

PROTOCOL FOR ADJUDICATING FROM A GENDER PERSPECTIVE

NATIONAL COUNCIL OF JUSTICE

Working Group established
by CNJ Ordinance No. 27,
of February 2, 2021.



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**PROTOCOL FOR ADJUDICATING
FROM A GENDER PERSPECTIVE
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(CNJ Ordinance No. 27, February 2, 2021)

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Preface to the English Edition

Building a genuinely egalitarian justice system requires more than normative frameworks and landmark decisions: it also demands practical tools to guide judges in the practical application of the right to equality and non-discrimination. With this in mind, the National Council of Justice (CNJ) drafted, in 2021, the Protocol for Adjudicating from a Gender Perspective – a pioneering Protocol that provides theoretical foundations and a step-by-step methodological guide for judicial decisions that take into account the structural inequalities affecting women, in all their diversity and across multiple intersections of race, class, ethnicity, sexual orientation, gender identity, disability, and other conditions of vulnerability.

The availability of this publication in English and Spanish is the result of the Justice Plural Programme, a partnership between the CNJ and the United Nations Development Programme (UNDP). These translations reinforce the commitment of the Brazilian Judiciary to international dialogue and to disseminating good practices that foster a culture of human rights and gender equality. By engaging with the experiences of neighboring countries, decisions of International Human Rights Courts, and the United Nations 2030 Agenda for Sustainable Development – in particular SDG 5 (Gender Equality) and SDG 16 (Peace, Justice and Strong Institutions) – this instrument reaffirms the Judiciary's transformative role in challenging stereotypes and overcoming historical barriers that restrict women's full exercise of citizenship.

This guideline is the result of a collective, inter-institutional effort with the participation of representatives of all branches of the Judiciary. It acknowledges that the law can perpetuate inequalities, but also that it can serve as a powerful tool for social emancipation when interpreted through the lens of equity. By making it available in new languages, the CNJ and the Justice Plural Programme ensure that this debate reaches a broader audience, reinforcing the shared commitment to building more inclusive and accessible justice systems for all women.

May this work, now available in English and Spanish, inspire judges, legal practitioners, scholars, and policymakers worldwide to adopt a gender-sensitive approach in their decisions and practices. May it serve as a tool for transformation, ensuring that each adjudication represents a step toward the realization of the promises of equality and dignity set forth in Brazil's 1988 Federal Constitution and in international human rights treaties.

RENATA GIL DE ALCANTARA VIDEIRA
Councillor, National Council of Justice
President, Standing Committee on Policies for the Prevention of Violence,
Witnesses, and Vulnerable Victims
Brasília, September 2025

Foreword

This publication is the result of studies conducted by the Working Group established by CNJ Ordinance No. 27, of February 2, 2021, with the aim of supporting the implementation of national policies established by CNJ Resolutions No. 254 and 255 of September 4, 2018, concerning, respectively, the Judiciary's Response to Violence against Women and the Promotion of Women's Participation in the Judiciary.

With the participation of all branches of the Judiciary – state, federal, labor, military, and electoral – the work culminated in the final text of this Protocol for Adjudicating from a Gender Perspective, based on the *Protocolo para Juzgar con Perspectiva de Género* developed by the Mexican State following a ruling by the Inter-American Court of Human Rights.

Importantly, this Protocol serves as an additional tool for the advancement of gender equality, in line with Sustainable Development Goal – SDG 5 of the UN 2030 Agenda, to which the Federal Supreme Court and the National Council of Justice have committed themselves.

This protocol brings theoretical reflections on the issue of equality, along with guidelines to ensure that judicial proceedings across the different branches of the justice system uphold the right to equality and non-discrimination of all. It seeks to ensure that the exercise of judicial authority avoids reproducing stereotypes or perpetuating inequalities, instead constituting a space for breaking with cultures of discrimination and prejudice.

The delivery of this Protocol by the CNJ and ENFAM represents another step within the broader set of actions developed under the policies to combat violence against women and promote women's participation in the Judiciary.

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Foreword by the Working Group responsible for the drafting of this Protocol

The Working Group, established under Ordinance No. 27, of February 27, 2021, and further regulated by Ordinance No. 116, of April 12, 2021, both issued by the National Council of Justice, was formed with the mandate to draft the Protocol for Judging with a Gender Perspective.

For six months, the Working Group, formed by 21 representatives from various branches of the Judiciary and academia, met to prepare this document. We express our gratitude for the trust placed in us to undertake the drafting of this Protocol, fully aware of the weight of this responsibility in a country marked by gender inequality and its multiple intersections.

This Protocol is the result of the institutional maturation of the Judiciary, which now recognizes the influence that the historical, social, cultural, and political inequalities – to which women have been subjected throughout history – exert on the production and application of law. From this understanding arises the recognition of the need to build a legal culture that is emancipatory and affirming of the rights of all women and girls.

A gender perspective in legal interpretation has been adopted for a long time, particularly following the enactment of the Maria da Penha Law, alongside various initiatives to ensure its effective implementation. These include the National Council of Justice's working sessions and the National Forum of Judges on Domestic and Family Violence against Women (FONAVID), as well as national public dialogues aimed at consolidating efforts that could effectively give structure and operational capacity to Law No. 11,340/2006. Also noteworthy is the establishment of specialized coordination offices on violence against women within the courts of justice, aimed at improving the implementation and functionality of judicial units with this competence, which in turn has strengthened public dialogue to improve the services provided by the women's support and protection services network when such incidents occur.

In this regard, by issuing this document, the National Council of Justice advances toward recognizing that the influence of patriarchy, *machismo*, sexism, racism, and homophobia cuts across all areas of law – not only domestic violence – and shapes their interpretation and application, including in criminal, labor, tax, civil and social security law, among others.

By turning its gaze to neighboring Latin America countries – such as Mexico, Chile, Bolivia, Colombia and Uruguay – which have already issued gender perspective protocols, the Brazilian Judiciary also looks to the decisions of Regional and International Human Rights Courts, which underscore the importance and necessity of adopting official protocols for adjudicating from a gender perspective, ensuring that cases involving women's rights are addressed appropriately and with due sensitivity.

