ISSN: 2675-9128. São Paulo-SP.
Year VII, Vol. 1, 2026 | Received: June 4, 2026 | Accepted: June 7, 2026 | Published: June 10, 2026

Conventional decision-making matrix for the Brazilian Inter-American judiciary in assessing urgent protective measures.

Conventional decision-making framework for the Brazilian Inter-American judiciary in the adjudication of emergency protective measures

Conventional decision-making matrix for the Brazilian Inter-American Judiciary when considering emergency protection measures

Valter Fabricio Simioni da Silva1.

Abstract: This article argues for the functional duty of Brazilian judges to apply conventional standards derived from contentious case law and the Advisory Opinions of the Inter-American Court of Human Rights when assessing urgent protective measures provided for in the Maria da Penha Law, especially based on the guidelines of the Statute of the Brazilian Inter-American Judiciary. It argues that the precise moment of judicial review of these measures constitutes a privileged area for the application of conventionality control in the exercise of jurisdiction, imposing on the judge the duty to interpret domestic law in accordance with the decision standards established by the Inter-American Protection System. It is further argued that, given the vulnerability of victims of domestic and family violence, the provision of internal judicial services should be guided by the *standards* of effective judicial protection, enhanced due diligence, victim-centeredness, the *pro persona* principle, and the prohibition of gender stereotypes. This study identifies and systematizes these *standards,* developed by the Inter-American Court of Human Rights, for use as methodological parameters in the assessment of urgent protective measures, through the decision-making technique of conventionality control, proposing a conventional decision matrix that is important for transforming judicial activity into a true realization of the international obligations assumed by the Brazilian State.
Keywords: Conventional decision matrix – Emergency protective measures – Conventionality control – Inter-American Statute of the Brazilian Judiciary.

Abstract: This article argues that Brazilian judges have a functional duty to apply the conventional standards derived from the contentious jurisprudence and Advisory Opinions of the Inter-American Court of Human Rights when adjudicating emergency protective measures under the Maria da Penha Law, particularly in light of the guidelines established by the Inter-American Statute of the Brazilian Judiciary. It contends that judicial review of such protective measures constitutes a privileged setting for the exercise of conventionality control, requiring judges to interpret domestic law in conformity with the decision-making standards developed within the Inter-American Human Rights System. The article further argues that, given the heightened vulnerability of victims of domestic and family violence, judicial decision-making must be guided by the standards of effective judicial protection, enhanced due diligence, victim-centered justice, the pro persona principle, and the prohibition of gender stereotypes.
To this end, the study identifies and systematizes these standards as developed by the Inter-American Court of Human Rights and proposes their use as methodological parameters for adjudicating emergency protective measures through the technique of conventionality control. It ultimately advances a Conventional Decision-Making Framework designed to transform judicial decision-making into an effective mechanism for implementing the international human obligations undertaken by the Brazilian State.
Keywords: Conventional Decision-Making Framework – Emergency Protective Measures – Conventionality Control – Inter-American Statute of the Brazilian Judiciary.

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ISSN: 2675-9128. São Paulo-SP.
Year VII, Vol. 1, 2026 | Received: June 4, 2026 | Accepted: June 7, 2026 | Published: June 10, 2026

INTRODUCTION

The recent establishment of the Statute of the Brazilian Inter-American Judiciary, through Recommendation No. 168/2026-CNJ, represents an important milestone for the reaffirmation of the institutional commitment of the Brazilian Judiciary to the effectiveness of the Inter-American System for the Protection of Human Rights2. In recognizing that the exercise of contemporary jurisdiction presupposes an integrated interpretation of the Constitution, sub-constitutional legislation, and conventional human rights norms, the Statute institutionally consolidated the rationality of jurisdictional activity based on the maximum protection of the human person3.

Every national magistrate is also an inter-American judge because, alongside The Constitution and national legislation are legally bound by treaties. International human rights treaties ratified by Brazil and their interpretation by the Inter-American Court of Human Rights and, for that reason, its legal argument must harmonize the various sources of protection for the human person through the exercise of conventionality control4.

According to Erik Jayme, the sources of domestic law and those derived from treaties and International conventions "do not exclude each other; they complement each other. Judges must coordinate the sources by listening to what they say.[5] In the field of human rights, this Coordination imposes on the national magistrate the duty to interpret the legal system in an integrated way, promoting a permanent dialogue between the Constitution of the Republic, the sub-constitutional legislation, international human rights treaties and case law of the Inter-American Court of Human Rights.

Conventionality control thus establishes itself as one of the most relevant tools available to the Brazilian judge to achieve this goal, since, in addition to serving as a mechanism for assessing regulatory compatibility, this decision-making technique is an important method of interpreting and applying the law. Through it, the magistrate incorporates the jurisprudence of the Inter-American Court of Human Rights and the principles that structure the international protection of the human person into judicial activity. It is precisely from this perspective that the analysis of protective measures is situated. The urgency provisions of the Maria da Penha Law, as well as the granting, maintenance, and revocation of these measures, are crucial.

[2] Regarding this topic, see MAZZUOLI, Valerio de Oliveira; FACHIN, Melina Girardi. *Estatuto da Magistratura Brasileira Interamericana Comentado.* RT, 2026.

[3] In truth, the Statute alters the very way in which judges decide cases involving the protection of human rights, insofar as it shifts judicial activity from a rationality centered exclusively on internal legality to an integrated constitutional and conventional rationality. Among the guidelines established by the Statute, the following stand out for this study: the exercise of conventionality control, the application of the *pro persona principle,* the observance of due judicial diligence, the centrality of the victim, and the special protection of people in situations of aggravated vulnerability, which are developed throughout this work.

[4] Regarding judicial review of the conventionality of laws: MAZZUOLI, Valerio de Oliveira. *Judicial review of the conventionality of laws.* RT, 2025, 6th ed.

[5] JAYME, Erik. Identité culturelle et intégration : le droit international privé post-moderne, Recueil des Cours de l'Académie de Droit International de La Haye, Kluwer, Dordrecht, 1995, p. 259, *apud* MAZZUOLI, Valerio de Oliveira. *Comments on the American Convention on Human Rights,* RT, 2009, 3rd ed., p. 207.

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Measures cannot be analyzed solely in light of the formal requirements of domestic legislation. But they must be guided by the international commitments undertaken by the Brazilian State. That's right, they constitute one of the most relevant points of contact between the jurisdiction of Brazilian domestic law and the Inter-American Human Rights System in addressing gender-based violence. Furthermore, it is in the decision regarding protective measures that the concept of conventionality gains enormous relevance, as it hermeneutically equips the State. The judge must provide a basis for the decision to guarantee the effective fulfillment of duties. International rights assumed by the Federative Republic of Brazil. Although national and foreign doctrine has already examined it from multiple aspects. Several precedents from the Inter-American Court of Human Rights regarding the protection of women in a situation of domestic violence, as well as the control of Despite the lack of conventionality, there is still no methodological systematization of decision-making *standards.* developed by the Court to guide Brazilian judges in assessing Emergency protective measures, as proposed in this study using the conventional matrix. decision. This framework is not intended to shape the magistrate's interpretative activity. Still, it serves to systematically organize the main conventional standards developed by the Inter-American Court that directly or indirectly involve the protection of women, offering the judge a methodological framework for justifying decisions regarding emergency protective measures. The proposal seeks to offer a model, an interpretative approach capable of providing greater coherence, predictability, and effectiveness to the exercise of conventional jurisdiction in matters of domestic and family violence against women.

1. Conventionality Control as a Functional Duty of Brazilian Inter-American Judiciary

In the paradigmatic case of Almonacid Arellano and Others vs. Chile, judged on 26 of In September 2006, the Inter-American Court of Human Rights expressly consolidated the mandatory exercise of conventionality control by the domestic Judiciary, in deciding that Article 2 of the American Convention on Human Rights imposes on the members of the Inter-American System the abstention from applying domestic laws contrary to the American Convention, on account of This obligation stems from the duty to guarantee the rights and freedoms recognized therein. directly from articles 1.1 and 2 of the Convention, which impose on States Parties not only a negative obligation not to violate human rights, but also a positive duty to *organize*

[6] As Eduardo Ferrer Mac-Gregor observes, in the context of the diffuse control of conventionality, "national judges become guardians of conventionality" (FERRER MAC-GREGOR POISOT, Eduardo. *El control difuso de convencionalidad en el Estado constitucional.* In: FIX-ZAMUDIO, Héctor; VALADÉS, Diego (coords.). Formación y perspectivas del Estado mexicano. México: El Colegio Nacional; Universidad Nacional Autónoma de México (UNAM), 2010, p. 177.

