dispersion of communities, the absence of adequate notification mechanisms and cultural specificity that shape both the occurrence and reporting of violence.

Despite these gaps, studies conducted by civil society organizations and academic researchers shows that indigenous women are exposed to overlapping and mutually

reinforcing vulnerabilities (racial, ethnic, gender-based and territorial) that generate heightened susceptibility to violence. Research by the Socio-Environmental Institute (ISA) and the Coordination of Indigenous Peoples of Brazil (APIB) indicates that domestic violence, sexual violence and femicide disproportionately affect indigenous women, who also face profound obstacles in accessing institutional mechanisms of protection (APIB, 2020; ISA, 2018; UN, 2015).

The intersection of ethnicity and gender places indigenous women in a position of what scholars describe as “multiple jeopardy”, a condition in which systems of oppression do not merely accumulate but interact in ways that intensify harm (Crenshaw, 1989). In Brazil, this intersection is further shaped by a colonial legacy that has historically subjected indigenous bodies, territories and modes of life to processes of domination, erasure and dispossession, therefore, violence against indigenous women must be situated within the broader political economy of land dispossession, forced assimilation and structural racism that continues to govern indigenous-state relations (Segato, 2012, pp. 106–131).

The Brazilian State’s response capacity has been further weakened by chronic underfunding of indigenous health and protection services, the progressive dismantling of FUNAI’s operational structure and the persistent failure to translate constitutional guarantees into effective public policies. Although the 2010 and 2022 demographic censuses conducted by the Instituto Brasileiro de Geografia e Estatística (IBGE) represent advances in mapping indigenous populations, they still lack sufficiently disaggregated data on violence against women within indigenous communities to support the design of targeted interventions (IBGE, 2010, 2023).

3.2.1. Linguistic, Territorial and Cultural Barriers to Legal Protection

The Maria da Penha Law is regarded as one of the most progressive domestic violence statutes in Latin America, however, it was not designed primarily with indigenous women in mind and its institutional architecture (reliant on specialized police precincts, judicial protective orders and networks of shelters and legal assistance) presupposes geographic proximity to State infrastructure and proficiency in Portuguese, assumptions that do not reflect the lived realities of a significant proportion of indigenous women (Thurler, 2012, pp. 549–568).

Brazil is home to over 300 indigenous ethnic groups speaking approximately 274 distinct languages (Instituto Socioambiental, 2022). Yet the official language of the Brazilian legal system is Portuguese and no systematic provision exists for interpretation services in

most courts and administrative proceedings. Therefore, indigenous women who do not speak Portuguese fluently are effectively excluded from meaningful access to justice, leaving them unable to exercise rights that are supposed to be universal.

This linguistic barrier operates at every stage of the legal process: a woman seeking a protective measure against domestic violence must be able to communicate her situation to a police officer or judge. If she requires an interpreter, one is rarely available and even when interpreters are present, they are often untrained in legal terminology and may be community members with their own conflicts of interest, including being relatives of the alleged aggressor. The result is that many indigenous women abandon their complaints before they are even formally registered.

Territorial isolation further compounds these barriers, because many indigenous communities are located in remote regions often several days away from urban centers by river or unpaved roads. The practical impossibility of filing police reports, attending court hearings or accessing shelters renders the protections of the Maria da Penha Law largely abstract and even when distance is not insurmountable, the financial costs of transportation and the risks associated with leaving one's community (where children, extended family and subsistence activities are located) act as powerful deterrents.

Perhaps the most complex barriers to access to justice for indigenous women are cultural, because it involves different conceptions of what constitutes a legal conflict, the appropriate ways to resolve it and the State's legitimacy to intervene in matters that, from an indigenous perspective, belong to the community sphere, since, in many indigenous communities, conflicts between intimate partners are addressed through internal mechanisms of mediation involving elders and spiritual leaders (Kymlicka, 1996).

While such mechanisms reflect legitimate expressions of cultural autonomy, they may also reproduce patriarchal hierarchies that prioritize family unity or community harmony over women's safety and autonomy since these systems can also have their own gendered power dynamics where women's voices are marginalized in decision-making processes. The relationship between State law and indigenous customary law is complex because imposing State solutions may undermine indigenous autonomy and cultural integrity, while deferring entirely to community mechanisms may leave women unprotected, which requires careful, context-sensitive engagement with each community's internal power dynamics (Segato, 2012).

Fear of stigmatization, community ostracism and the disruption of kinship bonds also conditions indigenous women's willingness to seek State protection, specially in contexts

where social cohesion is vital to collective survival and where historical relations with the Brazilian State have been marked by violence and dispossession, turning to State institutions may be perceived not as empowerment but as risk and betrayal (Segato, 2012).

A review of Brazilian case law concerning domestic and family violence reveals that judicial decisions frequently record that victims later renounced the protective measures provided under the Maria da Penha Law, such as restraining orders or criminal prosecution of the aggressor. While courts often interpret these withdrawals as expressions of personal choice or reconciliation, the jurisprudence rarely interrogates the structural and contextual factors that may compel indigenous women to abandon legal protection

More significantly, an examination of these decisions demonstrates that indigenous identity is almost entirely absent from judicial reasoning: the fact that the victim is indigenous is seldom acknowledged, let alone analyzed, by the courts. As a result, indigenous women are treated as abstract legal subjects and the specific risks they face remain legally invisible. This jurisprudential silence reinforces a formally equal but substantively unequal application of the law, undermining the transformative potential of gender-based violence legislation and perpetuating institutional neglect toward indigenous women.

3.2.2. Articulation Between Indigenous Rights and the Maria da Penha Law

IHRL offers a normative framework capable, at least in principle, of mediating the tension between indigenous self-determination and the protection of women. ILO Convention No. 169, ratified by Brazil in 2002, establishes the right of indigenous peoples to prior and informed consultation regarding legislative or administrative measures that may affect them directly (ILO, 1989). This creates a binding obligation for the Brazilian State to engage indigenous communities in the formulation of public policies, including those addressing gender-based violence.

Despite its landmark character, the Maria da Penha Law was enacted without prior consultation with indigenous peoples, which reflects a pattern of legal universalism that treats women as a homogeneous subject of protection, disregarding differentiated social realities. The unadapted application of the law to indigenous contexts risks reproducing colonial logics of homogenization and imposed assimilation within the justice system itself (Quijano, 2000).

A constructive articulation between Convention No. 169 and the Maria da Penha Law requires the active participation of indigenous communities in the development of differentiated protection mechanisms, which does not entail the relativization of women's rights but rather acknowledges that the institutional form of protection must be developed

through dialogue, not imposition. Indigenous women's organizations and scholars have proposed models of intercultural mediation that strengthen community-based mechanisms while ensuring State support in culturally appropriate ways (APIB, 2020).

Article 8 of Convention No. 169 is particularly significant in this regard, as it recognizes indigenous people's right to maintain their customs and institutions, provided these are compatible with internationally recognized Human Rights, therefore, indigenous women's rights to dignity and freedom from violence establish clear normative limits on practices justified in the name of tradition. The central challenge for Brazilian law and public policy lies in operating this balance, through institutional capacity, political commitment and respect for indigenous agency (Anaya, 2004).

It is essential to recognize that legal interventions, even when well-intentioned, may reproduce forms of institutional coloniality. The imposition of a standardized Western legal model risks reinforcing historical patterns of domination and erasure of indigenous knowledge systems and the perception of indigenous cultures as deficient or backward (Quijano, 2000). Therefore, when the State fails to listen to indigenous women or treats them merely as passive victims, it perpetuates a logic of tutelage that denies their agency and voice.

This does not imply an uncritical defense of all traditional practices, some of which may themselves reproduce gender hierarchies and expose women to violence, but it calls for a more nuanced approach in which the fight against gender-based violence and the recognition of indigenous self-determination are understood as mutually constitutive rather than inherently opposed objectives. Indigenous women's organizations, such as the National Coalition of Indigenous Women Warriors of Ancestry (ANMIGA), have been articulating this dual demand: protection from violence and respect for their cultural identities as inseparable dimensions of their rights.

A decolonial feminist approach demands that indigenous women be recognized as protagonists in the construction of legal responses to violence, rather than as objects of protection and the development of intercultural legal protocols for the application of the Maria da Penha Law within indigenous contexts (Segato, 2012). Without structural reforms, the formal promise of legal equality will continue to conceal a profound inequality in the conditions of access to justice for indigenous women in Brazil.

3.2.3. Recent Initiatives

A concrete initiative toward overcoming linguistic barriers was the translation, through a partnership between the Public Defender's Office of the State of Pará and the State University of Pará, of the "Protocol for Sustainable Service to Indigenous Peoples, Quilombolas, and Traditional Communities" into five indigenous languages: Parakanã, Munduruku, Asurini, Wai Wai and Tenetehar (FUNAI, 2025).