At the national level, the CNJ's work consistently strengthens the dialogue on the multiple intersectionalities that inform the gender perspective. Judicial decisions by the Federal Supreme Court, grounded in a strong commitment to the defense of human rights, have likewise advanced the agenda of recognizing the right of minorities to substantive equality, such as decisions on same-

sex unions, recognition of gender identify self-determination, granting house arrest to pregnant women and mothers, exemption of social security contributions on maternity pay, among others.

Concurrently, the Brazilian magistrates' associations – AMB, ANAMATRA, and AJUFE – each within their respective areas of representation, began debating the need for an associative discourse grounded in gender equality, and initiated training projects for magistrates on the subject. They also submitted formal requests to the National Council of Justice and the national schools for the training and improvement of magistrates (ENFAM and ENAMAT).

Importantly, the National Council of Justice's engagement with civil society has made clear the urgent need for the Brazilian judiciary to incorporate into its practices measures aimed at reducing the disproportionate impact of legal norms on certain groups.

According to data from UN Women, Brazil has expressed support for the “Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)”, with the aim of ensuring that cases of violence against women are treated with a differentiated approach.

As we can see, this Protocol proposal aligns with the constitutional principle of inalienable access to justice (Article 5, Item XXXV, of the Brazilian Federal Constitution) and establishes a procedural framework grounded in the discourses set forth in other internationally recognized protocols.

The primary objective of all these efforts is to overcome the obstacles that prevent us from perceiving equal dignity between women and men in all settings. Thus, this guideline is all the more essential in the judicial sphere, given the very breadth and significance of the concept of access to justice.

We remain confident that this is an important step toward making the promises of equality and dignity enshrined in the 1988 Federal Constitution a concrete reality for all Brazilian women who turn to the Judiciary.

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TABLE OF CONTENTS

PART I - CONCEPTS

1. Basic Concepts	17
a. Sex	17
b. Gender	17
c. Gender identity	19
d. Sexuality	20
2. Gender inequality – key issues	22
a. Structural inequalities, power relations, and intersectionality.....	22
b. Sexual division of labor	25
c. Gender stereotypes	28
d. Gender-based violence as a manifestation of inequality	31
3. Gender and the law	35
a. Neutrality and impartiality	35
b. Abstract interpretation and application of the law	37
c. Principle of equality	40

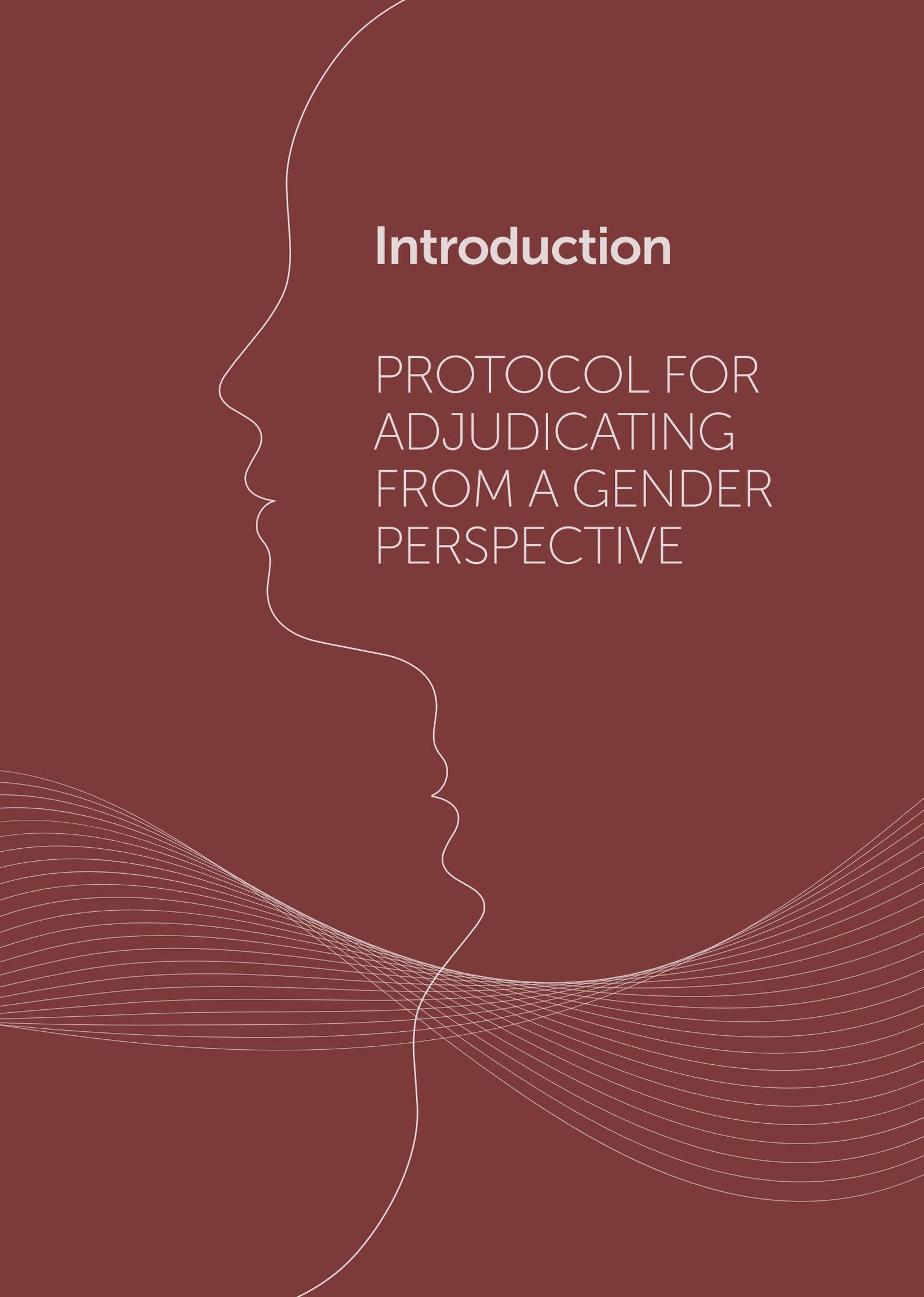
PART II – GUIDE FOR MAGISTRATES: A STEP-BY-STEP APPROACH