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The entire state apparatus must be compatible with conventional rights and guarantees. In its ruling, the Court acknowledged that domestic judges and tribunals are subject to it. The rule of law prevails; therefore, they are obliged to apply the provisions in force in the legal system. Legally, however, when a State ratifies an international treaty, its judges, as bodies of the State, are also subject to it, a circumstance that obliges them to ensure that the effects of the provisions of the ACHR should not be diminished by the application of laws contrary to its purpose.7

The dogmatic importance of the Almonacid Arellano case lies in the transfer of control. from the conventionality of the exclusively international plan to the internal plan of jurisdiction. national. From then on, the judge ceases to be seen merely as an enforcer of domestic law. and comes to be understood as a state agent directly responsible for compliance with judicial decisions regarding international protection treaties; that is, the control of Conventionality ceases to be an activity exclusive to the Inter-American Court and becomes a true technique of judicial decision-making intended for national magistrates.8

Through this instrument, a dialogical activity is exercised between the norms. Internally, international human rights treaties ratified by the State and the authentic interpretation given to these instruments by the Inter-American Court of Human Rights.9 The control of conventionality leads the national magistrate to incorporate, in the local jurisdiction, the interpretative criteria defined by the Inter-American Court of Human Rights, including the argumentative logic that it bases its precedents on the application of those precedents, with the necessary adaptations, to the peculiarities of the specific case. It is this reasoning that confers unity, coherence, and predictability to the process. Inter-American System for the Protection of Human Rights allows the parameters of conventional principles to transcend the subjective limits of the original process and radiate their effects.

Regarding all jurisdictional actions of the States Parties. Indeed, if the American Convention binds all state bodies, then Brazilian judges, when deciding specific cases, must interpret the Constitution and the legislation. Sub-constitutional laws and international human rights treaties should be coordinated. Thus, the control of conventionality is not an argumentative faculty, but a duty. functional consequences arising from Brazil's adherence to the Inter-American System, the non - observance of which may, under certain circumstances, contribute to the State's international accountability.10 Although the Almonacid Arellano case dealt directly with serious violations of human rights practiced in an authoritarian context, its *ratio decidendi11* goes beyond the theme

The main issue in this case. The precedent provides a basis for asserting that internal judicial action must be shaped by international human rights treaties and case law. Inter-American Court, and its relevance extends to the assessment of measures—emergency protective measures provided for in the Maria da Penha Law. The national judge, when considering requests for protective measures, must employ the technique of decision-making process of conventionality control to extract from precedents and the foundations of Advisory Opinions of the Inter-American Court: the *decision-making standards* applicable in their respective cases and, within the context of domestic violence, this duty is specifically guided by the need to ensure decisions are guided by the prevention of gender-based violence. Effective judicial protection, enhanced diligence, victim-centeredness, *the pro persona principle,* and prohibiting gender stereotypes, thus aligning domestic law with the *corpus.*

Inter-American *Court* of Human Rights.

[7] "The Judiciary must exercise a kind of conventionality control between internal legal norms applied to specific cases and the American Convention on Human Rights. In this task, the Judiciary must take into account not only the treaty, but also the interpretation that the Inter-American Court, the ultimate interpreter of the American Convention, has made of it." (Inter-American Court of Human Rights, Case of Almonacid Arellano and others v. Chile, Judgment of September 26, 2006 (Preliminary Objections, Merits, Reparations and Costs). The diffuse judicial control of the conventionality of domestic law norms was defended in an unprecedented way in Brazilian territory by Professor Valério de Oliveira Mazzuoli, in his doctoral thesis entitled "Towards new relations between international human rights law and domestic law: from exclusion to coexistence, from intransigence to the dialogue of sources", defended at the Faculty of Law of the Federal University of Rio Grande do Sul on November 4, 2008 and approved *summa cum laude* by the examining board.

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2. The normative force of the Court's interpretation.

INTERAMERICANA: *RES INTERPRETATA, RATIO DECIDENDI* AND *STANDARDS*

DECISIONS

The normative effectiveness of the interpretative actions of the Inter-American Court of Human Rights. Humans are not exhausted by the device of their sentences nor by the conclusions of their opinions. Advisory, but it also projects onto the determining fundamentals *(ratio decidendi)* that They support their decisions. These binding principles include the criteria, hermeneutical, conventional standards, and legal parameters intended to guide the role of States Parties in implementing the American Convention on Human Rights. Humans, as recognized by the doctrine of *res interpretata12* .

According to Ferrer Mac-Gregor: The norm as interpreted by the Inter-American Court acquires the same degree of effectiveness as the text. Conventional, especially since it is the only jurisdictional body provided for in the Inter-American System with ultimate and definitive jurisdiction in the interpretation of the American Convention on Human Rights (and its additional protocols), from which the *binding* nature of its interpretations derives13 . As Pedro Nikken observes, the advisory competence attributed to the Inter-American Court plays an essential role in the interpretation of the American Convention and of other human rights treaties of the Inter-American System, providing guidance to States for the proper fulfillment of their international obligations18, in accordance in accordance with the Court's own jurisprudence since Advisory Opinion OC-1/8219. Thus, although Advisory Opinions do not produce the procedural effects of judgments in contentious matters, their foundations constitute an important binding reference for the exercise of conventionality control by national magistrates. Advisory opinions, in essence, play a primary role in the very... construction of the conventional standards of the Inter-American Court, insofar as An authentic interpretation of the American Convention is not limited to the proclamation of the result of the trial, but it develops through the argumentative construction that leads... to the solution adopted. The grounds for the decision explain the scope of the obligations.

[8] According to Humberto Nogueira Alcalá, conventionality control is not exclusive to the Inter-American system; it is a legal and jurisdictional control that takes place at the international or supranational level and aims to verify the degree of compliance, by a State, with the conventional obligations assumed, based on the conformity of its conduct with the obligations established by the legal norm or international treaty (NOGUEIRA ALCALÁ, Humberto. *Los desafíos del control de convencionalidad del corpus iuris interamericano para las jurisdicciones nacionales.* Boletín Mexicano de Derecho Comparado, nueva serie, año XLV, n. 135, septiembre-diciembre 2012, Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México (UNAM), p. 1169).

9 According to Sérgio Garcia Ramirez, the control of conventionality "enables national jurisdictional bodies to analyze the compatibility of laws and other provisions of domestic law with the American Convention on Human Rights and with the jurisprudence of the Inter-American Court". Cf. GARCÍA RAMÍREZ, Sergio. *Sobre el control de convencionalidad.* Pensamiento Constitucional, 2016, p. 173.

[10] According to García Ramírez, the control of conventionality precisely translates the need for the internalization of the international human rights order by state bodies, so that national judicial activity develops in accordance with the American Convention and the interpretation given by the Inter-American Court. (GARCÍA RAMÍREZ, Sergio. *El control judicial interno de convencionalidad.* Revista IUS, Puebla, año V, n. 28, p. 123-159, jul./dic. 2011.)

[11] The *ratio decidendi* corresponds to the essential core of the legal reasoning indispensable for justifying the solution adopted by the Court, and it is precisely from this argumentative core that the decisional *standards* emerge , understood as normative criteria capable of guiding the resolution of future cases involving similar factual situations.

[12] The doctrine of *res interpretata* was initially developed within the European system for the protection of human rights. The European Court established that, based on its judgments on a given subject, there is a legitimate expectation that the Convention will be interpreted and applied in the same way in subsequent cases involving other States. The European Convention on Human Rights was conceived as a *living instrument,* meaning that States Parties must observe not only its normative text but also the decisions of its authentic interpreter, regardless of whether they are parties to the judgment. Cf. ARNARDÓTTIR, Oddný

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Conventional laws define the content of the positive duties imposed on States and establish the criteria that should guide the actions of national bodies in future situations similar.

This is the architecture of the system established by the American Convention, because, by assigning to the Inter-American Court the competence to interpret and apply the Convention (art. 6214) and imposing on States the duty to comply with its decisions (art. 68.115), the treaty confers upon the interpretation... developed by the Court as a normative authority that transcends the specific case and serves as parameter for the actions of all state bodies responsible for carrying out the control of conventionality.