The translation process involved indigenous leaders, such as João Akay Kaba, from the Munduruku people, who highlighted the importance of the material: "We have never had access to institutional material from the Defender's Office in our language. Translation facilitates knowledge and allows communities to better understand the institution's role" (FUNAI, 2025, para. 7). The protocol provides information on the rights of indigenous persons in legal proceedings, the services offered by the Public Defender's Office and the steps involved in filing complaints and accessing protective measures.

While this initiative is commendable, it remains limited in scope. Five languages represent a small fraction of Brazil's indigenous linguistic diversity. Moreover, the availability of printed materials does not guarantee access, as many communities have limited literacy in their own languages, particularly in written forms that may have been developed only recently. Finally, the protocol addresses only the services of one state-level Defender's Office; it does not cover federal courts, police stations or forensic services.

In the legislative field, Bill No. 1,977/2022, which establishes general principles for access to the judiciary by indigenous communities, is being processed in the Federal Senate. Approved by the Human Rights Commission in December 2025, the bill recognizes the social organization and specific forms of conflict resolution of each person, allowing communities to file lawsuits even without registration as a legal entity (Senado Federal, 2025).

The proposal alters provisions of the Indian Statute (Law 6,001/1973) that were not received by the 1988 Constitution, especially regarding the tutelage regime that subjected indigenous people to State intervention. As highlighted by the rapporteur, Senator Damares Alves, the aim is to replace "this system of tutelage and emancipation still formally foreseen in the statute with directives and principles that guarantee access to justice for this population" (Senado Federal, 2025, para. 3).

Key provisions of the bill include: the right to free, prior and informed consultation on any legal measure affecting indigenous rights; the right to an interpreter in all legal proceedings; the admissibility of oral proceedings and traditional forms of evidence; and the

obligation of judges to consider indigenous customary law in their decisions, provided it respects fundamental rights.

Within the Executive branch, the Ministry of Indigenous Peoples (MPI) began in 2025 a process of constructing a National Strategy for Access to Justice, with regional seminars planned for the country's five regions. The Executive Secretary of the MPI, Eloy Terena, announced that the strategy will contemplate specific cuts for indigenous women, indigenous people in urban contexts, indigenous LGBTQ+ people, and indigenous youth (MPI, 2025). The initiative represents an effort for qualified listening to the legal demands of indigenous populations and aims to identify priority actions, allocate resources, establish monitoring indicators, and coordinate among federal, state, and municipal actors.

However, both these initiatives focus primarily on access to courts and legal representation, rather than on the broader social determinants of violence against indigenous women. Access to justice, for indigenous women, is inseparable from access to land, health, education and economic security and without a comprehensive approach that addresses these intersecting dimensions, legal reforms risk remaining symbolic.

Despite advances, public policies aimed at indigenous women remain fragmented and often disconnected from local realities. This insufficiency is not merely quantitative but qualitative, because of the absence of an intercultural and intersectional approach in the formulation and implementation of these policies. The history of implementing public policies for indigenous peoples in Brazil is marked by underfunding and a lack of coordination between different levels of government, for example, the Federal Public Defender's Office and states Defender's Offices, although they have advanced in creating specialized units, still lack sufficient staff with intercultural training and qualified interpreters to act in legal proceedings, especially in the most remote areas of the country.

3.3. THE APPLICATION OF THE MARIA DA PENHA LAW TO LGBTQ+ COMMUNITY

The Maria da Penha Law was enacted within the Brazilian legal system as a landmark instrument for the protection of women in situations of domestic and family violence. However, over time, its scope has been progressively expanded to encompass forms of violence that, although not explicitly mentioned in the original legislative text, are fully aligned with the protective rationale that underpins it. Within this process of interpretative expansion, the application of the law to LGBTQ+ individuals (particularly transgender

women, travestis⁸ and people in same-sex relationships) has emerged as one of the most important constitutional debates in recent Brazilian jurisprudence (Máximo, 2025) .

In the case of the LGBTQ+ population, gender violence takes on particular contours, situated at the intersection of violence based on sexual orientation and gender violence itself. Interpersonal violence, a category that includes both family and community violence (WHO, 2002), is the main channel through which these aggressions manifest, often occurring in the domestic sphere, precisely the space that the Maria da Penha Law seeks to protect. However, for many LGBTQ+ individuals, the domestic sphere is a site of heightened risk, particularly for youth who face violence from family members in response to their sexual orientation or gender identity.

A proper understanding of this expansion requires a clear conceptual distinction between sex, gender, sexual orientation and gender identity, categories that are often conflated in everyday discourse, but have different legal and social implications. Biological sex refers to the physiological and anatomical characteristics assigned at birth, while gender identity concerns each individual's internal and deeply felt sense of their own gender, which may or may not correspond to the sex assigned at birth (Scott, 1986, pp. 1053–1075; Butler, 1990). Sexual orientation refers to the pattern of emotional, effective or sexual attraction a person experiences toward others (Yogyakarta Principles, 2007/2017). These distinctions are legally decisive in determining who may be considered a victim of gender-based violence and, therefore, who is entitled to protection under the Maria da Penha Law.

In the context of domestic and family violence, these distinctions are crucial. Gender-based violence is not confined to heterosexual relationships, nor is it reducible to a binary opposition between male aggressor and female victim. Rather, it constitutes a form of structural violence rooted in unequal power relations that may also manifest in same-sex relationships, affecting lesbian women, bisexual women, transgender women and non-binary persons socially perceived as women (Saffioti, 2004; Bandeira, 2014). Restrictive interpretations of the Maria da Penha Law disregard the protective purpose of the statute and its insertion within the constitutional system of fundamental rights and the International Human Rights obligations undertaken by the Brazilian State (Piovesan, 2018)

In 2022, the STJ affirmed that gender is a cultural and social construct shaped by interactions and power relations, whereas sex refers to biological characteristics alone,

⁸ Travesti is a culturally specific gender identity in Latin America (primarily Brazil and Spanish-speaking countries) for individuals assigned male at birth who identify and live as women. While similar to transgender women, travestis have their own distinct historical and social context.

therefore, according to this understanding, biological sex, in isolation, is insufficient to define gender identity or to delimit the scope of legal protection against gender-based violence⁹.

The concept of gender, as developed by feminist theory and later incorporated into IHRL, goes beyond biology to encompass socially constructed roles, behaviors and expectations attributed to men and women. This structural inequality, rooted in historically entrenched gender hierarchies and power asymmetries, that forms the normative foundation of the Maria da Penha Law, therefore, an interpretation that restricts the law's application exclusively to cisgender women would fail to capture its purpose and would leave unprotected individuals who experience comparable forms of vulnerability and violence arising from gender-based dynamics.

This understanding, long disputed in lower courts, was consolidated by the STF's 2025 decision, by affirming that the Maria da Penha Law applied whenever violence is rooted in gender-based power relations, regardless of the victim's biological sex or sexual orientation, the Court aligned domestic law with contemporary Human Rights standards and reinforced the law's role as an instrument of substantive equality rather than formal categorization (Conjur, 2025).

3.3.1. Jurisprudential Evolution

The jurisprudential evolution regarding the application of the Maria da Penha Law to same-sex couples in Brazil was gradual and marked by institutional resistance. In the early years following the enactment of the law, courts frequently denied its applicability to same-sex relationships, arguing that the presumed "female vulnerability" envisioned by the legislature would be absent (Campos, 2017).

Brazilian jurisprudence has gradually acknowledged the restrictive interpretation of the Maria da Penha Law and in the years following its enactment, courts at different levels increasingly extended its protective mechanisms, often in the absence of explicit legislative authorization, to same-sex relationships and to transgender individuals. The main reasoning underlying these decisions was that the law is not intended to protect women as a biological category, but rather to address gender-based violence, understood as violence arising from socially constructed power asymmetries associated with gender.

⁹ In his opinion, the rapporteur for the STJ case, Justice Rogerio Schietti Cruz, explained that "gender is a cultural and social issue and refers to interactions between men and women," while sex refers to the biological characteristics of the female and male reproductive systems; thus, in his view, the concept of sex "does not define gender identity." (STJ, 2022)

From that point forward, excluding LGBTQ+ couples from the protection of the Maria da Penha Law became increasingly incompatible with the principles of substantive equality, human dignity, and non-discrimination based on sexual orientation or gender identity (Barroso, 2013).