1. First contact with the case	45
2. Engagement with the parties	46
3. Special protection measures	47
4. Evidentiary proceedings	48
5. Evaluation of the evidence and identification of facts	49
6. Identification of the legal framework and precedents	51
7. Interpretation and application of the law	52
8. Guide for magistrates: from a step-by-step approach	55
9. Considerations on conventionality control, human rights, and gender perspective	59

PART III – GENDER-SPECIFIC ISSUES IN DIFFERENT BRANCHES OF THE JUDICIARY

1. Cross-cutting themes	66
a. Harassment	66
b. Custody hearings	66
c. Imprisonment	69
2. Federal Judiciary	72
a. Jurisdiction and Gender	72
b. Criminal Law	73
c. Social Security Law	76
d. Civil, Administrative, Tax, and Environmental Law	81
3. State Judiciary	84
a. Gender-based violence and procedural law issues	84
a.1. Emergency Protective Measures and the National Risk Assessment Form	85
a.2. Probative value of the victim’s testimony	86
a.3. Testimony of victims in situations of age-related vulnerability	86
a.4. Legal representation of the victim	88
a.5. Effects of conviction and the victim’s right to compensation.....	88
b. Criminal Law	89
b.1. Obstetric violence	90
b.2. Criminal responsibility in abortion and infanticide	91
b.3. Sexual autonomy and integrity	91
b.4. Stalking	92
b.5. Revenge pornography	93
b.6. Defenses in property crimes	94
c. Femicide	94
c.1. Constitutional jurisdiction of the Jury Court	95
c.2. Application of the Maria da Penha Law	95
c.3. Framing of femicide in jury questions	95
c.4. Legítima defesa da honra Honor-based self-defense	96

d. Family and Succession Law	96
d.1. Parental alienation	97
d.2. Child support obligations and property violence	97
d.3. Division of assets	98
e. Child and Youth Law	98
f. Administrative Law	98
g. Intersectionality	99
h. Gender-based violence prevention and response network	102
4. Labor Judiciary	103
a. Inequalities and asymmetries	104
a.1. Unequal access and career progression	105
a.2. Wage disparities	106
b. Discrimination	108
b.1. Pre-contractual stage – automated screening	109
b.2. Employment stage and contract termination	112
c. Workplace violence and harassment	113
c.1. Moral and sexual harassment in the workplace	113
d. Occupational Safety and Health	116
d.1. The “average man” standard	116
d.2. Horizontal segregation	116
d.3. Vertical segregation	117
d.4. Ergonomics	117
d.5. Pregnant and breastfeeding workers	118
5. Electoral Judiciary	119
a. Legitimacy of gender quotas	119
b. Distribution of campaign time	119
c. Distribution of electoral funding	120
6. Military Judiciary	120
a. Hierarchy, order, and discipline	120
b. Legislative reform in the Military Criminal Code	121



Introduction

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ADJUDICATING
FROM A GENDER
PERSPECTIVE

INTRODUCTION

Despite having a constitution committed to equality – both in terms of equal treatment and the positive duty to promote equality – Brazil has been and continues to be a country marked by profound social inequalities. These inequalities are reproduced daily through political, cultural, and institutional practices. In this context, as could hardly be otherwise, the law plays a crucial role: on the one hand, it may serve to perpetuate subordination; on the other, if analyzed, developed, interpreted, and applied with a commitment to substantive equality, it can become a genuine mechanism of social emancipation.

In this regard, the Protocol for Adjudicating from a Gender Perspective was developed to guide magistrates in the adjudication of concrete cases through a gender lens, thereby advancing the effective realization of equality and the implementation of equity policies.

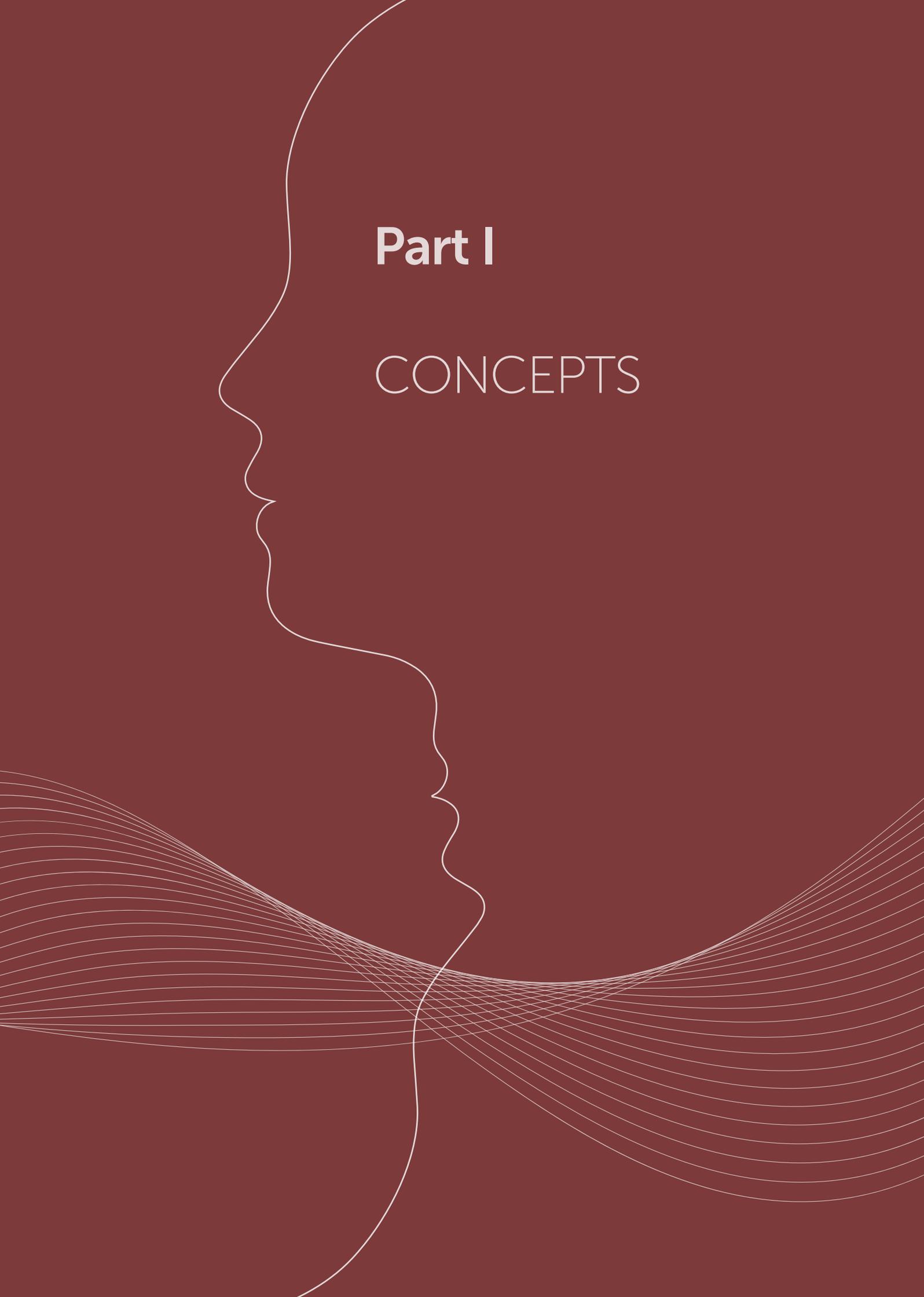
The Protocol respects the multilevel dialogue with international protection systems, insofar as it adopts the “Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide),” which Brazil formally joined in 2016, and observes the recommendation of the Inter-American Court of Human Rights to adopt official protocols for adjudicating from a gender perspective, ensuring that cases of violence against women are addressed with a differentiated approach.