Although the authority of *res judicata* produces direct effects only between the parties to the case. In international proceedings, the interpretation given by the Court to the American Convention has interpretative effects on all States Parties. It is from this theory of *res interpretata* that This results in the expansive effectiveness of Inter-American jurisprudence.

The same reasoning applies to Advisory Opinions, which, although not resolve a specific dispute, they demonstrate the interpretative competence attributed to the Court by Article 64 of the American Convention16, and are intended precisely to clarify the meaning and the The scope of conventional norms. The authority of these pronouncements does not reside solely in its formal conclusions, but above all, in the legal foundation that develops the principles, concepts and interpretative parameters applicable to the States Parties17 .
They establish the original hermeneutical criteria that guide the evolutionary interpretation of human rights as determined by the Court, providing the normative foundation upon which case law subsequently develops *standards* applicable to the various cases submitted to contentious jurisdiction20 .

[13] FERRER MAC-GREGOR POISOT, Eduardo. *Interpretation according to diffuse control of conventionality: The new paradigm for Mexican judgment.* Estudios constitutionales, Santiago, v. 9, no. 2, 2011, p. 556.

[14] Article 62.1. Any State Party may, at the time of depositing its instrument of ratification or accession to this Convention, or at any later time, declare that it recognizes as *binding* ipso jure and without special agreement the *jurisdiction* of the Court in all cases concerning the interpretation or application of this Convention. 2. The declaration may be made unconditionally, or on condition of reciprocity, for a specified period, or for specific cases. It shall be submitted to the Secretary-General of the Organization, who shall forward copies thereof to the other States Parties of the Organization and to the Registrar of the Court. 3. The Court shall have *jurisdiction over any case concerning the interpretation and application of the provisions of this Convention submitted to it,* provided that the States Parties to the case have recognized or recognize such jurisdiction, either by a special declaration, as provided in the preceding paragraphs, or by a special agreement.

[15] 1. The States Parties to the Convention undertake to comply with the decision of the Court in any case to which they are parties.

[16] Article 64.1. Member States of the Organization may consult the Court regarding the interpretation of this Convention or other treaties concerning the protection of human rights in the American States. The bodies listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may also consult the Court, within their respective competences. 2. The Court, at the request of a Member State of the Organization, may issue opinions on the compatibility between any of its domestic laws and the aforementioned international instruments.

[17] Some legal scholars believe that Advisory Opinions are predominantly persuasive in nature, and do not recognize their binding effect in the strict sense. Cf. RAMOS, André de Carvalho. *Curso de Direitos Humanos.* 2nd ed. São Paulo: Saraiva, 2015, p. 265. This work, however, does not base its thesis on the autonomous binding force of Advisory Opinions, but on the interpretative authority of the Inter-American Court as the ultimate interpreter of the American Convention, whose hermeneutical criteria must be considered by the national magistrate in the exercise of conventionality control.

[18] See NIKKEN, Pedro. *The consultative function of the Inter-American Court of Human Rights.* In: Inter-American Court of Human Rights. *The Inter-American System for the Protection of Human Rights at the Threshold of Siglo XXI.* 2nd ed. San José, Costa Rica: Inter-American Court of Human Rights, 2003. t. I, p. 161-184.

[19] In OC-1/82, the Inter-American Court of Human Rights (IACHR) affirmed that its advisory competence is not merely academic or abstract in purpose, but is intended to assist the American States in the fulfillment and correct application of international human rights treaties. Advisory Opinions thus constitute an important preventive instrument of state guidance, providing hermeneutical criteria aimed at preventing future conventional violations and guiding the actions of internal bodies, including the Judiciary, in the exercise of conventionality control. Cf. Inter-American Court of Human Rights, Advisory Opinion OC-1/82, of September 24, 1982. *Other treaties subject to the advisory function of the Court (Article 64 of the American Convention on Human Rights).* Series A No. 1, §§ 25-26.

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The advisory and contentious powers of the Inter-American Court do not constitute not watertight spheres of jurisdictional action, but rather mechanisms interconnected for the progressive development of International Human Rights Law. The use The recurring use of Advisory Opinions in the reasoning behind the judicial decisions of the Inter-American Court of Human Rights. That demonstrates exactly that.

The Brazilian magistrate's adherence to the jurisprudence of the Inter-American Court must, therefore, be understood in its fullest extent. It's not just about respecting the result achieved in a given precedent, but rather about internalizing the legal fundamentals that supported it and incorporating decision-making standards into the national decision-making process. Built by the Court. In the context of protecting women who are victims of violence, this understanding takes on particular relevance, given the decision-making *standards* established by the Court. Inter-American Courts constitute a hermeneutical reference for the granting, maintenance, and revocation of emergency protective measures under the Maria da Penha Law. It is precisely from these conventional decision patterns that the specific parameters to be observed in the actions of the Brazilian magistrate will be extracted.

3. Emergency Protective Measures as a Privileged Space for the Application of Conventionality Control

The emergency protective measures provided for in the Maria da Penha Law are distinct from jurisdictional provisions traditionally conceived in civil procedure and in the process of Brazilian criminal law. At the same time, classic judicial activity is generally focused on the resolution of past conflicts, through the definition of responsibilities and reparation. The primary protection afforded to women is the *prevention* of violence in situations of threat in the context of domestic cohabitation. This obligation is provided for in Article 7, *heading* and subparagraphs "b" and "d", of the Belém do Pará Convention22; in summary, these provisions establish that States Parties should adopt appropriate measures to *prevent,* investigate, punish and eradicate violence against women by organizing their agencies and institutions to to ensure effective protection for victims. It is noteworthy that the first measure adopted by the Brazilian state focuses on prevention.

Indeed, one of the purposes of protective measures is to prevent the consummation or the exacerbation of future violations of the fundamental rights of women in situations of domestic and family violence. Therefore, the decision regarding urgent protective measures is essentially a legal risk management approach, and this special characteristic gives these individuals provisions of a unique legal nature. This is, therefore, one of the most relevant areas of incidence for the control of conventionality in the exercise of Brazilian jurisdiction, as this panorama brings it much closer to domestic jurisdictional activity of the protective logic adopted by the Inter-American System of Human Rights. The American Convention on Human Rights and the Belém Convention.

The laws of Pará do not only establish negative obligations directed at the State, consisting of abstention from violations of fundamental rights, but also impose positive duties of *prevention,* protection, investigation and appropriate response to situations that expose people subjected to violations of their human rights.

In cases where injuries have already occurred, protective measures are primarily intended to prevent them.21 The jurisprudence of the Inter-American Court has consolidated the understanding that the duty of prevention constitutes a positive obligation arising from articles 1.1 and 2 of the American Convention on Human Rights,

ISSN: 2675-9128. São Paulo-SP.
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imposing on States are required to adopt reasonable measures to prevent violations from occurring when authorities are aware, or should be aware, of the existence of a real and predictable risk. Conventional protection, therefore, is not limited to the state's response after the commission of violence, but requires proactive, appropriate, and effective action aimed at preventing risky situations from escalating into more serious violations of fundamental rights.23 In the field of domestic and family violence against women, the commitment to Prevention takes on particular importance, since state judicial action ceases to be measured exclusively by the State's response to the very act of violence; it becomes examined from the perspective of the institutional capacity to anticipate the occurrence of episodes of Aggression or threat. The omission or insufficiency of adequate protection measures. This could even constitute a breach of the State's contractual obligations, giving rise to its international accountability. Thus, the decision that considers an emergency protective measure does not apply.

It simply implements one of the obligations of the Maria da Penha Law, but it also fulfills its provisions. international rights assumed by the Brazilian State before the Inter-American System of Human Rights Humans, namely, *preventing* violence against women. This is the first protection center against violence against women, and the prevention required of the State is not limited to the development and implementation of public policies, but also to the performance of a swift and effective Judiciary24 .

[20] *Decisional standards* are largely developed in contentious judgments, but their interpretative premises are already present, in many cases, in previous Advisory Opinions. These define the hermeneutical framework of the American Convention; those concretize this framework into objective criteria for judicial decision-making applicable to specific cases.