The vulnerability of transgender women and travestis proved especially critical in this context, since data published by Associação Nacional de Travestis e Transexuais (ANTRA) consistently showed that Brazil has led global rankings of killings of trans people for more than a decade. This reality was acknowledged by the STJ in 2022, when it noted that Brazil accounted for approximately 38.2% of recorded global homicides against trans individuals, which helps expose the inadequacy of a legal framework that denies transgender women access to the specialized protections afforded by the Maria da Penha Law.

The case that developed this debate before the STJ involved Luana Fernandes, a transgender woman assaulted by her father in 2020 after resisting a sexual assault. Despite medical evidence and an *in flagrante delicto* arrest, first-instance courts and the São Paulo Court of Justice (TJSP) denied her access to protective measures under the Maria da Penha Law, on the grounds that it would be legally impossible to equate a “female transsexual” with a “woman” for the purposes of the statute (Senado Federal, 2022; CNN Brasil, 2021). On the appeal by the São Paulo Public Prosecutor’s Office, the STJ was asked to determine whether Article 5 of the Law (explicitly grounded in violence “based on gender”) could be interpreted independently of biological sex.

In April 2022, the Sixth Panel of the STJ unanimously held that the Maria da Penha Law applies to cases of domestic or family violence against transgender women (STJ, 2022). The rapporteur, Rogério Schietti Cruz, held that the differentiating element of the Law's scope is the female gender and that the Law's true objective is to prevent, punish and eradicate domestic violence against women by reason of gender. He further affirmed that gender identity is a Human Right constitutionally and internationally guaranteed and that the decision was needed to “deconstruct the scenario of heteronormativity” within the justice system (STJ, 2022).

This understanding recognizes gender identity as an aspect of personality, inserted within the rights to identity, intimacy, privacy, freedom and isonomic treatment, all protected by human dignity. The court rejected biological reductionism, affirming that a person who identifies and lives socially as a woman is a woman for all legal purposes, including access to protective legislation against domestic violence.

The decision further noted that excluding trans women from the law's protection would perpetuate the very forms of structural discrimination and vulnerability that the Maria da Penha Law was designed to combat. Trans women, the court observed, are among the most marginalized and violence-exposed populations in Brazil¹⁰, facing intersectional discrimination based on gender identity, transphobia, and often racism and classism.

After this decision, police forces in several states adopted administrative measures to ensure compliance: the Civil Police of Minas Gerais issued Resolution 8.225, establishing that transgender women and travestis who are victims of domestic or family violence based on gender must be received at specialized domestic violence units, regardless of any legal name change or sex reassignment surgery (PCMG, 2023). In São Paulo, the Civil Police issued Portaria DGP 08/2022, guaranteeing, among other rights, the use of social names by all officers attending to trans individuals (Polícia Civil do Estado de São Paulo, 2022). Between 2020 and 2022, the Civil Police of Minas Gerais alone recorded the assistance of 224 transgender women who were victims of domestic violence (PCMG, 2023).

Yet for all this progress, legal uncertainty remained for persons in male same-sex couples and travestis due to the absence of a uniform ruling at the constitutional level. A significant portion of LGBTQ+ individuals continued to be denied the specialized protection offered by the Maria da Penha Law, being redirected to the general criminal system, which lacks the specific mechanisms for monitoring, urgent protective measures, and psychosocial support enshrined in the 2006 legislation (Vivas, 2025).

3.3.2. The STF Ruling: Constitutional Consolidation

This interpretative uncertainty was resolved by the STF on 21 February 2025, in Mandado de Injunção No. 7.452, filed by the Associação Brasileira de Famílias HomoTransAfetivas (ABRAFH). The claim alleged an unconstitutional legislative omission, arguing that Congress had failed to enact specific legislation protecting LGBTQ+ individuals from domestic and family violence, despite long-standing legislative inertia (Conjur, 2025; Máximo, 2025).

The decision drew upon IHRL, including the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará), which defines violence against women as a human rights violation regardless of the

¹⁰ Data from the National Council of Justice (CNJ) from 2022, cited in the judgment, indicated that, while for gay men and transvestites the most frequent crime was homicide (80% and 42.5%, respectively), for trans women, threat-related crimes predominated (42.9%), evidencing different victimization patterns that now become formally recognized by the justice system (CNJ, 2022)

victim's gender identity or sexual orientation. The STF unanimously held that this omission could not justify the denial of protection and affirmed the applicability of the Maria da Penha Law to LGBTQ+ individuals, therefore, the ruling elevated prior jurisprudential advances to the constitutional level and, as the rapporteur Alexandre de Moraes emphasized, the legislative inaction could not suspend the effectiveness of fundamental rights (STF, 2025).

With respect to transgender women and travestis, the Court held that the concept of “woman” under the Maria da Penha Law encompasses gender identity and is not limited to biological sex, clarifying that external physical characteristics are neither exclusive nor determinative of gender, that is, external physical configuration is only one, but not the sole, defining characteristic of gender (STF, 2025). The Court therefore confirmed that travestis and transgender individuals with a feminine gender identity who maintain affective family relationships are covered by the Law's protective provisions.

This constitutional affirmation extended and cemented the STJ's 2022 precedent in which it affirmed that, for the purposes of Law No. 11.340/2006, transgender women are to be regarded as women and are therefore entitled to the full protection of the statute, including urgent protective measures. The Court grounded its reasoning on the understanding that the law targets violence “based on gender,” rather than biological sex, emphasizing that gender-based violence arises from historically constructed relations of domination and subordination (STJ, 2022).

According to the reporting justice, Rogerio Schietti Cruz, reducing vulnerability to biological criteria reflects a simplistic and exclusionary approach incompatible with the law's objectives and with contemporary human rights standards. By explicitly engaging with the concepts of gender, gender identity and structural vulnerability the STJ reinforced that the decisive element for the law's application is the victim's condition as a woman situated in a domestic, family or affective context of violence. This decision represents a crucial step toward dismantling heteronormative and biologically restrictive readings of the Maria da Penha Law, ensuring that transgender women, who are disproportionately exposed to violence, are not left in a situation of legal underprotection (STJ, 2022).

The STF elevated this STJ decision from a statutory interpretation to a constitutional mandate and made clear that the application of the Law to transgender women and travestis does not depend on any medical procedure, legal name change, or registration of gender, a point of major practical import, as many trans women face significant financial or bureaucratic barriers to formal gender recognition. In Justice Moraes' words, gender identity is “one of the aspects of personality”, encompassing the rights to identity, intimacy, privacy,

freedom, and equal treatment, all of which are protected by the overarching value of human dignity (STF, 2025). Denying transgender women the protection of the Maria da Penha Law would therefore constitute a violation of the constitutional guarantee of human dignity and equality.

By grounding its reasoning in the constitutionally protected right to human dignity and in the international Human Rights obligations assumed by Brazil, the Court demonstrated the indispensability of an interpretation of domestic legislation that is conformant with Human Rights standards. This approach, designated as conventionality control in Latin American constitutional doctrine, demands that national judges and institutions read legal norms in dialogue with the normative corpus of IHRL. It is precisely this dialogue that enabled the Court to move beyond the literal text of the Maria da Penha Law and give effect to its deeper protective purpose (Conjur, 2025).

Equally innovative was the Court's approach to male same-sex couples: the STF recognized that the law may apply in relationships between men where there is a demonstrable dynamic of subordination rooted in gendered power relations. As Justice Moraes stated, the extension of the norm to male same-sex couples is possible "if contextual factors are present that place the male victim of violence in a position of subordination within the relationship" (O Povo, 2025). This is a particularly innovative aspect of the ruling: it acknowledges that gender-based oppression does not require a female victim in the biological sense, but rather a relational configuration in which gendered hierarchies produce vulnerability.

In doing so, the Court recognized that violence in same-sex male relationships can replicate patterns of control and psychological abuse that are functionally equivalent to the violence experienced by women in heterosexual relationships and acknowledged that gender-based violence is relational and structural, rather than biologically determined. Psychological, moral, economic and physical violence may occur in relationships between women just as in heterosexual relationships and are often intensified by social isolation, institutional invisibility, and fear of discrimination (UN Women, 2015). This interpretation broadens the concept of vulnerability beyond biological sex, incorporating the power dynamics that structure domestic relations.

Therefore, the protective rationale of the Maria da Penha Law, which is based on the unequal power relationship between victim and aggressor, applies equally to male victims who find themselves in positions of vulnerability within intimate partnerships. While some judges cautioned against the automatic extension of penal provisions that presuppose a

female victim by sex, this reservation did not undermine the availability of the law's protective and preventive mechanisms.

The decision further stressed that access to protection under the law cannot be conditioned on the victim's sexual orientation, as this would create an illegitimate hierarchy among victims of domestic violence. By adopting a human rights-oriented interpretation, the Supreme Court reinforced the Brazilian State's commitment to eradicating all forms of gender-based violence.