Thus, in drafting the Protocol, the Working Group drew on studies and documents produced by the Brazilian academic community and Judiciary, as well as on the protocols issued by Mexico, Uruguay and Colombia, in addition to international instruments.

The importance of this protocol is underscored by the close relationship that law holds in both reproducing inequalities in Brazil and in its emancipatory potential when applied through judicial practices committed to equality. We expect that this instrument will have an impact on the exercise of jurisdiction, enabling a cultural shift that will help us to fulfill one of the fundamental objectives of the Republic: the construction of a freer, fairer, and more supportive society.

This document provides conceptual tools and a step-by-step guide for those committed to equality, through the methodology of “adjudicating from a gender perspective” – that is, adjudicating with attention to inequalities and with the aim of mitigating them, in pursuit of substantive equality.

For this purpose, the Protocol is structured as follows: the first part presents relevant concepts for adjudicating from a gender perspective. The second part offers a suggested set of steps to be followed by magistrates in the decision-making process, providing tools to support the exercise of jurisdiction with a gender perspective. Finally, the third part outlines the particularities of the Federal, State, Labor, Electoral, and Military branches of the Judiciary that generally relate to gender issues, including examples of recurring challenges and topics within each segment. Naturally, the questions presented here do not exhaust the range of situations that may arise in daily judicial practice, but they do highlight key points of attention to be observed in the handling of cases, demonstrating the cross-cutting impact of gender across a wide variety of conflicts and throughout the different branches of justice.



Part I

CONCEPTS

1. Basic concepts

The first step to adjudicating from a gender perspective is to understand what this concept means and how it differs from – and relates to – other important terms such as sex, gender, sexuality, and gender identity. These concepts will be explored in this section, and, at the end, the key ideas will be summarized in a synoptic table.

a. Sex

As a concept, sex refers to the biological characteristics used to classify individuals as males, females, or intersex. In our society, human beings are typically placed into these categories – usually at birth – based on specific anatomical features such as sexual and reproductive organs, hormones, and chromosomes. Today, the concept of sex is often regarded as an outdated analytical tool for understanding inequality. This is because it overlooks a range of non-biological, socially constructed characteristics that are attributed to individuals – often on the basis of their biological sex – which are more relevant for understanding how oppression operates in the real world.

We will further elaborate on this point below, but for now, consider that a baby born with XX chromosomes is generally classified as ‘female.’ From that point on, we begin to assign to this child a range of characteristics that are not biological. It is common, for instance, to give this child dolls – based on the ingrained idea that girls enjoy caregiving activities. Although many girls do like to play with dolls, this is not a natural biological trait, but rather a socially constructed one. Naturalization, a widespread phenomenon, refers precisely to the mistaken classification of something culturally constructed as a biological trait, which is then improperly used to justify certain forms of inequality.

The concept that best encompasses these social aspects is the concept of gender¹.

b. Gender

We use the term gender to refer the set of characteristics that are socially attributed to different sexes. While sex refers to biology, gender refers to culture. When we think of a man or a woman, we do not think only of their biological characteristics; we also envision a series of social constructions related to the roles socially assigned to the groups – tastes, expected life paths, and behavioral norms. Just as it is common to give dolls to girls, it is common to give cars or balls to boys. Neither group has an inherent tendency to like dolls or cars; rather, this idea has been culturally constructed – so deeply ingrained that it often appears natural and unchangeable. However, the attribution of different characteristics to different groups is not homogeneous. People within the same group also differ from one another, as they are affected by various social markers, such as race, age, and class. As a result, different roles and characteristics are attributed to different women². This topic will be further explored in [Part I, Section 2.a.](#)

¹ Mathieu, N.-C. (2009). Sex and gender. In H. Hirata, F. Laborie, H. Le Doaré, & D. Senotier (Eds.), *Critical dictionary of feminism* (p. 222). São Paulo: UNESP.

² Crenshaw, K. (2004). Intersectionality in race and gender discrimination. In: **Race and gender crossing**: panel. Brasília: UNIFEM, pp. 7–16. Retrieved from http://www.acaoeducativa.org.br/fdh/?p=1533&hc_location=ufi (Accessed May 1, 2021).

The idea that we associate historically determined cultural characteristics with certain groups – and that this then shapes how they are seen and treated – is what underlies philosopher Simone de Beauvoir’s famous phrase: “One is not born, but rather becomes, woman.” Being a woman does not mean being born female (that is, being a “female”), but rather being assigned a set of characteristics that go beyond biology³.