[21] Not without reason, Article 19, § 2, of Law No. 11.340/06 establishes that such judicial provisions will be applied whenever the rights recognized in this Law are threatened or violated: Article 19. Urgent protective measures may be granted by the judge, at the request of the Public Prosecutor's Office or at the request of the victim. § 2. Urgent protective measures will be applied individually or cumulatively, and may be replaced
at any time by others of greater effectiveness, whenever the rights recognized in this Law are *threatened* or violated.

[22] Incidentally, Article 7 of the Belém do Pará Convention states: "States Parties condemn all forms of violence against women and agree to *adopt,* by *all appropriate means* and without delay, policies aimed at *preventing,* punishing and eradicating such violence and to undertake (...) b) to act with due diligence to *prevent,* investigate and punish violence against women; (...) d) to adopt *legal measures* requiring the perpetrator to *refrain* from stalking, intimidating and threatening the woman or from using any method that harms or endangers her life or integrity or damages her property; (...) f) to establish fair and effective legal procedures for women subjected to violence, including, among others, protective measures, timely judgment and effective access to such processes."

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The control of conventionality, at this procedural stage, functions as an instrument for anticipating the protection of human rights and is an integral part of the process itself.
of the formation of judicial decisions, directing the exercise of jurisdiction in accordance with the parameters of the Inter-American System. The Brazilian magistrate, in guaranteeing the commitment
international task force to prevent violence against women, simultaneously acts as a national judge. and as a state agent responsible for ensuring the effectiveness of international human rights treaties ratified by Brazil, exercising an unequivocal jurisdictional function in the conventional dimension.

The decisional standards must therefore guide the actions of the national judge. developed by the Inter-American System, which establish safe parameters for effective granting, maintaining, and eventual revocation of emergency protective measures, whose case law established by the Inter-American Court will be analyzed below.

4. **MAIN** DECISION-MAKING ***STANDARDS*** **OF THE INTER-AMERICAN COURT OF** HUMAN RIGHTS TO INTEGRATE THE ASSESSMENT OF MEASURES

Emergency protective measures

The jurisprudence of the Inter-American Court of Human Rights has developed over time. From its contentious and advisory activities, several conventional *standards* have been designed to guide States in protecting human rights. Although they were built in distinct factual contexts, it is possible to identify a common core among these applicable decision patterns. to the assessment of the urgent protective measures provided for in the Maria da Penha Law, which do not These are isolated guidelines, but they form part of a unified system of essential protection for judicial activity, from the interpretation of applicable rules to the justification of court decisions.

The selection of the *standards* examined below results from the systematization of the main hermeneutical parameters repeatedly affirmed by the Court in its jurisprudence on contentious matters and in its Advisory Opinions, especially in matters relating to protection of women, equality and non-discrimination, and the duty to prevent violence. based on gender and the effectiveness of judicial protection of human rights.

[23] See González and Others (Cotton Field) v. Mexico case. Inter-American Court of Human Rights, Judgment of November 16, 2009. In its decision, the Court noted that States have duties to adopt preventive and protective measures for individuals in their relations with each other when conditioned upon knowledge of a situation of real and immediate risk to a specific individual or group of individuals, and the reasonable possibilities of preventing or avoiding that risk, under penalty of liability. The Court concluded that Mexico violated several rights enshrined in the American Convention on Human Rights (ACHR), and among the central grounds for the decision is the failure to *prevent* crimes, despite knowledge of the context of violence against women.

[24] In its judgment in the case of Velásquez Rodríguez v. Honduras, on July 29, 1988, the Inter-American Court of Human Rights noted that the State has a legal duty to reasonably *prevent* violations of human rights. This *duty* of *prevention* encompasses all *legal,* political, administrative, and cultural measures that promote the safeguarding of human rights and ensure that any violations thereof are effectively considered and treated as an unlawful act, liable to sanctions for those who commit them.

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ISSN: 2675-9128. São Paulo-SP.
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Understanding the proposal developed in this study presupposes the distinction of three conceptual categories that, although functionally interconnected, perform functions various factors in the construction of judicial decisions: the conventional *standards* themselves, the Decision parameters and the conventional decision matrix.

Conventional *standards* are understood to be the normative criteria developed by jurisprudence of the Inter-American Court of Human Rights to concretize the content of obligations assumed by the States Parties to the American Convention on Human Rights and other international treaties for the protection of human rights. They should not be confused with legal rules, nor principles in the strict sense, nor judicial precedents. considered individually, as they represent consolidated case law, extracted from the interpretations of the Inter-American Court of Human Rights, which establish the manner in which certain

Conventional norms must be understood and applied in specific situations. functioning as benchmarks of rationality for the exercise of control of conventionality.

When incorporated into the exercise of national jurisdiction, these standards become- if in decision-making parameters. While the standard has a predominantly Based on case law and convention, the parameter corresponds to its concrete projection in the process the judge's decision-making process. In other words, the standard provides the content

The normative framework and the parameter indicate how this content should influence the assessment of the case.

concrete. The conventional decision matrix, in turn, represents systematic integration. These various decision-making parameters are incorporated into a methodological model for judicial reasoning. It is not merely a collection of independent criteria, but an argumentative structure. organized, in which each parameter plays a complementary role in the construction of a decision. The conventional matrix25 provides the magistrate with a rational path, allowing the control of conventionality to cease operating merely as an abstract technique of normative compatibility and to assume the status of a true methodology. of a court decision.

Each of the standards identified throughout this study corresponds to a specific decision-making parameter that, when combined with the others, makes up the matrix. Conventional proposed decision. This integration allows for the transformation of duties. Conventional principles adopted by the Brazilian State based on concrete criteria to justify court decisions regarding emergency protective measures. In methodological terms, it can be stated that the jurisprudence of the Court Interamericana develops conventional standards; these standards, when incorporated into the exercise of national jurisdiction, become a decision-making parameter; and the systematization of the integration of these parameters gives rise to the conventional decision matrix proposed in this study.

[25] The term "matrix" is used because conventional *standards* do not act successively or independently, but as interdependent normative elements that structure, in an integrated way, the argumentative path of the judicial decision.

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ISSN: 2675-9128. São Paulo-SP.
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4.1. Effective Judicial Protection

An important decision-making *standard* derived from the jurisprudence of the Inter-American Court. Human Rights consists of the duty to ensure effective judicial protection for women in situations of domestic and family violence. This duty transcends the mere formal guarantee of Access to the judiciary; it requires that judicial action be capable of providing a response. timely, adequate and effective in response to the concrete risk of violation of the victim's fundamental rights26.

In the Inter-American Human Rights System, the effectiveness of protection is emphasized. The jurisdictional process presupposes that procedural instruments and state bodies are capable of producing concrete results in the preservation of life, physical, psychological, and moral integrity, sexual and patrimonial rights, and the freedom of people subjected to situations of vulnerability27. In matters of gender-based violence, this requirement takes on particular importance, since delays, insufficient or inadequate state response can allow escalation of violence and the perpetration of irreversible damage. The contentious case law of the Inter-American Court of Human Rights has reaffirmed the hermeneutical foundations of OCs Nos. 9/87 and 11/90, consolidating the guideline that the mere existence of bodies is not enough. formally competent judicial bodies or legally prescribed procedures, but it is essential that states act effectively to prevent the continuation of violence. and to provide concrete protection to people at risk. This pattern of interpretation was improved in the González and Others (Campo Algodonero) v. Mexico case, when the Court stated that the state's response must be immediate, serious, diligent, and proportionate to the gravity of the situation presented, especially when there are indications of risk to the life and physical integrity of women subjected to gender-based violence28. In the case of Barbosa de Souza and Others vs. Brazil, in turn, when addressing the homicide of Márcia Barbosa de Souza, which occurred in June 1998 at the hands of the then state deputy.

Aércio Pereira de Lima, the Court acknowledged the deficiency in the Brazilian judicial system, marked by unjustified delays, insufficient investigation, and the reproduction of stereotypes. This gender compromised the effectiveness of judicial protection and constituted a breach of the conventional obligations assumed by the State, resulting in a violation of the psychological integrity of the victim's family members29. Transposed to the scope of emergency protective measures, this important *standard* imposes on Brazilian judges the duty to consider the highest degree of effectiveness. of the judicial provision, evaluating not only the urgency for granting it, but also primarily what measures and instruments should be employed to protect the victim to the greatest extent possible30 effectively.