The historical exclusion of LGBTQ+ couples from the protection of the Maria da Penha Law also contributed to the underreporting of violence, limiting victims' access to protective measures, shelters and specialized public services. Legal recognition, therefore, has not only symbolic value but concrete effects on the guarantee of comprehensive protection (CIDH, 2019).

The Court noted, however, that Ministers Cristiano Zanin, André Mendonça, and Edson Fachin accompanied the rapporteur's vote with the reservation that criminal sanctions specifically presupposing a female victim by sex should not be applied in cases involving male same-sex couples (STF, 2025). This nuance reflects ongoing debates about the proper scope of penal provisions and the limits of analogical interpretation in criminal law, without undermining the core holding that the Law's protective and administrative mechanisms are available to all victims within the ruling's scope.

It is important to note that the unanimity of the decision carries a symbolic weight: in a polarized institutional context, it affirms that protection against gender-based violence for the LGBTQ+ individuals is not an ideological preference but a constitutional obligation grounded in human dignity and equality. The ruling also follows a line of progressive jurisprudence in which the STF has affirmed the rights of LGBTQ+ individuals, including the recognition of same-sex unions (ADI 4.277, 2011) and the criminalization of homotransphobia as a form of racism (ADO 26, 2020), a trajectory shows the Court's consolidation of a more inclusive and equal legal system (Conjur 2025). Importantly, the ruling is to remain in force until the Congress enacts specific legislation on the subject.

Another important jurisprudential advance concerns the recognition that gender-based violence qualifiers also apply to acts of violence committed within homoaffective relationships between women. In this context, the STJ held that the aggravating circumstance provided for in Article 129, paragraph 13, of the Brazilian Penal Code (lesion inflicted against a woman by reason of her female sex) extends to cases of violence occurring in same-sex relationships between women.

The Court emphasized that gender-based violence is not limited to aggression perpetrated by men against women, since the Maria da Penha Law does not condition its application on the gender of the aggressor, but rather on the victim's status as a woman situated in a context of domestic, family or affective vulnerability. According to the reporting justice, Rogerio Schietti Cruz, the presumed vulnerability underlying the Maria da Penha framework does not stem from disparities in physical strength, but from a structural condition of subordination historically imposed on women through patriarchal social arrangements, which may also be reproduced within relationships between women. This ruling represents a significant step toward an inclusive and structural understanding of gender violence, ensuring that women in homoaffective relationships are not excluded from enhanced criminal protection due to formalistic or heteronormative interpretations of the law (STJ, 2024).

3.3.3. Gender-Based Violence Against the LGBTQ+ Community: Data, Invisibility and Institutional Barriers

The significance of the STF's 2025 ruling can only be fully appreciated when situated against the backdrop of alarming data on violence against LGBTQ+ individuals in Brazil. A 2022 report by Conselho Nacional de Justiça (CNJ) revealed that homicide constitutes the most frequently recorded crime against travestis and gay men. According to the report, 80% of crimes registered against travestis were classified as homicides, while 42.5% of offenses against gay men fell into the same category (CNJ, 2022, as cited in Agência Brasil, 2025). Among lesbian women, bodily injury accounted for 36% of recorded crimes, followed by defamation at 32%, whereas threats represented the most common offense against transgender women, accounting for 42.9% of cases (Andes, 2022).

Mortality data shows an even more severe picture: the Observatório de Mortes e Violências contra LGBTI+ reported 273 violent deaths of LGBTQ+ individuals in Brazil in 2022, of which 228 were murders, representing 83.52% of the total (Agência Brasil, 2023). Of those killed, 159 were travestis or transgender women, and 97 were gay men (Agência Brasil, 2023). Focusing specifically on the trans population, data from the Trans Murder Monitoring project indicates that a transfeminine person has up to 38 times greater likelihood of being killed than a transmasculine or non-binary person (CNJ, 2023).

These figures are widely acknowledged as significant underestimates, given the pervasive under-reporting that characterises LGBTQ+ individuals' interactions with State institutions. Data from the Disque 100 service of the Ministry of Human Rights and Citizenship recorded 6.070 complaints of LGBTQ+phobia in 2022, rising to 5.741 in the first

nine months of 2023 alone, furthermore, the ObservaDH estimates that at least 11.120 LGBTQ+ individuals experienced some form of violence motivated by sexual orientation or gender identity in 2022 (Agência Brasil, 2024).

A central issue is the invisibility of violence within same-sex and LGBTQ+ relationships, since dominant social representations of domestic violence remain profoundly heteronormative, typically imagining a cisgender woman as the victim and a male partner as the perpetrator. This framework systematically obscures violence in relationships that do not conform to this model, both for victims themselves, who may fail to recognize their experiences as legally domestic violence, and for institutions responsible for providing protection. Neighbors, family members, healthcare professionals and law enforcement officials may fail to identify or adequately respond to violence occurring within same-sex households precisely because such relationships fall outside dominant cultural expectations (STF, 2025).

Many victims are reluctant to report abuse due to fear of institutional discrimination, involuntary disclosure of sexual orientation or gender identity, or disbelief by authorities (Moura et al., 2023). This invisibility is reinforced by a legal culture that long treated domestic violence as an issue restricted to the heterosexual family. Consequently, violence in LGBTQ+ relationships was historically relegated to the private sphere or mischaracterized as ordinary conflict, stripped of its structural gender dimension (Saffioti, 2004).

For transgender women and travestis, this invisibility is compounded by layers of social exclusion and economic precarity, since many live under conditions marked by poverty, social marginalization and the criminalization of survival strategies, all of which increase exposure to violence while simultaneously limiting access to institutional protection. The fear that one's gender identity will not be respected by police officers or judges, a fear substantiated by cases such as that of Luana Fernandes, constitutes a powerful deterrent to formal reporting (CNN Brasil, 2021; Senado Federal, 2022).

In addition to invisibility, LGBTQ+ victims encounter structural barriers when seeking institutional protection: prejudice and discrimination within police stations, healthcare services and judicial institutions remain well documented. Victims frequently report being met with disbelief, ridicule or hostility, leading many to abandon formal complaint procedures altogether (STF, 2025). The fear of secondary victimization, being subjected to further discrimination on the basis of sexual orientation or gender identity by institutions designed to offer protection, functions as a significant deterrent to accessing justice.

Finally, deficiencies in data collection systems further entrench this cycle of invisibility and impunity: the CEDAW Committee has repeatedly urged Brazil to implement disaggregated data collection mechanisms capable of capturing the specific forms and prevalence of violence experienced by LGBTQ+ populations, since without reliable data public policies cannot be adequately designed or evaluated. The CNJ itself has acknowledged that the Brazilian justice system lacks sufficient instruments to properly classify and record LGBTQ+phobic crimes (Andes, 2022). The invisibility of violence in official statistics thus mirrors its invisibility in social life, perpetuating impunity and denying victims the comprehensive state response required under domestic and IHRL.

4. CRITICAL ASSESSMENT OF THE MARIA DA PENHA LAW'S EFFECTIVENESS FROM AN INTER-AMERICAN AND INTERSECTIONAL PERSPECTIVE

Brazil's enactment of Law 11.340/2006 represented a direct response to international accountability mechanisms, following the condemnation of the Brazilian State by the Inter-American Commission on Human Rights in the *Maria da Penha Maia Fernandes v. Brazil* case. The law was designed to fulfill Brazil's obligation under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (OAS, 1994; UN, 1979).

From a formal standpoint, Brazil has complied with its international obligations by adopting a comprehensive legal framework that recognizes domestic violence as a Human Rights violation and establishes preventative, protective and punitive mechanisms. Therefore, the Maria da Penha Law incorporates principles endorsed by the IAHRs, including due diligence, State responsibility and the recognition of gender-based violence as structural and discriminatory (Piovesan, 2018).

Nevertheless, the formal existence of a law is insufficient to ensure the effective protection of those who need it most: the gap between legislative text and the lived realities of black, indigenous and LGBTQ+ women, as well as those living in poverty, exposes the inadequacy of approaches that treat effectiveness in abstract and decontextualized terms. This chapter offers a critical assessment of the effectiveness of Brazilian protective legislation, particularly the Maria da Penha Law, from an Inter-American and intersectional perspective, linking the critical diagnosis to the constructive proposition of pathways toward more inclusive and effective protection, in line with Brazil's international commitments.

4.1. The Concept of Effectiveness in International Human Rights Law and Brazil's Compliance with International Obligations

In IHRL, the effectiveness of a norm does not end with its formal validity, it is, rather, a dynamic concept that requires correspondence between the prescribed norm and the social reality it seeks to transform. Therefore, the distinction between formal effectiveness and material effectiveness is central to understanding the limits of Brazil's legislative advances in the field of women's protection.