Every day, society assigns different roles to men and women; but the concept of gender allows us to go further, revealing how these differences often serve to reproduce social hierarchies. This is because, in many cases, men are assigned more valued characteristics and roles, while women are assigned less valued ones – something that has significant impacts on the way unequal social relations are structured⁴.

Just to mention a few points that will be discussed in more detail below, women are largely associated with domestic life, including housework or caregiving activities (whether paid or unpaid), which leads to their exclusion from the public sphere – or relegates them to precarious and undervalued forms of employment⁵.

Regarding work, women in Brazil still tend to dedicate significantly more time to domestic tasks and caregiving than men, which results in men occupying more highly valued and better-paid positions, while women often remain financially dependent on them. Even in paid employment, many women are pushed into roles analogous to domestic work. In politics, women remain underrepresented – partly because they are perceived as unfit to hold public office, or because they are simply not given the opportunity. As a result of being excluded from this sphere, women lose the chance to emphasize agendas necessary to address issues related to gender inequality. These are just few examples.

We can thus see that certain characteristics associated with gender are not natural or immutable – and they also produce unjust subordination. The problem lies not only in the differential treatment of groups, but in the fact that some groups hold power while others do not. Gender should therefore be understood as an analytical tool that seeks to identify and explain the set of social formulations, attributes, and characteristics assigned to certain individuals based on their sex⁶. As Maria Amélia de Almeida Teles and Monica de Melo write, “the term gender should be understood as an instrument, as a magnifying glass that facilitates the perception of social and economic inequalities between men and women, which result from the historical discrimination against women” (our translation)⁷.

Magistrates committed to gender equality should pay close attention to the cultural dimension involved in the construction of rights-bearing subjects – and to the potential negative effects of such constructions. This can be achieved by questioning the role that socially constructed characteristics may or may not play in a given interpretation, as well as the possibility that such characteristics might

³ Beauvoir, S. de. (2009). *The second sex* (2nd ed.). Rio de Janeiro: Nova Fronteira.

⁴ MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Cambridge: Harvard University Press.

⁵ Saffioti, H. (1987). *The power of the male* (pp. 9–10). São Paulo: Moderna.

⁶ Teles, M. A. de A. (2018). *A brief history of feminism in Brazil and other essays*. São Paulo: Alameda.

⁷ As Teles, M. A. de A., and de Melo, M. (2018) state: “The term gender should be understood as an instrument, as a magnifying glass that facilitates perceiving social and economic inequalities between men and women due to historical discrimination against women” (our translation). In *A brief history of feminism in Brazil and other essays*. São Paulo: Alameda.

be reinforced by a judicial decision. Since the assignment of attributes is not homogeneous among members of the same group, it is essential that magistrates consider how other social markers affect the lives of different women.

c. Gender identity

As stated above, gender refers to socially constructed characteristics assigned to individuals according to their biological sex. Although certain attributions are so deeply ingrained that they may seem natural and necessary, they are in fact socially constructed and therefore not fixed. Often, a person may identify with a set of characteristics that do not align with their assigned sex⁸. In other words, one may be born male but identify with characteristics traditionally associated with what is culturally attributed to the female sex – and vice versa – or may not identify with any gender at all.⁹

Individuals who do not conform to the gender assigned to them at birth have been – and continue to be – heavily discriminated against in Brazil and around the world, as conformity between sex and gender remains the dominant societal expectation. **It is therefore recommended that magistrates committed to adjudicating from a gender perspective ask themselves: Are these expectations guiding a certain interpretation and/or reinforcing such expectations in a way that harms the individual involved in the case?**

Although the factual scenario of discrimination in Brazil remains severe, in recent years the Federal Supreme Court has recognized certain rights for these minority groups through both en banc and individual decisions. Among others, in Direct Action of Unconstitutionality (ADI) No. 4,275, the majority held that individuals may change their names in the civil registry without undergoing gender-affirming surgery or obtaining a specific court ruling¹⁰. In a precautionary decision in Allegation of Violation of a Fundamental Precept (ADPF) No. 527, the Court guaranteed transgender women in detention the right to be transferred to women’s prisons¹¹. Put differently, although the Brazilian Constitution refers to equality between the sexes, current legal interpretation also protects equality between genders.

⁸ Butler, J. (2003). *Gender trouble: Feminism and the subversion of identity* (R. Aguiar, Trans.). Rio de Janeiro: Civilização Brasileira.

⁹ People whose gender identity aligns with their sex assigned at birth are called “cisgender”; those whose gender identity diverges are called transgender. Some individuals do not identify with any gender at all.

¹⁰ Brazil. Federal Supreme Court. (2018, March 1). Direct Action of Unconstitutionality No. 4,275. Rapporteur: Justice Edson Fachin. *Electronic Justice Gazette*, Brasília, No. 45, March 7, 2019. Available at: <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=7302788>. Accessed on: August 27, 2021. (Topic 761).

¹¹ Brazil. Federal Supreme Court. (2018, June 29). Precautionary Decision in Allegation of Violation of a Fundamental Precept (ADPF) No. 527/DF. Rapporteur: Justice Luís Roberto Barroso. *Electronic Justice Gazette*, Brasília, No. 153, August 1, 2018. Pending judgment.

To know more: The Inter-American Commission on Human Rights' report draws attention to the threats of regression in the recognition of LGBTQIA+ people's rights in Latin America. These challenges include, among others, the persistence of violence against LGBTQIA+ individuals; the continued criminalization of non-normative sexual orientations, gender identities, and expressions in several states; the adoption of laws and other state measures that contradict the principles of equality and non-discrimination; disinformation campaigns and initiatives that perpetuate stigmas and stereotypes against LGBTQIA+ people – such as those self-described as opposing “gender ideology”; and the rise of groups and movements that resist the recognition of LGBTQIA+ rights. In this regard, the Commission urges States to continue advancing the adoption of legislation and public policies to guarantee the human rights of LGBTQIA+ individuals¹².

d. Sexuality

Sexuality refers to the sexual and affective practices of human beings¹³.