The judicial decision must be based on a concrete analysis of the circumstances of the case, considering the intensity of the risk, the vulnerability of the victim, the history of violence, the possibility of repeated attacks, the specific needs of the victim and the The suitability of the measures to provide adequate protection, neutralizing the identified danger. A The rationale must demonstrate, clearly and individually, that the solution adopted is sufficient to ensure the effective protection of the fundamental rights involved. As can be seen, the decision parameter resulting from effective judicial protection requires firmness. The magistrate's role in ensuring that the judicial response is timely, appropriate, and proportional to the identified risk, avoiding decisions based on merely formal criteria. Abstract or detached from the factual reality presented, in order to guarantee that the application of the Maria da Penha Law provides concrete and effective protection for women's fundamental rights.

[26] In OC-9/87, the Court decided that "remedies must be suitable to protect the infringed legal situation and capable of producing the result for which they were conceived." In short, the Court established the standard that the formal existence of procedural mechanisms is not enough; it is essential that judicial remedies be effective, capable of preventing or repairing violations of human rights, ensuring concrete protection for persons subject to state jurisdiction. Cf. Inter-American Court of Human Rights, Advisory Opinion OC-9/87, of October 6, 1987. *Judicial guarantees in states of emergency (arts. 27.2, 25 and 8 of the American Convention on Human Rights).* Series A no. 9.

[27] OC-11/90 confirmed the understanding that domestic remedies only meet the requirements of the American Convention when they are effective, that is, capable of concretely protecting human rights and repairing the alleged violations. Merely formal remedies or those incapable of producing effective protection do not satisfy Articles 8 and 25 of the Convention. Cf. Inter-American Court of Human Rights, Advisory Opinion OC-11/90, of August 10, 1990. *Exceptions to the exhaustion of domestic remedies (Articles 46.1, 46.2 and 46.2.b of the American Convention on Human Rights).* Series A No. 11, §§ 22, 24, 36 and 37.

[28] See paragraphs 283 and 284 of the judgment delivered by the Inter-American Court of Human Rights in the case of González and Others (Campo Algodoeiro) vs. Mexico. Judgment of November 16, 2009.

[29] See Case of Barbosa de Souza and Others vs. Brazil. Inter-American Court of Human Rights, Judgment of September 7, 2021. On this point, the lesson of Segundo Cançado Trindade is precise, in the sense that only through the consolidation of the full procedural capacity of victims and *their families* does the protection of human rights cease to be a mere normative proclamation and become an effective reality (CANÇADO TRINDADE, A. A.. *International Law in a World of Transformation.* Rio de Janeiro: Renovar, 2002, p. 546).

[30] Not without reason, Article 22, §§ 1 and 4, of the Maria da Penha Law provides for the application of "other measures" foreseen in current legislation, whenever the safety of the victim or the circumstances so require, and the magistrate may even determine the necessary measures to ensure the obtaining of protection through an equivalent practical result.

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ISSN: 2675-9128. São Paulo-SP.
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4.2. ENHANCED DUE DILIGENCE

Among the parameters developed by the jurisprudence of the Inter-American Court of Human rights, few areas assume such significant relevance to the work of a judge.

Brazilians understand the duty of due diligence, which is reinforced in the context of domestic violence. This is a *decision-making standard that requires the State, and particularly the Judiciary,*

more intense activity than normally expected in other litigation, due to the special The vulnerability of women subjected to any kind of violence.

Enhanced due diligence is an extension of positive obligations. as provided for in Articles 1.1 and 2 of the American Convention on Human Rights and in Article 7 of the Belém do Pará Convention, given the state's duty to provide formal mechanisms
protective measures, with concrete, timely and effective action, aimed at preventing, interrupting and To prevent the continuation of gender-based violence. In the conclusion of the case Dos Santos Nascimento and Ferreira Gomes vs. Brazil, the Court The Inter-American Court of Human Rights reaffirmed its jurisprudence to the effect that States have a reinforced obligation.

in the investigation, trial and punishment of conduct incompatible with the right not to Discrimination, it established that judges must consider all elements of evidence. during the trial with due caution and concluded that the failure to observe these precepts, coupled with the violation of the guarantee of a reasonable timeframe for the conclusion of the process, they entail a breach of the State's duty of enhanced due diligence31 .

This relevant foundation of the Inter-American Court of Human Rights' jurisprudence results in the recognition

that violence against women deserves a state response with a reinforced standard of diligence, higher than what is ordinarily required in conflicts that do not involve structural discrimination or groups in vulnerable situations.

The *standard* has important implications for the assessment of the measures. protective measures of urgency, insofar as it requires a jurisdictional stance committed to the proper assessment of the victim's vulnerability and with the adoption of Necessary measures to prevent a recurrence of violence. Enhanced due diligence has the effect of modifying the content of the document itself. judicial cognition requires the magistrate not only to verify the existence of violence. past, but also an in-depth examination of the entire relational dynamic established between aggressor and victim, within the context of vulnerability, of possible economic dependence or emotional and any other elements capable of revealing the persistence of the risk. Thus, the Judicial decisions are now built on the basis of an integrated assessment of the situation of violence.

[31] Inter-American Court of Human Rights. Case of Dos Santos Nascimento and Ferreira Gomes v. Brazil. Preliminary Objections, Merits, Repairs and Costs. Judgment of October 27, 2024. Series C No. 539.

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ISSN: 2675-9128. São Paulo-SP.
Year VII, Vol. 1, 2026 | Received: June 4, 2026 | Accepted: June 7, 2026 | Published: June 10, 2026

Thus, due diligence, reinforced as a methodological parameter of the decision, It is requested, during the assessment of urgent protective measures, that the national magistrate assess, in a well-reasoned and extremely cautious manner, whether the requested provisions and The approved measures are effectively sufficient to neutralize the identified risk, based on all factors. The circumstances surrounding the scenario in which the victim is situated, establishing a meticulous care criteria regarding the cause.

4.3. Victim-centricity

Another important decision-making *standard* developed by the Court's case law, the Inter-American Convention on Human Rights, centers the victim32 as the axis structuring the state's role in addressing gender-based violence.

Traditionally, the judicial process has always been structured around conflict. Directing the judge to resolve the controversy between the parties. In the context of protecting human rights, on the other hand, especially in cases of gender-based violence, the focus shifts.

The focus shifts to the centrality of the victim. The system's priority becomes the effective protection of the victim. person in a vulnerable situation, a goal that ceases to be a mere consequence of the activity. Jurisdictional and becomes the central objective of state action. This shift in legal logic stems from the very evolution of International Law. of Human Rights. As Antônio Augusto Cançado Trindade observes, the States ceased to be the sole subjects of International Law, and began to coexist with it. humanity. In this sense, the formation and development of International Law do not depend exclusively on state interests, disregarding the centrality of the protection of the human person in the international legal order33.

This transformation of the system's rationality is directly projected onto the judicial activity exercised by national magistrates. In contemporary international law, society recognizes the human person as the central focus of protection within the legal order. Internationally, the assessment of emergency protective measures cannot remain structured exclusively from the perspective of procedural conflict or the repressive actions of the State. The judicial function becomes primarily guided by the protection of the victim. Understood as the immediate recipient of conventional obligations of prevention and protection. and guarantees assumed by the Brazilian State. The judicial decision must be mandatory. constructed based on an analysis of the victim's specific needs, demonstrating that this methodological shift in judicial action directly influences the interpretation of legal requirements for granting, maintaining, or revoking protective measures.

[32] In Advisory Opinion No. 16/99, the Inter-American Court established the hermeneutical premise that the human person occupies a central position in the international legal order, departing from the traditional conception according to which only States are subjects of International Law. By recognizing that international human rights treaties aim at the direct protection of individuals, the Court affirmed that the interpretation and application of the American Convention must be guided primarily by the protection of the human person. OC-16/99 therefore provided an important hermeneutical foundation for the subsequent development of the *standard* of victim centrality, shifting the axis of international protection from state interests to the effective safeguarding of the rights of the person subject to state jurisdiction. Cf. Inter-American Court of Human Rights, Advisory Opinion OC-16/99, October 1, 1999. *The Right to Information on Consular Assistance within the Framework of Due Process Guarantees.* Series A, no. 16, paragraphs 114, 115 and 119.