Formal effectiveness refers to the incorporation of international obligations into the domestic order and the existence of institutional mechanisms designed to implement them. From this perspective, Brazil has developed an extensive normative framework since it ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1984 and the Belém do Pará Convention in 1994, enacted the Maria da Penha Law in 2006 and the Femicide Law (Law No. 13,104/2015) and recognized the contentious jurisdiction of the IACtHR in 1998 (IACHR, 2001; Piovesan, 2018).

Material effectiveness, in turn, concerns the capacity of such norms to produce concrete and equitable changes in the living conditions of those they are intended to protect, which, in the Brazilian context, reveals profound structural deficiencies (Ferraz, 2019, pp. 45–67). Data indicate that despite the law's robust normative design, rates of domestic violence and femicide in Brazil remain alarmingly high, particularly among black, indigenous, rural, and low-income women (Cerqueira et al., 2023). These numbers demonstrate that the existence of legal protection, taken in isolation, does not ensure equal or effective protection, because the lack of shelters, insufficient specialized courts, delays in issuing protective measures and inadequate funding undermine the law's material effectiveness (Waiselfisz, 2015).

At the Inter-American level, the IACHR has affirmed that States Parties to the American Convention are obliged not only to refrain from violating rights, but also to adopt positive measures to ensure their effective enjoyment, with particular attention to groups in situations of structural vulnerability (IACHR, 2007; IACtHR, 2009). In *González et al. ("Cotton Field") v. Mexico*, the IACtHR articulated binding regional standards concerning the duty of due diligence in preventing, investigating and punishing gender-based violence, as well as the obligation to produce disaggregated data (IACtHR, 2009). Although the case concerned Mexico, its standards apply directly to Brazil as a State bound by the Inter-American System.

Therefore, Brazil's compliance with its international obligations must be assessed through the lens of material effectiveness, since legislative enactment alone is insufficient, the decisive question is whether legal norms reach, in an equitable and non-discriminatory manner, the women who most need protection, a challenge that remains without adequate institutional response from the Brazilian State.

4.2 International Monitoring, State Responses, and Unequal Protection

International monitoring mechanisms play a central role in evaluating the effectiveness of domestic legislation and in holding States accountable for persistent omissions and violations. In Brazil's case, scrutiny by bodies such as the CEDAW Committee, the IACHR and the Committee on the Elimination of Racial Discrimination (CERD) reveals a pattern of selective inclusion and unequal protection in the implementation of gender policies.

The CEDAW Committee, in its Concluding Observations on Brazil, has expressed concern regarding deficiencies in the implementation of the Maria da Penha Law, particularly in relation to rural women, indigenous women, afro-descendant women and women living in poverty (CEDAW, 2012; 2024). Among the most salient shortcomings identified are the scarcity of shelters outside major urban centers, the lack of specialized services in indigenous languages, persistent underreporting in traditional communities and the continued influence of gender stereotypes within the justice system, which undermines women's access to effective remedies (CEDAW, 2024).

Similarly, the IACHR's Report on the Situation of Human Rights in Brazil emphasized the convergence of gender-based violence, structural racism and socioeconomic inequality as a key factor explaining the disproportionate victimization of black and indigenous women. The Commission also drew attention to the fact that, in cases of both domestic violence and sexual violence, most of the victims are young women of African descent, calling upon Brazil to continue implementation of its existing laws and policies and improve its practices when it comes to investigating and punishing crimes against women, but also to adopt further measures geared to fighting explicit and implicit gender-biased social hierarchies and social tolerance of violence against women, including the "culture of rape," in addition to acknowledging the intersectional vulnerability when gender combines with ethnic/racial origin and youth (IACHR, 2021).

State responses to these observations have largely followed a logic of formal compliance: Brazil submits reports highlighting legislative progress without sufficiently demonstrating the correspondence between such advances and concrete changes in the living

conditions of the most vulnerable populations (Piovesan, 2018). This dynamic reproduces what is described as apparent effectiveness, a State that formally meets international requirements without structurally transforming the power relations that produce violence. However, legal obligations must be interpreted and applied in a way that gives them practical, tangible meaning and real-world results, rather than rendering them purely theoretical or meaningless (Elvira Mendez-Pinedo, n.d.).

Unequal protection is also evident in access to justice, since research shows that black women face greater obstacles in being heard by police authorities, experience lower rates of enforcement of protective measures and are more frequently subjected to processes of re-victimization within the justice system (FBSP, 2023; Carneiro, 2003). Indigenous women confront additional barriers arising from geographic isolation, lack of interpreters, misunderstandings of their communities' normative systems and a historically grounded distrust of State institutions (Anaya, 2004; Cobo, 2014).

4.3 Intersectional Analysis of Implementation: Race, Gender, Ethnicity and Sexual Orientation

One of the most critical limitations of the Maria da Penha Law lies in its pattern of selective inclusion, because while the law is formally universal, its protection is unevenly distributed across different social groups. As seen, in practice, white, urban, middle-class women are more likely to benefit from the law's protective mechanisms, whereas black and indigenous women disproportionately face barriers such as institutional racism, geographic isolation, linguistic obstacles and distrust of State institutions (Gonzaga & Schraiber, 2021).

Intersectional analysis constitutes an indispensable analytical tool for understanding inequalities in the implementation of policies aimed at protecting women from violence. Originally articulated by Kimberlé Crenshaw (1989; 1991) within the field of feminist critical race theory, intersectionality is grounded in the premise that categories such as race, gender, class, ethnicity, sexual orientation and gender identity do not operate independently, but they interact in complex ways producing differentiated experiences of oppression, vulnerability and access to protection. As the IACtHR has emphasized, equality requires differential and context-sensitive measures capable of addressing the specific conditions of marginalized groups (IACtHR, 2014).

In the Brazilian context, the intersection of race and gender is central to understanding both the unequal distribution of violence and the uneven reach of protective mechanisms. The social condition of black women cannot be adequately grasped without reference to Brazil's

history of slavery, the colonial formation of the State and the persistence of structural racism an organizing feature of social, institutional and symbolic life, therefore, racism in Brazil is not reducible to individual prejudice, it operates as a structural logic that distributes death, precarity and invisibility in a racially differentiated way (Carneiro, 2003).

This theoretical diagnosis is corroborated by empirical data: according to the Brazilian Public Security Forum (2024), black women are killed at significantly higher rates than white women and this disparity has intensified in the decade following the enactment of the Maria da Penha Law. Between 2012 and 2022, the femicide rate among black women increased 4% while the rate among non-black women declined by 2.1%. In 2022, black women accounted for 61.8% of all femicide victims, despite representing approximately 56% of the female population. This disproportionality reflects the operation of structural racism within and through institutions ostensibly designed to provide protection.

Protective institutions are not neutral spaces and can function as sites of racial reproduction (Davis, 1981). In the Brazilian context, this insight manifests in a recurrent pattern: black women who seek police assistance in situations of domestic violence are less likely to be believed, less likely to have their complaints formally registered and more likely to be questioned about their own conduct or that of their communities (Carneiro, 2003; FBSP, 2024). The figure of the black woman, shaped by centuries of racist iconography, is frequently read by institutional agents through lenses of hypersexualization, moral suspicion, and presumed resilience that naturalize her suffering and delegitimize her demand for protection.

The phenomenon of institutional racism in the protective apparatus is compounded by the geographic and socioeconomic realities of black women's lives, who are disproportionately concentrated in urban peripheries, where public services are precarious, specialized domestic violence units are scarce or distant and the presence of other forms of State violence produces dynamics of fear and distrust that actively discourage formal reporting (Carneiro, 2003; hooks, 1984). The decision not to report is often a rational calculation within a context in which seeking State protection may expose other family members to different forms of State harm.

Racial inequality is also reproduced in access to protective measures: black women face longer delays in the granting of protective orders, higher rates of non-compliance by aggressors without effective enforcement and greater exposure to the risk of lethality in the period between the violation and the granting of protection (FBSP, 2024). This temporal gap between victimization and institutional response is frequently the interval in which femicide

occurs, and its disproportionate impact on Black women reflects the lower institutional priority assigned to their cases.

The ethnic dimension introduces further layer of complexity, especially when considering the situation of indigenous women, since many live in territories marked by land conflicts and limited State presence, where violence is often intertwined with territorial dispossession, collective dynamics and cultural practices not adequately captured by the individualistic and urban-centered logic of the Maria da Penha Law (Anaya, 2004; Cobo, 2014). Without culturally sensitive approaches, State intervention risks reproducing colonial forms of imposition rather than offering effective protection.