Just as different genders are assigned different social values, the same applies to different sexual orientations. In our society, heterosexuality has been established as the “norm,” while sexual orientations such as homosexuality and bisexuality are considered “deviant.” Just as there are various socially constructed expectations about women’s behavior, there are also socially constructed expectations regarding whom the affective and sexual desires of different genders should be directed toward¹⁴. This is what is known as heteronormativity – that is, the set of norms that render heterosexuality compulsory. **Legal action committed to equality must therefore be guided by the following question: Is heteronormativity being used as an implicit assumption, or is it being reinforced in any way by a given decision?**

The LGBTQIA+ population suffers various forms of discrimination in Brazil; however, in recent years, this population has also secured a number of legal rights. A key milestone came in 2011, when the Federal Supreme Court recognized same-sex unions as a valid legal institute, in the judgment of Direct Action of Unconstitutionality (ADI) No. 4,277 and Allegation of Violation of a Fundamental Precept (ADPF) No. 132, ruling that prohibiting such unions was unconstitutional¹⁵.

¹² Inter-American Commission on Human Rights (IACHR). (2019, May 22). IACHR publishes report on advances and challenges in the recognition of the rights of lesbian, gay, bisexual, trans, and intersex people in the Americas. OAS Press Release, Washington, No. 126. Available at: <https://www.oas.org/pt/cidh/prensa/notas/2019/126.asp>. Accessed on: August 27, 2021.

¹³ Jesus, J. G. de. (2012). Guidelines on gender identity: Concepts and terms: Technical guide on transsexual, travesty and other transgender people, for opinion-makers (2nd ed.). Brasília, DF: [s.n.]. According to Jesus, J. G. de, “gender refers to ways of identifying and being identified as a man or a woman. Sexual orientation refers to affective-sexual attraction to someone of some gender. One dimension is independent from the other; there is no norm of sexual orientation depending on one’s gender, thus not every man and woman is ‘naturally’ heterosexual.”

¹⁴ Heilborn, M. L. (2006). Among the layers of Brazilian sexuality. *Revista Estudos Feministas*, 14(1), 43–59. Retrieved from http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104026X2006000100004&lng=en&nrm=iso. Accessed on: May 1, 2021.

¹⁵ Brazil. Federal Supreme Court. (2011, May 5). Allegation of Violation of a Fundamental Precept (ADPF) No. 132. Rapporteur: Justice Ayres Britto. *Electronic Justice Gazette*, Brasília, No. 198, Oct. 14, 2011; Brazil. Federal Supreme

Moreover, in 2019, the Court ruled on Action for Breach of Fundamental Omission (ADO) No. 26, in which LGBTphobia was equated with racism for the purposes of criminalization¹⁶.

To know more: In 2020, the Federal Supreme Court (STF) launched the thematic dossier “Diversity, STF Jurisprudence and Thematic Bibliography”¹⁷, which compiles theoretical considerations on the topics discussed here, as well as the Court’s case law on relevant matters, such as: recognition of same-sex unions; equal treatment of same-sex and heterosexual stable unions for inheritance purposes¹⁸; civil registry rights; discrimination under the Military Criminal Code¹⁹; the possibility of teaching about gender diversity in schools²⁰; the transfer of trans women and “travesties” to women’s prisons²¹; LGBTphobia; the right to information²²; the extension of maternity leave to non-gestational mothers in same-sex unions²³; and blood donation by homosexual individuals²⁴.

Court. (2011, May 5). Allegation of Violation of a Fundamental Precept (ADPF) No. 132. Rapporteur: Justice Ayres Britto. Electronic Justice Gazette, Brasília, No. 198, Oct. 14, 2011.

¹⁶ Brazil. Federal Supreme Court. (2019, June 13). Action for Breach of Fundamental Omission (ADO) No. 26. Rapporteur: Justice Celso de Mello. Retrieved from <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=754019240>. Accessed on: Aug. 27, 2021.

¹⁷ Brazil. Federal Supreme Court. (2020). Diversity: STF jurisprudence and thematic bibliography. Brasília: Federal Supreme Court. Retrieved from <http://www.stf.jus.br/arquivo/cms/publicacaoLegislacaoAnotada/anexo/diversidade.pdf>. Accessed on: Aug. 27, 2021.

¹⁸ Brazil. Federal Supreme Court. (2017, May 10). Extraordinary Appeal (RE) No. 646,721. Rapporteur: Justice Marco Aurélio. Electronic Justice Gazette, Brasília, Sept. 11, 2017.

¹⁹ Brazil. Federal Supreme Court. (2015, Oct. 28). Allegation of Violation of a Fundamental Precept (ADPF) No. 291. Rapporteur: Justice Luís Roberto Barroso. Electronic Justice Gazette, Brasília, May 11, 2016.

²⁰ Brazil. Federal Supreme Court. (2019, Dec. 12). Allegation of Violation of a Fundamental Precept (ADPF) No. 600. Rapporteur: Justice Luís Roberto Barroso. Electronic Justice Gazette, Brasília, Dec. 17, 2019; Brazil. Federal Supreme Court. (2019, Apr. 27). Allegation of Violation of a Fundamental Precept (ADPF) No. 457. Rapporteur: Justice Alexandre de Moraes. Electronic Justice Gazette, Brasília, June 3, 2019; Brazil. Federal Supreme Court. (2020, May 29). Allegation of Violation of a Fundamental Precept (ADPF) No. 467. Rapporteur: Justice Gilmar Mendes. Electronic Justice Gazette, Brasília, July 7, 2019.

²¹ Brazil. Federal Supreme Court. (2018, Feb. 14). Habeas Corpus No. 152,491. Rapporteur: Justice Luís Roberto Barroso. Electronic Justice Gazette, Brasília, Feb. 20, 2018.

²² Brazil. Federal Supreme Court. (2019, Sept. 8). Precautionary Measure in Suspension of Injunction No. 1,248. Rapporteur: Justice Dias Toffoli. Electronic Justice Gazette, Brasília, Sept. 11, 2019; Brazil. Federal Supreme Court. (2019, Sept. 8). Precautionary Measure in Complaint No. 36,742. Rapporteur: Justice Gilmar Mendes. Electronic Justice Gazette, Brasília, Sept. 12, 2019.

²³ Brazil. Federal Supreme Court. (2019, Nov. 7). General Repercussion in Extraordinary Appeal (RE) No. 1,211,446/RG. Rapporteur: Justice Luiz Fux. Electronic Justice Gazette, Brasília, Nov. 19, 2019. Topic 1,072. Merits pending.