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ISSN: 2675-9128. São Paulo-SP.
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The centrality of the victim also has repercussions on the duty to provide reasons for decisions. judicial. Whenever you choose to restrict, deny, or revoke a previously granted protective measure. granted, the magistrate must demonstrate, through concrete and reasoned individualized justification, that the solution adopted adequately preserves the fundamental rights of the victim and does not compromise their safety, physical or psychological integrity, freedom, or Dignity. It is not enough to state, generically, the non-existence of risk; it is indispensable to demonstrate, based on the evidence in the case file, that state protection remains sufficient even after the amendment of the previously granted measure.

The centrality of the victim ceases to be merely an axiological guideline and assumes the status of a true methodological criterion for the justification of judicial decisions. Magistrates, when considering urgent protective measures, must expressly demonstrate that the decision was based on a concrete analysis of the victim's situation, an assessment of their protection needs, and an evaluation of the proportionality of judicial protection. It is not enough for the decision to be legally valid; it is essential that it reveal, in a rationally grounded manner, that women's human rights remained at the center of jurisdictional activity, in accordance with conventional duties of protection. assumed by the Brazilian State.

[33] CANÇADO TRINDADE, Antônio Augusto. *International Law for Humankind: Towards a New Jus Gentium.* The Hague Academy of International Law. Martinus Nijhoff Publishers, Boston, 2010. On the status of subjects of rights in the supranational sphere, with the ability to exercise them freely and directly by themselves, see: MELLO, Celso D. de Albuquerque. *Curso de Direito Internacional Público.* Vol. 1, Rio de Janeiro: Renovar, 2004, 15th ed., p. 808; SOARES, Guido Fernando Silva. *Curso de Direito Internacional Público.* São Paulo: Atlas, 2002, Vol. 1, p. 158. MAZZUOLI, Valério de Oliveira, *Curso de Direito Internacional Público.* Rio de Janeiro: Forense, 2018, 11th ed., pp. 369–370. According to the most refined doctrine of international law, there is no general rule or principle that denies individuals legal personhood under
international law, and it is certain that in cases related to the protection of human rights, the claim is made *intuitu personae.* BROWNLIE, Ian. CRAWFORD, James. *Brownlie's Principles of Public International Law.* Hampshire: Oxford University Press, 2012, 8th Edition, p. 121. On the subject, see CANÇADO TRINDADE, Antônio Augusto.
The Humanization of International Law. Belo Horizonte: Del Rey Editora, 2nd ed., 2015, p. 155. Furthermore, according to Cançado Trindade, it is necessary to reclaim the status of individuals as true subjects of international human rights law and public international law, given that they are the true claimants before international human rights tribunals and not mere objects of protection. (CANÇADO TRINDADE, Antônio Augusto. *International Tribunals and the Realization of Justice.)* Rio de Janeiro: Renovar, 2015, p. 17/18). Any remaining exclusion of victims from processes that address human rights violations must be reconsidered to ensure the true essence of international protection (CANÇADO TRINDADE, Antônio Augusto. *El ejercicio de la función judicial internacional). Memories of the Inter-American Court of Human Rights.* Belo Horizonte: Del Rey, 2013, 4th ed., p. 114.

[34] In Advisory Opinion No. 5/85, the Inter-American Court affirmed that the American Convention on Human Rights (ACHR) should always prioritize the interpretation that ensures the broadest protection of human rights, based on Article 29 of the Convention.
The Advisory Opinion thus establishes the hermeneutical foundation of the *pro persona principle.* Cf.
Inter-American Court of Human Rights, Advisory Opinion OC-5/85, of November 13, 1985. *The Mandatory Collegiality of Journalists — Articles 13 and 29 of the American Convention on Human Rights.* Series A, no. 5, paragraphs 51 and 52. Subsequently, in Advisory Opinion no. 7/86, the Court reaffirmed that human rights treaties must be interpreted and applied in a way that produces practical and effective effects *(effet utile),* prohibiting interpretations that empty or reduce the effectiveness of conventional guarantees, reinforcing the hermeneutical foundation of the *pro persona principle.*
Inter-American Court of Human Rights, Advisory Opinion OC-7/86, August 29, 1986. *Enforceability of the Right of Rectification or Reply — Arts. 14.1, 1.1 and 2 of the American Convention on Human Rights.* Series A, no. 7, paragraphs 24, 26 and 30.

ISSN: 2675-9128. São Paulo-SP.
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4.4. ***Pro Persona*** Principle

The *pro persona* principle occupies a central position in the Inter-American System of Protection of Human Rights and constitutes one of the most relevant interpretative standards for the exercise of conventionality control 34. Its purpose is to ensure that, in the face of the different legally possible interpretations, the one that confers greater weight should always prevail. protection of the human person and greater effectiveness of fundamental rights recognized by international human rights instruments35. This is, in truth, a genuine *legal norm* that establishes a criterion for the maximum effectiveness of human rights – understood in their entirety – so that their effects radiate throughout the entire legal system and linking all legal operators36 .

For Professor Mazzuoli All rules in force in the State, whether internal or international, must be interpreted “In accordance with" human rights, without any exception (…). The interpretation in accordance with Human rights equally prevents the application of a less beneficial rule to the individual. Human, since the basic principle present in all human rights treaties, as well as in international custom relating to these rights, is pro homine or pro persona. According to which the interpreter, in each concrete case, must always apply the rule most favorable to the person37. This principle is based on Article 29 of the American Convention on Human Rights, which prohibits restrictive interpretations that could limit the enjoyment and exercise of the rights recognized therein. Based on this interpretative clause, the Inter-American Court established that the American Convention must be interpreted in an evolving manner and always guided by the principle of maximum effectiveness in protecting human rights.38 It is important to highlight, as Sergio Garcia Ramírez rightly does, that International Law, the Universal Declaration of Human Rights, establishes a minimum level of protection, not a maximum limit of protection of fundamental rights. For this reason, the interpretations of the Inter-American Court: these limitations can be overcome by internal rules or decisions that ensure individual protection. A broader conclusion, which follows directly from the pro persona principle and the interpretative rules enshrined in Article 29 of the American Convention on Human Rights39. In the context of domestic and family violence against women, the pro persona principle

[35] The principle was defined in one of the opinions of Judge Rodolfo E. Piza Escalante of the Inter-American Court of Human Rights, who stated that it is: "a fundamental criterion dictated by the very nature of human rights, which requires a broad interpretation of the norms that enshrine or expand them, and a restrictive interpretation of those that limit or restrict them." (URQUIAGA, Ximena Medellín. *Principio* pro persona *en la metodología para la enseñanza de la reforma constitucional en materia de derechos humanos.* Coedición de la Suprema Corte de Justicia de la Nación (SCJN), la Oficina en México del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (OACNUDH) y la Comisión de Derechos Humanos del Distrito Federal, México, DF, 2013, p. 17. Professor Zlata Drnas considers the *pro persona* principle as the apex of the complex *corpus iuris* towards which all human rights norms converge, prioritizing the human being over other international issues (CLÉMENT, Zlata Drnas. *La complejidad del principio pro homine.* Buenos Aires, marzo 25 de 2015 - JA 2015-). I, issue no. 12, p. 98/111).

[36] SILVA GARCÍA, Fernando. Pro homine *principle vs. Constitutional restrictions: is it possible to constitutionalize authoritarianism? in* Constitutional State, Human Rights, Justice and University Life. Studies in honor of Jorge Carpizo. Constitutional State, volume IV, volume 2. Ciudad de México: UNAM, 2015, p. 701.

[37] MAZZUOLI, Valério de Oliveira. *Course on Human Rights.* São Paulo: Método, 2017, 4th ed., pp. 36-37.

[38] According to Henderson, this is a rule aimed at "privileging, preferring, selecting, favoring, protecting, and therefore adopting the application of the norm that best protects the fundamental rights of the human being" (HENDERSON, Humberto. *Los tratado internacionales de derechos humanos en el orden interno: la importancia del principio* pro homine. In Revista del Instituto Interamericano de Derechos Humanos, vol. 39, Enero-Junio 2004, San José, CR, p. 87). With this meaning, the precept is foreseen in international human rights treaties. Cf. Article 29 of the American Convention on Human Rights; Article 5 of the International Covenant on Civil and Political Rights; Article 23 of the Convention on the Elimination of All Forms of Discrimination against Women; Article 41 of the Convention on the Rights of the Child; Article 1. 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among other instruments.