In this context, quilombola women communities (akin to tribal communities, by international parameters) occupy an especially vulnerable position, because living in territories whose legal recognition is persistently contested, they face gender-based violence intertwined with territorial dispossession, land-grabbing and the absence of State services (IACHR, 2021, p. 11). These overlapping forms of violence remain unaddressed by existing protective frameworks, underscoring the need for policies attentive to the intersection of race, gender and territory.

Sexual orientation and gender identity constitute equally relevant axes in the intersectional analysis. Lesbian, bisexual, and transgender women experience specific forms of violence that were not expressly contemplated in the law's original formulation and the country's persistent position at the top of global rankings for murders of transgender persons reveals the insufficiency of existing State responses (ANTRA, 2023). Although Brazilian courts have progressively extended protection to same-sex relationships and to transgender women, these advances remain largely jurisprudential and lack full normative and institutional consolidation (Costa, 2012, pp. 585–587; Lugones, 2008).

Intersectionality, in this sense, is a methodological and ethical imperative for any serious evaluation of the effectiveness of women's protection policies. From a normative perspective, Crenshaw's intersectional framework requires that gender-based violence legislation be evaluated not only by its formal content but by its distributive outcomes. A law that coincides with declining femicide rates among white women while rates among black women rise fails to meet its constitutional and international obligations of equal protection. Recognizing this distributive failure is the indispensable starting point for any meaningful reform agenda.

4.4. Proposals to Strengthen Protection: Pathways Toward Inclusive and Effective Protection

The critical diagnosis presented in the preceding sections does not authorize fatalistic pessimism, but rather imposes the responsibility of translating analysis into concrete propositions for transformation. This section articulates the main dimensions of a program to strengthen protection, in dialogue with the recommendations of international bodies and the commitments assumed by Brazil before the Inter-American System.

4.4.1. Recommendations of the Inter-American System and International Bodies on Gender Policies in Brazil

The Inter-American System has developed a robust set of recommendations directed at Brazil that transcends the normative plane and extends to institutional, budgetary and cultural dimensions. The IACHR, in its 2021 report, urged Brazil to adopt differentiated service protocols for indigenous and afro-descendant women, expand the shelter network with equitable regional coverage, create reporting mechanisms accessible in indigenous languages and incorporate an intersectional perspective into systems for collecting and analyzing data on gender-based violence to strengthen public policies (IACHR, 2021).

Similarly, the CEDAW Committee, in its most recent Concluding Observations (2024), reiterated concern over persistent impunity in femicide cases and the absence of effective reparation mechanisms for victims of domestic violence. The Committee emphasized the State's duty to strengthen prevention, investigation, prosecution and punishment of perpetrators, while simultaneously expanding and sustainably funding the institutional protection network. This includes allocating dedicated budget lines and sufficient human, technical and financial resources to Reception Units and victim support services, particularly outside urban centers; ensuring the effective implementation and territorial expansion of the Women Living without Violence Program, the House of Brazilian Women centers and women's police stations in rural areas; establishing Houses of Indigenous Women across all Indigenous territories with culturally appropriate services, indigenous-language materials and specialized training for protection network professionals; and adopting specific measures to prevent and punish hate crimes against lesbian, bisexual, transgender and intersex women, alongside the creation of systems for the systematic collection and analysis of disaggregated data on violence affecting these populations (CEDAW, 2024).

Although the IACtHR has not yet adjudicated a contentious case against Brazil specifically addressing domestic violence, its jurisprudence in *González et al.* ("Cotton

Field”) v. *Mexico* established the standard of heightened due diligence in contexts of feminicidal violence. This standard encompasses criminal investigation, structural prevention, protection and guarantees of non-repetition, which is fully applicable to the Brazilian context as a parameter of conventionality control (IACtHR, 2009).

4.4.2. Necessary Normative Reforms: Adapting the Law to Different Realities

The normative consolidation of existing jurisprudential advances is a necessary condition for legal certainty and effective protection. Regarding the LGBTQ+ population, the Maria da Penha Law must be expressly amended to affirm its applicability to transgender women and non-binary persons in situations of gender vulnerability, regardless of formal sexual reassignment or any bureaucratic requirement, because protection cannot remain dependent solely on judicial interpretation, which is vulnerable to regional variation and political regression (Lugones, 2008).

Regarding indigenous women, normative adaptation must address three interrelated dimensions (Saffioti, 2015). First, the explicit provision of culturally adequate service protocols, including interpreters in indigenous languages and the prohibition of documentary requirements incompatible with the realities of peoples living in remote territories or lacking complete civil documentation. Second, the recognition of legal plurality and the establishment of institutional mechanisms for dialogue between the state justice system and indigenous systems of conflict resolution, in accordance with ILO Convention No. 169 (1989) and the United Nations Declaration on the Rights of Indigenous Peoples (UN, 2007).

Finally, the guarantee that indigenous territories are effectively covered by public security and women’s protection policies, supported by specific budgetary allocations and coordination with Fundação Nacional dos Povos Indígenas (FUNAI) and the Ministry of Indigenous Peoples (Anaya, 2004). Budgetary commitment is essential, because without adequate and sustained funding, legal protections remain symbolic. The Inter-American human rights framework underscores that resource allocation is a core component of State obligations in combating gender-based violence (OAS, 2011).

4.4.3. Intersectional Public Policies: Training of Legal Practitioners, Culturally Adequate Protocols and Access to Justice

The training of legal practitioners constitutes one of the most decisive (and frequently neglected) pillars of an effective protection policy. Police officers, prosecutors, public defenders, judges and prison officials engage daily with women in situations of violence and

their practices can either facilitate or obstruct access to justice (Gomes, 2018, pp. 89–112). The persistence of gendered, racialized, and class-based stereotypes within the justice system is extensively documented (Carneiro, 2003; FBSP, 2024) and cannot be remedied through isolated legislative reforms alone.

This reality demands mandatory and ongoing intercultural training programs with a gender perspective for all professionals involved in the protection system, which must include substantive content on intersectionality, structural racism, indigenous and LGBTQ+ specificities and non-revictimizing service techniques. Their development should occur in partnership with specialized civil society organizations and representatives of affected communities, with periodic evaluation and updating of content (IACHR, 2021; CEDAW, 2024).

Equally necessary is the development of culturally adequate service protocols. For indigenous women, these must include interpreters, respect for traditional social organization and coordination with community leaderships. For transgender and non-binary women, protocols must ensure recognition of social names, access to safe service environments and referral to specialized health services. For women with disabilities, accessible communication is a precondition for the exercise of any right (UN, 2006).

Access to justice, understood broadly as the real possibility of knowing rights, activating protection mechanisms and obtaining effective responses, also requires structural investment. The expansion of Specialized Domestic Violence Courts to small and medium-sized municipalities and rural areas, especially in the North and Northeast regions, is essential given the intersection of poverty, geographic distance and high concentrations of indigenous and quilombola populations, which creates conditions of vulnerability.

4.4.4. Dialogue Among Legal Systems

In contexts involving indigenous and traditional communities the relationship between State law and community normative orders is characterized by historical tension and competing legitimacies (Kymlicka, 1996). When women from these communities seek protection against domestic violence, they frequently encounter institutional frameworks that are inaccessible and linguistically incomprehensible, which demand adversarial procedure and family rupture in contexts where social survival depends on collective belonging and relational repair. This results in abandonment since women are forced to choose between formal legal remedies that destroy their communal ties and informal community responses that may inadequately address the harm they have suffered.

Legal pluralism is an important concept to overcome this impasse, since modern law's claim that only State-made rules constitute valid law is both empirically inaccurate and politically harmful in societies where multiple legal orders coexist (Santos, 2007, pp. 71–94). In Brazil, indigenous peoples have preserved their own systems of conflict resolution and social regulation, that operate according to their own logics, sources of legitimacy and forms of accountability, which cannot be reduced to, or fully replaced by, the categories and procedures of the Brazilian state legal system. The Federal Constitution partially acknowledges this reality by recognizing, in Article 231, the social organization, customs, languages, beliefs and traditions of indigenous peoples. When interpreted in light of ILO Convention No. 169 (1989) and the United Nations Declaration on the Rights of Indigenous Peoples (2007), this constitutional recognition implies a degree of normative autonomy that has yet to be fully implemented in practice.

However, legal pluralism does not justify unrestricted cultural relativism. The key challenge in creating dialogue between legal systems lies in reconciling two equally binding commitments: respect for the normative autonomy and self-determination of indigenous and the protection of women's Human Rights as guaranteed by international treaties ratified by Brazil. Their reconciliation requires careful committed institutional design and the active participation of affected communities as co-authors of solutions rather than passive beneficiaries (Anaya, 2004).