²⁴ Brazil. Federal Supreme Court. (2020, May 8). Direct Action of Unconstitutionality (ADI) No. 5,543/DF. Rapporteur: Justice Edson Fachin. Retrieved from <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=753608126>. Accessed on: Aug. 27, 2021.

Synoptic Table

Sex	Refers to the biological characteristics (such as sexual and reproductive organs, hormones, and chromosomes) used to categorize individuals as male or female.
Gender	Refers to socially constructed characteristics – often carrying subordinating and unequal value – artificially assigned to different sexes, depending on the various social positions occupied by members of the same group.
Gender identity	Refers to a person’s internal identification with characteristics socially attributed to a given gender, even when not aligned with the individual’s biological sex. People whose sex and gender align are referred to as cisgender; those whose sex and gender do not align are referred to as transgender; and some individuals do not identify with any gender.
Sexuality	Refers to a person’s affective and sexual attraction. People who are attracted to the same gender are homosexual; those attracted to the opposite gender are heterosexual; and those attracted to both genders are bisexual.

2. Gender inequality – key issues

a. Structural inequalities, power relations, and intersectionality

Men and women are assigned different characteristics, each carrying distinct meanings and value judgments. The lower value attributed to what is culturally associated with the “feminine” – such as the private sphere, passivity, caregiving or undervalued labor, and emotion over reason – in contrast to the “masculine” – such as the public sphere, assertiveness, aggressiveness, paid labor, rationality, and neutrality – is the result of power relations between genders and tends to reinforce them. This means that, in the world we live in, inequalities are not merely the outcome of differential treatment between individuals or groups, but rather the consequence of structural hierarchies²⁵.

This power asymmetry manifests in multiple ways. It materializes, for instance, in interpersonal relationships – domestic violence is one expression of this asymmetry, as is sexual violence. However, behind and beyond unequal interpersonal dynamics lies a hierarchical social structure, which shapes, among other things, interpersonal relations, institutional frameworks, and the law²⁶.

²⁵ MacKinnon, C. A. (2011). Substantive equality: A perspective. *Minnesota Law Review*, 96, 1–27. (Original in English).

²⁶ MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Cambridge: Harvard University Press.

This structure was (and in many contexts still is) referred to as “patriarchy,” or male domination, and describes a system that, in various ways, keeps women subordinated to men²⁷. Although the concept of patriarchy has been instrumental in gender analysis and in driving social transformations, the notion itself has evolved. This is due to the fact that gender-based oppression is not monolithic. Today, we know that gender inequalities operate in different ways depending on other social markers – such as race, class, education, place of origin, ethnicity, disability, age, gender identity, and sexuality. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has incorporated an intersectional perspective, and provides specific recommendations for, among others, older women, women with disabilities, and migrant women²⁸.

The proposition that experiences of gender-based oppression vary depending on other forms of oppression has long been addressed in Brazil and, in the 1990s, was conceptualized in academia as intersectionality²⁹ – a term that aligns with the concept of multiple or aggravated discrimination as addressed by the Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance³⁰.

This concept seeks to capture the structural and dynamic consequences of the interaction between two or more axes of subordination affecting the same individual. In this context, it serves as a tool to unveil how racism, patriarchy, class oppression, and other interconnected systems of subordination generate different levels of inequality that structure the relative positions of women, racial groups, ethnicities, social classes, migratory status, and others.

²⁷ Delphy, C. (2009). Patriarchy (theories of). In H. Hirata, F. Laborie, H. Le Doaré, & D. Senotier (Eds.), *Critical dictionary of feminism* (p. [p. exata, se conhecida]). São Paulo: UNESP.

²⁸ United Nations. Committee on the Elimination of Discrimination against Women (CEDAW). (2013). *General Recommendation No. 29: Economic consequences of marriage, family relations and their dissolution* (Portuguese ed.). Lisbon: Portuguese Platform for Women’s Rights. Available at: <https://plataformamulheres.org.pt/projectos/cedaw4all/recomendacoes-gerais/>. Accessed on: June 27, 2021; United Nations. Committee on the Elimination of Discrimination against Women (CEDAW). (1999). *General Recommendation No. 24: Article 12 of the Convention (Women and Health)* (Portuguese ed.). Lisbon: Portuguese Platform for Women’s Rights. Available at: <https://plataformamulheres.org.pt/projectos/cedaw4all/recomendacoes-gerais/>. Accessed on: June 27, 2021; United Nations. Committee on the Elimination of Discrimination against Women (CEDAW). (2008). *General Recommendation No. 26: Women migrant workers* (Portuguese ed.). Lisbon: Portuguese Platform for Women’s Rights. Available at: <https://plataformamulheres.org.pt/projectos/cedaw4all/recomendacoes-gerais/>. Accessed on: June 27, 2021.

²⁹ Crenshaw, K. (2002). Document for the Expert Group Meeting on gender-related aspects of racial discrimination. *Revista Estudos Feministas*, 10(1). Available at: <https://www.scielo.br/pdf/ref/v10n1/11636.pdf>. Accessed on: May 15, 2021. (American jurist who coined the term intersectionality).

³⁰ Organization of American States (OAS). (2013). *Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance*. Article 1.3: “Multiple or aggravated discrimination is any preference, distinction, exclusion, or restriction based simultaneously on two or more of the criteria set forth in Article 1.1...”.

Attention: This means, for example, that Black women experience oppression structured by “racist perceptions of gender roles.”³¹ Brazilian author Sueli Carneiro points out that many of the myths historically associated to the condition of White women never have applied Black women. When we speak about the myth of female fragility, the myth of the queen of the home or the muse idolized by poets – which women are we talking about? Black women have never been treated as fragile; they were confused when feminists said that women should take to the streets and work, and they are not queens of anything, as they are portrayed as the anti-muse of Brazilian society, given that the aesthetic ideal of womanhood is centered on the White woman³². Philosopher and anthropologist Lélia González, in reflecting on the forms of domination and political ideologies that reinforce inequalities, referred to the myths surrounding Black Brazilian women, such as the hypersexualization (the “mulata” as an export product) and their association with domestic work (Black women are overwhelmingly represented in low-paid jobs). To be Black and a woman in Brazil, she stated “is to be the object of triple discrimination, as the stereotypes produced by racism and sexism place them at the highest level of oppression.”³³

To know more: The notion that gender inequalities vary according to other social markers has long been discussed in Brazil. One of the early forerunners of this perspective was the author and intellectual Lélia Gonzalez.³⁴

To know more: Heleieth Saffioti was a Brazilian Marxist sociologist, professor, feminist activist, and scholar of gender-based violence, as well as the author of several books and articles on gender and patriarchy.³⁵

³¹ Kilomba, G. (2019). *Plantation memories: Episodes of everyday racism* (J. Oliveira, Trans.; 1st ed.). Rio de Janeiro: Cobogó. pp. 98–99.