[39] RAMIREZ, Sergio Garcia. *The internal judicial control of conventionality,* Revista IUS – Revista Científica of the Institute of Juridical Sciences of Puebla, n. 28, Jul.-Dec. 2011, p. 139.

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ISSN: 2675-9128. São Paulo-SP.
Year VII, Vol. 1, 2026 | Received: June 4, 2026 | Accepted: June 7, 2026 | Published: June 10, 2026

This assumes particular relevance. The combination of the American Convention with the Convention of Belém do Pará requires that judicial activity be conducted in a manner that ensures the broadest possible protection for women in situations of violence, especially when given specific circumstances that reveal a risk to their life or physical integrity, psychological, moral, sexual, or financial.
The *pro persona* principle is certainly a decision-making parameter applicable to the assessment. of the emergency protective measures. In exercising control over conventionality, the magistrate Brazilians must interpret the Maria da Penha Law in harmony with other legal norms, international human rights standards, and the jurisprudence of the Inter-American Court, favoring, among the legally possible interpretations, the one that ensures greater

Effective protection of the victim.

This guidance has important practical implications. The existence of doubt Reasonable considerations regarding the persistence of the risk situation do not authorize a restrictive interpretation of protection mechanisms provided for in the Maria da Penha Law. On the contrary, the *pro persona* principle
It recommends that the judicial solution preserve, whenever legally possible, the The integrity of the victim, preventing overly restrictive interpretations from weakening its protection. of rights whose violation may have irreversible consequences.
The *pro persona* interpretative *standard ,* in short, reinforces the understanding that the International human rights instruments should be interpreted in a way that favors their maximum effectiveness *(effet utile40),* avoiding solutions that reduce or empty their protection. Conventional guarantee provided to people in vulnerable situations. This is a criterion. mandatory hermeneutical process for the exercise of conventionality control by the magistrate
Brazilian, which directly influences judicial decision-making given the possibility of There may be more than one legally possible solution in this case.
In methodological terms, the application of the *pro persona* principle requires that the The magistrate should formulate a conclusive question before deciding: between the interpretations legally admissible for the specific case, which ensures greater protection of rights.

The human impact on women in situations of domestic and family violence? The answer to this question The principle *of pro persona* should guide the reasoning and conclusion of the judicial decision. the deciding factor whenever solutions that are equally compatible with the legal order coexist. internal, but distinct in terms of the degree of protection afforded to the victim.

1.1. PROHIBITION ON THE USE OF GENDER STEREOTYPES

Gender stereotypes correspond to socially imposed generalizations or expectations. constructed around the behavior, characteristics, or roles that men and women They should play a role in society and, when incorporated into judicial reasoning, they shift the The focus shifts from objective analysis of the risk situation to subjective judgments about the victim's conduct. giving rise to decisions that downplay the seriousness of the violence by transferring part of the responsibility for the facts ascertained to the woman, minimizing her condition of vulnerability41 . According to Flávia Piovesan, the Brazilian regulatory universe combines legal instruments. archaic and contemporary, revealing a picture of tension and value conflict. While The Brazilian Constitution and international treaties protecting women's rights. They enshrine equality between men and women and the duty to promote this equality, even There are Brazilian regulations currently in force that adopt an androcentric perspective. according to which the male perspective is central and man is the paradigm of humanity, the Examples of provisions in the Penal Code that consider rape a crime against the sexual dignity and not against the person42.

According to the teacher

Therefore, there is an urgent need to reform the Brazilian legal system, with the immediate Elimination of discriminatory norms that empty and restrict the scope of the provisions. Normative objectives achieved. The prevalence of the Brazilian Constitution and instruments. International laws protecting women's rights require the repeal of all regulations.

ISSN: 2675-9128. São Paulo-SP.
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ordinary with it incompatible, thus eliminating obstacles arising from a mentality discriminatory, hierarchical in relation to genders, which assigns a socially defined role to men and women43.

More than prohibiting explicit discrimination, the Inter-American Court of Human Rights affirms that the mere fact that The reproduction of gender stereotypes in judicial activity constitutes, in itself, a form of... discrimination incompatible with the American Convention and the Belém Convention Pará. This decision protocol directly addresses the duty of the Brazilian magistrate to to base their decisions on cultural biases or assumptions about women's expected behavior, thereby ruling out the possible application of internal rules that do not align with the human rights protection system.

The prohibition against the use of gender stereotypes is strongly justified. Interpretative in Advisory Opinion No. 24/17, in which the Inter-American Court stated that the principles of equality and non-discrimination constitute impediments to decisions state-based decisions based on preconceived notions about social roles assigned to people because of their gender or identity44. From this hermeneutical premise, jurisprudence The contentious court has developed the standard according to which judicial authorities cannot to base their decisions on generalizations, prejudices, or gender stereotypes, imposing The magistrate has a duty to assess each case based on the specific circumstances, by the victim.

[40] In Advisory Opinion OC-7/86, the Court stated as follows: "Human rights treaties must be interpreted and applied in a way that the protected guarantee is truly practical and effective *(effet utile)."*

[41] In the judgment of ADPF No. 1,107, the Supreme Court established the thesis that "it is unconstitutional to disqualify a woman who is a victim of violence during the investigation and trial of crimes against sexual dignity and all crimes of violence against women, in such a way that any mention, questioning or reasoning about the victim's past sexual life or way of life in hearings and judicial decisions is prohibited." Cf. Summary: "ARGUMENT OF NON-COMPLIANCE WITH FUNDAMENTAL PRECEPT. ALLEGED OMISSIVE AND COMMISSIVE CONDUCT OF THE PUBLIC POWER IN THE FIGHT AGAINST VIOLENCE AGAINST WOMEN. INVESTIGATION AND JUDGMENT PROCESSES OF CRIMES AGAINST SEXUAL DIGNITY. QUESTIONS REGARDING THE WAY OF LIFE AND THE PREVIOUS SEXUAL EXPERIENCE OF THE VICTIM. OFFENSE AGAINST THE PRINCIPLES OF EQUALITY

AND HUMAN DIGNITY. ARGUMENT DEEMED VALID. 1. It offends the principles of equality and human dignity to inquire into the victim's lifestyle and history of sexual experiences during investigations and trials of crimes against sexual dignity. 2. Notwithstanding the actions of the Powers of the Republic, based on the analysis of the arguments presented in this claim of non-compliance with a fundamental precept, it is necessary for this Supreme Court, in the exercise of its constitutional competence, to interpret the provisions challenged by the petitioner in accordance with the Constitution of the Republic, to give maximum effect to constitutionally established rights and to prevent the perpetuation of practices that imply the revictimization of sexually assaulted women. 3. Argument deemed admissible to i) provide a constitutional interpretation to the expression "elements unrelated to the facts under investigation" contained in art.

400-A of the Code of Criminal Procedure, to exclude the possibility of invoking, by the parties or their lawyers, elements relating to the victim's past sexual experience or lifestyle in the instruction and judgment hearing of crimes against sexual dignity and violence against women, under penalty of nullity of the act or the judgment, pursuant to articles 563 to 573 of the Code of Criminal Procedure; ii) the recognition of the nullity referred to in the previous item is prohibited in the event that the defense invokes the victim's lifestyle or questions her about her past sexual experience for this purpose, considering the impossibility of the accused benefiting from his own wrongdoing; iii) to give an interpretation in accordance with article... 59 of the Penal Code, to establish that it is forbidden for the magistrate, in determining the sentence in sexual crimes, to assess the victim's past sexual life or way of life and iv) to establish that it is the duty of the judging magistrate to act in order to prevent this unconstitutional practice, under penalty of civil, administrative and criminal liability". (STF, ADPF nº 1107, Full Court, Justice Cármen Lúcia, judgment of 05/23/24, DJe 08/26/24).

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ISSN: 2675-9128. São Paulo-SP.
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The Inter-American System recognizes that the reproduction of stereotypical conceptions regarding the social roles assigned to men and women compromises the impartiality of the court decision, weakens the protection of victims, and perpetuates structural patterns of discrimination. Incompatible with the American Convention on Human Rights and with the Convention of Belém do Pará.

The prohibition of gender stereotypes is not merely a requirement for neutrality—linguistic or political correctness. According to Rebecca Cook and Simone Cusack, the treatment assigned to women is based on generalizations about the roles they should play.