An intercultural dialogue, a meaningful dialogue between indigenous normative systems and State law, requires that both be treated as legitimate sources of norm creation, rather than positioned in a hierarchical relationship (Kuokkanen, 2008, pp. 216-233). This approach demands that State actors view community-based justice mechanisms not as outdated or inferior forms of law, but as contemporary systems that may, in certain contexts, respond to conflict more appropriately than formal adversarial procedures. At the same time, it requires that indigenous authorities engage with a non-negotiable core of human rights protections, including women's rights to life, physical integrity and freedom from violence, as external limits on community autonomy (Cobo, 2014).

In practical terms, effective dialogue between legal systems depends on institutional mechanisms that are largely absent in Brazil. Comparative experiences offer useful guidance. In Colombia, constitutional recognition of Indigenous jurisdiction has led to judicial standards governing interaction between Indigenous authorities and state courts, including minimum human rights guarantees (Sieder, 2011). Bolivia and Ecuador have adopted plurinational constitutional models that formally recognize the coexistence of multiple legal

systems, though implementation remains uneven and contested (Walsh, 2010). In Canada, sentencing circles and restorative justice practices in indigenous communities have been incorporated into the criminal justice system while remaining subject to constitutional rights review (Dickson-Gilmore & LaPrairie, 2005). Although none of these models can be directly transferred to Brazil, they demonstrate that legal pluralism can be institutionalized in concrete and workable ways.

It can be argued that legal pluralism and the universality of women's Human Rights are not opposing values¹¹: indigenous women can simultaneously claim protection from violence under state law and demand respect for their communities' autonomy and cultural integrity. What is required is an approach that takes both sets of norms and seeks outcomes that are legitimate from both perspectives.

A framework for inter-legal dialogue should be based on four core principles. First, free, prior, and informed consultation, as required by ILO Convention No. 169 (1989): mechanisms addressing domestic violence must be designed with the active participation of the communities involved, ensuring real decision-making power, particularly for indigenous women, whose voices have often been marginalized even within community governance (Segato, 2012). Second, subsidiarity: State legal intervention should occur when community-based processes fail or are unable to ensure adequate protection, rather than as an automatic response that disregards community authority. Third, minimum standards: community processes must respect a basic set of protections, including the prohibition of revictimization, the right of women to be heard in their own terms, and the freedom to access state justice without punishment or stigma. Fourth, institutional support: community mechanisms should receive material resources, intercultural training, and structured channels of communication with state justice institutions.

A system that is formally universal but practically inaccessible to Indigenous and traditional community women offers only an illusion of justice. Developing genuine inter-legal dialogue (grounded in participation, minimum human rights standards, and institutional support) remains one of the most urgent and insufficiently addressed challenges within Brazil's framework for the protection of women.

¹¹ The tension this raises is a familiar one in the theory of minority rights. Kymlicka (1995) distinguishes between external protections, which shield a minority group from the larger society, and internal restrictions, which a group may impose on its own members, arguing that a liberal theory of multicultural citizenship can endorse the former while resisting the latter where they curtail the basic freedoms of individuals within the group. Applied to indigenous justice and gender-based violence, this distinction clarifies that respecting the normative autonomy of indigenous communities need not entail tolerating internal practices that leave women unprotected, allowing collective self-determination and women's rights to be reconciled rather than traded off.

4.4.5. The Role of the Public Prosecutor's Office, the Public Defender's Office and Civil Society in the Realization of the Law

The effectiveness of the Maria da Penha Law cannot depend exclusively on Executive Branch or judicial action: the Public Prosecutor's Office and the Public Defender's Office play strategic and complementary roles whose institutional potential remains insufficiently explored.

The Public Prosecutor's Office, as the holder of criminal prosecution and guardian of the legal order, bears the responsibility of ensuring effective criminal prosecution in domestic violence cases, combating the impunity that feeds a culture of violence. Beyond criminal action, state prosecutors have standing to bring public civil actions in defense of the collective and diffuse rights of women in situations of violence, to demand from the Executive compliance with legally mandated public policies and to conclude conduct adjustment agreements with municipalities that have not implemented the mandatory services of the protection network (Piovesan, 2018).

The Public Defender's Office, in turn, constitutes the main instrument of access to justice for economically vulnerable women, who comprise the majority of domestic violence victims. Strengthening this institution through increased human and material resources, the creation of specialized Women's Defense Units with an intersectional perspective and expansion of territorial coverage is indispensable for the effective realization of the constitutional right to full and free legal assistance (Federal Constitution, art. 5, LXXIV).

Organized civil society, such as feminist movements, black women's organizations, LGBTQ+ advocacy groups and indigenous peoples' organizations, plays an irreplaceable role in monitoring policy implementation, denouncing violations, providing direct support to victims and pressing for reforms. Therefore, civil society participation in policy formulation, monitoring and evaluation of women's protection policies must be institutionally guaranteed and cannot be treated as a discretionary concession of the State (IACHR, 2021).

This entails both symbolic recognition of their knowledge and material inclusion in follow-up mechanisms, expert groups, and policy design processes (Htun & Weldon, 2012; Alvarez, 2014). Drawing on the concept of participatory parity (Fraser, 2005, pp. 69-88), meaningful inclusion requires institutional conditions that enable effective participation, including adequate resources, accessible formats, and decision-making power rather than merely consultative roles (Blackwell et al., 2017, pp. 40-55).

Civil society organizations are central to the effectiveness of these accountability mechanisms, but the ones led by those facing multiple and overlapping forms of marginalization often lack the financial and institutional resources necessary to participate meaningfully in international monitoring processes (Htun & Weldon, 2012). As a result, intersectional perspectives remain underrepresented in reporting procedures and the formulation of recommendations. Addressing this imbalance requires concrete institutional support rather than symbolic inclusion, therefore, international mechanisms should provide financial and technical assistance to intersectional advocacy organizations in ways that respect their autonomy and do not force them to adapt their priorities to external bureaucratic demands (Cornwall & Molyneux, 2006, pp. 1175=1191).

4.4.6. Reparations that Address Intersectional Harm

Standard reparations frameworks in IHRL were developed with a relatively abstract victim in mind: an individual who suffered a specific violation, usually by a state actor, and whose harm could be addressed through compensation, symbolic measures or guarantees of non-repetition. Although this model represents an important step forward, it remains insufficient when applied to cases of intersectional gender-based violence, when harm is experienced through overlapping structures of oppression the resulting damage is deeper and often irreversible in ways that traditional reparative categories cannot adequately address.

The jurisprudence of the IACtHR has developed one of the most comprehensive reparations regimes in international law, extending beyond financial compensation to include rehabilitation, satisfaction, and guarantees of non-repetition tailored to the specific context of each case (IACtHR, 2009; Shelton, 2015). In cases involving indigenous communities, the Court has ordered collective measures such as land restitution, community infrastructure, health and education services and recognition of collective rights, acknowledging that individual harm cannot be repaired without community recovery (IACtHR, 2001; 2005). In cases of gender-based violence, the Court has required effective investigations, punishment of perpetrators, psychological and medical support for survivors and structural reforms to prevent recurrence (IACtHR, 2009). However, even this advanced jurisprudence has rarely addressed cases where all these dimensions converge, where the harm is simultaneously bodily, cultural, territorial and institutional.

A formal State apology, while symbolically important, does not resolve the lack of culturally competent healthcare, safe housing, or protection from gender-identity-based discrimination. Memorialization alone risks acknowledging suffering without repairing its

causes or consequences. What is needed is a reparations framework explicitly designed to respond to the multidimensional nature of intersectional gender-based violence, grounded in the survivor's own understanding of what restoration means within her cultural, bodily, and relational context.

Within the theory of intersectionality, the remedies are required to reflect the complexity of the harm suffered, if a violation results from the interaction of multiple systems of oppression then reparations must address each of these dimensions simultaneously. In these cases, only transformative reparations are capable of responding adequately to such compounded harms, because rather than seeking to restore the victim to a prior condition of vulnerability, transformative reparations aim to change the structural conditions that made the violation possible in the first place (Rubio-Marín & Sandoval, 2011).

Designing such reparations requires a shift in methodology, because conventional reparations models can reproduce colonial hierarchies by allowing State and international actors to define what "restoration" means, while survivors are limited to accepting or rejecting predefined options (Sieder, 2010). In intersectional cases, this approach is particularly inadequate, as the meaning of repair is inseparable from cultural belonging, gender identity and community relationships (De Greiff, 2006).