Performing roles without considering their individual circumstances constitutes a form of discrimination incompatible with human rights.45 Gender stereotypes. They reproduce structures of subordination and compromise material equality, which is why... Their elimination represents a legal duty of the States and, consequently, of the magistrates. Those responsible for administering justice.

The Inter-American Court addressed this issue in a paradigmatic way in the Case González and Others (Campo Algodonero) vs. Mexico, considering that the creation and employment of stereotypes constitute one of the causes and consequences of gender-based violence against women.46 In the judgment, the Court stated that comments made by employees in The notion that the victims would have a reprehensible life constitutes stereotypes forbidden by the Inter-American Protection System, insofar as prejudices related to Female behavior cannot justify state inaction nor serve as a basis for decisions that reduce the intensity of protection due to women subjected to violence based on gender.

This understanding was reaffirmed in the Barbosa de Souza and Others vs. Brazil case, in which the Court concluded that the use of gender stereotypes by state authorities undermines access to justice and violates the duty of effective judicial protection.47 The Court emphasized that decisions based on preconceived notions about women's behavior, expectations of their private lives, their credibility, or their way of reacting to violence. They reproduce historical discriminations that are incompatible with international commitments—assumed by the State. The prohibition of gender stereotypes also requires an understanding from the magistrate. Individualized consideration of each female victim's condition, as Kimberlé clearly explains. Crenshaw, certain forms of discrimination do not stem from a single factor of vulnerability but from the simultaneous interaction among various social markers, a phenomenon termed intersectionality 48. Thus, the experience lived by the woman subjected to Domestic violence cannot be reduced to abstract categories, imposing on the judge... to consider specifically the multiple vulnerabilities present in the case, especially about race, disability, age, socioeconomic status, or membership in groups historically discriminated against, which overlap.

[42] PIOVESAN, Flávia. *Themes of human rights.* São Paulo: Saraiva, 2017, 10th ed., pp. 437/438.

[43] PIOVESAN, Flávia. *Themes of human rights. Op. Cit.,* p. 438/439.

[44] Inter-American Court of Human Rights, Advisory Opinion OC-24/17, of November 24, 2017. *Gender identity, equality and non-gender identity. Discrimination against same-sex couples.* Series A no. 24, §§ 61-83; 115-120.

[45] COOK, Rebecca J.; CUSACK, Simone. *Gender Stereotyping: Transnational Legal Perspectives.* Philadelphia: University of Pennsylvania Press, 2010, p. 71.

[46] See González and Others (Cotton Field) v. Mexico case. Inter-American Court of Human Rights, Judgment of November 16, 2009, § 401.

[47] See Case of Barbosa de Souza and Others vs. Brazil. Inter-American Court of Human Rights, Judgment of September 7, 2021.

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ISSN: 2675-9128. São Paulo-SP.
Year VII, Vol. 1, 2026 | Received: June 4, 2026 | Accepted: June 7, 2026 | Published: June 10, 2026

The rejection of gender stereotypes is therefore not simply an ethical guideline or not a recommendation of judicial policy, but a prominent *decision-making standard that has repercussions. directly related to the* duty to provide grounds for judicial decisions.

The Brazilian magistrate, therefore, when assessing urgent protective measures, must ensure that their decision is based on objective legal criteria, compatible with substantive equality, the dignity of the human person, and conventional obligations of protection assumed by the Brazilian State, refraining from using cultural or moral assumptions. Social norms regarding expected female behavior serve as a basis for judicial protection. Aspects such as any prior reconciliation with the abuser, delays in communication of facts, continued cohabitation, economic dependence, existence of an affective bond, or other circumstances frequently present in relationships marked by domestic violence cannot, in themselves, justify the reduction of judicial protection, nor serve as a basis to undermine the victim's credibility.

CONCLUSIONS

The line of reasoning developed in this study leads to the conclusion that the Statute of the Brazilian Inter-American Judiciary not only consolidates the control of conventionality as a functional duty of the Brazilian magistrate, but it also redefines the own methodology for exercising jurisdiction in matters of human rights. More than reaffirming the obligation to observe the American Convention on Human Rights, the Belém do Pará Convention, and the jurisprudence of the Inter-American Court of Human Rights, the Statute inaugurates a new decision-making rationality, in which jurisdictional processes are permanently guided by conventional parameters for the protection of human rights.

In the context of domestic and family violence against women, this transformation takes on special relevance. The assessment of emergency protective measures ceases to be merely The activity of enforcing the Maria da Penha Law becomes a true space of fulfillment of the international obligations assumed by the Brazilian State. In this context, the control of conventionality takes on a methodological function in the very construction of judicial decision, influencing the identification of legally relevant facts, the interpretation of applicable rules, evaluation of evidence, and justification of decisions. Based on the systematization of the jurisprudence of the Inter-American Court of Human Rights.

[48] CRENSHAW, Kimberlé. *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color.* Stanford Law Review, vol. 43, no. 6, p. 1241-1299, 1991.

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In the present study, five decision-making standards were identified to guide Brazilian judges in assessing urgent protective measures: the protection of an effective judicial process, enhanced due diligence, victim-centeredness, the pro persona principle, and the prohibition of gender stereotypes. Interpreted in an integrated way, these *standards* They cease to be mere hermeneutical references and assume the status of truths. Methodological parameters for judicial reasoning, comprising a decision-making matrix of conventional law aimed at realizing the judicial protection of human rights for women experiencing domestic and family violence.

The main contribution of this work is to demonstrate that the role of the Inter-American Court of Human Rights in jurisprudence is not limited to offering interpretative criteria. Abstract, but it also provides sufficient elements for the construction of a methodology of conventional judicial decision. The proposed conventional decision matrix converts the *standards* developed by the Court, based on objective criteria for justification, thereby conferring greater rationality, coherence, predictability, and effectiveness on judicial activity49, allowing the national magistrate to exercise control over conventionality in a structured, methodologically oriented way.

On the other hand, the present proposal does not intend to exhaust conventional *standards* applicable to domestic and family violence against women, but it constitutes the starting point. for the construction of a true Brazilian Conventional Protocol of Foundation Judicial, designed to methodologically guide the actions of magistrates in the exercise of their duties. Conventionality control. This protocol should function as an instrument of rationalization of judicial activity, allowing for the conventional duties assumed that the Brazilian State systematically incorporates these principles into the decision-making process and if they reflect concretely in the reasoning behind judicial decisions. In this line of thought, the conventional protocols for justifying the decision judicial issues are natural consequences of the Brazilian Judiciary Statute itself. Inter-American Court. The Statute redefined the functional duties of the Brazilian magistrate before the Inter-American Court. The Inter-American System of Human Rights also requires the development of methodological instruments capable of converting the Court's decision-making *patterns.* Inter-American Court based on concrete criteria for judicial justification. Only in this way will it be possible to give practical effect to international obligations of prevention, protection, and investigation. The Brazilian State has committed to upholding and guaranteeing human rights, reducing the risk of international accountability and strengthening the legitimacy of national jurisdiction. Finally, the proposal developed and systematized in this study can perfectly to go beyond the specific scope of emergency protective measures and serve as a basis for the construction of conventional decision-making protocols in other areas of judicial activity, contributing to the development of a theory of judicial decision-making, always guided by dialogue between the Constitution, international human rights treaties and jurisprudence of the Inter-American Court.

[49] As Robert Alexy observes, “the uncertainty regarding the outcomes of discourse in the realm of fundamental rights leads to the need for authoritative decisions (...) practical reason can only be realized within a legal system that rationally links argumentation and decision.” ALEXY, Robert. *Theory of Fundamental Rights.* Translated by Virgílio Afonso da Silva. 2nd ed., 4th printing. São Paulo: Malheiros, 2015, p. 574.

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ISSN: 2675-9128. São Paulo-SP.
Year VII, Vol. 1, 2026 | Received: June 4, 2026 | Accepted: June 7, 2026 | Published: June 10, 2026

More than offering definitive answers, this work aims to inaugurate an agenda. research focused on improving the justification of judicial decisions in light of the System Inter-American Court of Human Rights, reaffirming the role of the Brazilian magistrate as agent for implementing the international obligations assumed by the State and as protagonist in the judicial protection of human rights.

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ISSN: 2675-9128. São Paulo-SP.
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