International Human Rights bodies have begun to recognize these needs, though implementation remains fragmented. The CEDAW Committee has emphasized that reparations for gender-based violence must be transformative and address structural inequality (CEDAW, 2010; 2015). The UN Special Rapporteur on the Rights of Indigenous Peoples has highlighted the need for reparations that reflect collective harm and the link between individual wellbeing and community integrity (Tauli-Corpuz, 2015). The IACHR has acknowledged the particular vulnerability of indigenous women and LGBTQ+ persons and the inadequacy of standard remedies for those experiencing overlapping forms of discrimination (IACHR, 2015; 2017). What remains lacking is a coherent set of binding guidelines that translate these principles into operational standards.

Such guidelines should include at least five core requirements. First, an intersectional assessment of harm prior to the design of reparations, identifying all relevant forms of oppression and all affected dimensions of the survivor's life. Second, the requirement that the design process be led by the affected person and her community, with institutional actors playing a supporting rather than determining role. Third, a transformative standard of adequacy, under which reparations are considered sufficient only when they create conditions

for genuine flourishing that account for all dimensions of her identity and community belonging. Fourth, the inclusion of collective reparations, recognizing that gender-based violence against intersectionally marginalized persons often harms entire communities. Fifth, the establishment of long-term implementation and monitoring mechanisms, with community participation, since some reparations cannot be delivered through one-time measures (Rubio-Marín & Sandoval, 2011; De Greiff, 2006).

4.4.7. Monitoring and Accountability: Mechanisms for Evaluating Effectiveness from a Human Rights Perspective

The final dimension of the proposed strengthening program concerns monitoring and accountability mechanisms, because without robust systems for data collection, analysis and public dissemination, any assessment of the effectiveness of protection policies remains impressionistic and vulnerable to political manipulation.

Brazil lacks an integrated national information system on gender-based violence capable of systematic data disaggregation by race, ethnicity, region, sexual orientation, gender identity and socioeconomic status. The existing data (produced by the FBSP, IPEA, the Ministry of Health and the judiciary) are fragmented and methodologically inconsistent, which makes it frequently not comparable across sources (FBSP, 2023). The creation of a National Observatory on Gender-Based Violence, with legal mandate, institutional autonomy, civil society participation and an obligation to publish annual disaggregated reports, would constitute a concrete response to repeated recommendations from CEDAW and the IACHR.

Effectiveness monitoring must incorporate qualitative indicators, such as users' perceptions of discrimination, satisfaction with services and compliance with protective orders, alongside quantitative metrics. It is important to remember that a Human Rights-based approach requires that the experiences of the most vulnerable women occupy a central place in evaluative frameworks (Crenshaw, 1991; Davis, 1981).

Accountability before international bodies must be substantive, with the presentation of disaggregated data and the demonstration of concrete and measurable advances. Therefore, Brazil must submit honest, data-driven reports to CEDAW, CERD and the Inter-American System, acknowledging persistent gaps and structural challenges rather than relying on narratives of formal progress that obscure enduring realities of exclusion (Piovesan, 2018).

None of the proposals advanced in this chapter will achieve their potential without the political will of States to implement them, which is perhaps one of the biggest challenges in IHRL, since it operates within a structure of sovereign consent: States agree to be bound by

the obligations they ratify, report on their own compliance through self-assessment processes and implement recommendations at their own discretion within timelines they largely control. The result is a system in which the gap between normative aspiration and practical reality is built into the architecture of the international order itself (Donnelly, 2013).

The effective realization of human rights for those most marginalized depends not only on formal legal recognition but on the redistribution of political power that makes that recognition meaningful in practice, but since intersectionally marginalized groups are usually the least represented, they cannot just appeal to States' good faith. The proposal, accordingly, is to build parallel accountability structures that create genuine costs for non-compliance and support for intersectional advocacy.

This involves strengthening naming and shaming mechanisms within regional human rights systems. Publicly identifying states that consistently fail to comply with their international obligations can produce concrete behavioral change when such criticism comes from credible institutions, resonates with domestic political debates, and is sustained over time rather than applied sporadically (Hafner-Burton, 2008). It is important to note that their impact can be enhanced when their assessments rely on disaggregated and intersectional data, which makes visible how state failures affect specific groups rather than abstract populations.

CONCLUSION

This thesis set out to assess the extent to which the Maria da Penha Law has been effectively implemented in Brazil nearly two decades after its enactment, paying particular attention to its origins in the Inter-American Human Rights System and to its application to groups exposed to intersecting forms of discrimination. The inquiry was framed from the outset not as a question of whether the norm exists, but of whether the Brazilian State has discharged the reparative and preventive obligations it assumed before the international community as a consequence of its responsibility in *Maria da Penha Maia Fernandes v. Brazil*. The answer that emerges from the preceding chapters is that Brazil has fulfilled those obligations only partially: it has met, and in many respects exceeded, the demands of formal compliance, while falling persistently short of the substantive equality that the same international commitments require.

The argument unfolded in stages. Chapter 1 established that gender violence is a structural Human Rights violation rather than a private or individual matter, and that it cannot be understood through an abstract, universal notion of "woman." The conceptual tools of intersectionality, the coloniality of gender and power, and the critique of the public/private

divide revealed that violence is produced differently along intersecting axes of race, class, sexuality and ethnicity, and that the State's duty of due diligence extends to dismantling the structural conditions that sustain it. Chapter 2 showed how these general obligations acquired binding force in the Brazilian case: the Inter-American system, through Report No. 54/2001 and the framework of the Belém do Pará Convention, transformed a single case of impunity into a finding of State responsibility and, ultimately, into Law No. 11,340/2006. The chapter demonstrated that the law is best understood as a direct, if belated, response to international accountability, and that its normative design and continuous refinement have justly earned it recognition as a model instrument.

It was precisely against this background of formal achievement that the central tension of the thesis came into focus. Chapter 3 tested the law's formal universality against the lived experience of black women, indigenous women and LGBTQ+ individuals, and found that the protection guaranteed in the abstract is not distributed equally in practice. Black women remain simultaneously the most exposed to lethal violence and the least served by institutional mechanisms; indigenous women confront linguistic, territorial and cultural barriers that the law's individualistic and urban-centred logic does not reach; and LGBTQ+ individuals face an invisibility rooted in heteronormative assumptions that courts have corrected only partially and unevenly. Chapter 4 then synthesised these findings through the distinction between formal and material effectiveness, situating Brazil's record against the monitoring of the CEDAW Committee, the IACHR and the standards articulated in *González et al. ("Cotton Field") v. Mexico*. The conclusion of that assessment is unambiguous: Brazil possesses a relatively advanced normative framework that nonetheless fails systematically to guarantee equitable protection, reproducing through institutional practice the very inequalities the law was meant to overcome.

Taken together, these findings sustain the thesis's principal claim, that the internalization of international Human Rights standards in Brazil has prioritised formal compliance over substantive equality, producing what may be described as selective protection: a law that is universal in text but stratified in effect, more readily available to white, urban, middle-class women than to those situated at the intersections of multiple structures of subordination. This is a structural feature of how the obligation was internalized, because to internalize an international duty is not only to enact the corresponding norm, but to equip it with the institutional, financial and cultural means necessary for it to reach those who need it most, it is in this second dimension that Brazil's compliance remains incomplete.

What follows from this diagnosis is not a counsel of despair but a constructive agenda, and there are real grounds for hope. The history traced in this thesis is, after all, the history of transformation: a single woman's refusal to remain silent became a book, the book became a movement, which became an international finding of responsibility and that finding became one of the most advanced gender-violence laws in the world. The same law has shown a remarkable capacity to grow, absorbing new protections through successive reforms and through a jurisprudence that has progressively extended its reach to same-sex relationships, to transgender women, and beyond the strictly domestic sphere. These are not the marks of a static or exhausted instrument, but of a living framework still capable of being made more inclusive. The proposals advanced in Chapter 4 (normative consolidation, intercultural and gender-sensitive training, culturally adequate protocols, genuine inter-legal dialogue, stronger access-to-justice institutions, meaningful civil society participation, reparations attentive to intersectional harm and robust disaggregated monitoring) are concrete demands that lie within the State's reach and follow the international commitments Brazil already assumed.

The distance this thesis has sought to measure is the distance between norm and practice; but distance can be crossed. The vitality of Brazil's feminist, black, indigenous and LGBTQ+ movements, the growing willingness of its highest courts to read the law in light of its emancipatory purpose and the steady pressure of the inter-American and United Nations systems together suggest that the trajectory, though incomplete, points forward. Maria da Penha herself transformed personal suffering into a demand that no other woman should endure what she endured, and that demand has already reshaped Brazilian law once. Honouring it fully, making protection a genuine guarantee for all women, and not the privilege of some, remains an achievable task. In the end, it is a matter of sustaining the will to finish what a survivor's courage began.

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