³² Carneiro, S. (2011). *Blackening feminism: The situation of Black women in Latin America from a gender perspective*. São Paulo: E-Disciplinas USP. Available at: https://edisciplinas.usp.br/pluginfile.php/375003/mod_resource/content/0/Carneiro_Feminismo%20negro.pdf. Accessed on: May 15, 2021. hooks, b. (2020). *Ain't I a woman?: Black women and feminism* (B. Libanio, Trans.; 7th ed.). Rio de Janeiro: Rosa dos Tempos. pp. 104–107.

³³ Gonzalez, L. (2020). *For an Afro-Latin American feminism: Essays, interventions, and dialogues* (F. Rios & M. Lima, Eds.; 1st ed.). Rio de Janeiro: Zahar. p. 58.

³⁴ To learn more about Lélia Gonzalez's innovative feminism see: Gonzalez, L. (1984). *Racism and sexism in Brazilian culture*. *Revista Ciências Sociais Hoje*, São Paulo, 223–244; Gonzalez, L. (1988). *The political-cultural category of “Amefricanity”*. *Tempo Brasileiro*, Rio de Janeiro, (92/93), 69–82.

³⁵ To learn more about the author see: Saffioti, H. (2015). *Gender, patriarchy, and violence* (2nd ed.). São Paulo: Expressão Popular; Fundação Perseu Abramo; Saffioti, H. (2013). *Women in class society* (3rd ed.). São Paulo: Expressão Popular.

Did you know? In November 2019, the Institute of Applied Economic Research (IPEA) reported that, among the more than 6 million Brazilians engaged in domestic work, 92% are women – mostly of them Black (63% of the total), with low levels of education and from low-income families³⁶. As IPEA pointed out, these figures reflect the legacy of slavery, the persistence of a traditionally patriarchal society, and Brazil's significant income inequality.

Since there is no single, homogeneous gender oppression, we must be cautious when using the category of “patriarchy” to reflect on systems of oppression. This is not to say that the term lacks value, but rather that the structure of patriarchal oppression should be understood as being constituted by a multitude of other forces. Stated differently, to pursue real equality – one that includes all women – it is more accurate to think in terms of interconnected systems of oppression that operate in an integrated way across the many expressions of inequality³⁷. In this Protocol, when we refer to patriarchy, it is in this integrated and intersectional sense that the term should be understood.

Over the years, scholars of gender relations – including numerous jurists – have identified the impacts that these interconnected systems of oppression have on society. Among other effects, patriarchy influences the attribution of negative traits to women and their crystallization in the form of stereotypes ([Part I, Section 2.c.](#)), the distribution of job opportunities and the social roles assigned to women ([Part I, Section 2.b.](#)), the many forms of violence they suffer ([Part I, Section 2.d.](#)), and, of course, the legal system itself ([Part I, Section 3.](#)). This section addresses each of these aspects.

Key points of the section:

- Inequality stems from structural social hierarchies that shape everything – from how we perceive group members and assign them roles, to interpersonal relationships, institutional practices, and the law.
- It is essential to recognize that there is no single and universal experience of gender inequality. Inequality is shaped by multiple, intersecting social markers – such as race, class and others – which means that different people experience oppression in varying degrees and forms.

b. Sexual division of labor

One of the ways in which interconnected structures of oppression operate is through the imposition of the so-called “sexual division of labor.” The concept – also referred as the division of labor based on sexist criteria – is a theoretical construction that emerged from feminist struggles

³⁶ Pinheiro, L., Lira, F., Rezende, M., & Fontoura, N. (2019). The challenges of the past in 21st-century domestic work: Reflections on the Brazilian case based on PNAD Continuous data (Discussion Paper No. 2,528). Rio de Janeiro: Institute for Applied Economic Research (IPEA). Available at: https://www.ipea.gov.br/portal/images/stories/PDFs/TDs/td_2528.pdf. Accessed on: May 17, 2021.

³⁷ Collins, P. H. (2019). Black feminist thought: Knowledge, consciousness, and the politics of empowerment (J. P. Dias, Trans.; 1st ed.). São Paulo: Boitempo Editorial.

against systems of gender oppression. It allows us to understand how certain types of labor are ideologically and artificially assigned to different genders.

The sexual division of labor is organized around two main pillars: (i) the historical, social, and cultural construction of gender, based on the essentialist notion that certain types of work that are “naturally” male and others “naturally” female; and (ii) the construction of a hierarchy that ascribes greater value to male labor over female labor – in other words, there is not only differentiation, but also hierarchization.

The sexual division of labor is both the product and the reproducer of inequality, reinforcing it through stereotypes, asymmetries, hierarchies, and both material and symbolic disparities. From an intersectional perspective, it is important to remember that socially assigned roles vary depending on the social markers that shape the experiences of diverse women – a variation reflected in both expectations and employment opportunities. Nevertheless, it is possible to identify certain patterns, even if they operate in different ways and remain in constant transformation.

One such pattern is the division between productive and reproductive labor. Historically, in capitalist society, men have been assigned to productive work – carried out in the public sphere, remunerated, social valued, and through which sufficient income is obtained to fulfill the socially constructed male role of provider. At the same time, the patriarchal notion that women are solely or primarily responsible for reproductive or care work (paid and unpaid) – that is, the labor of maintaining life and reproducing society – has been both assigned and naturalized. Care work has a dual dimension. In the private domestic sphere, it can be unpaid or paid – in the latter case, performed by professionals such as domestic workers, nannies, caregivers and housekeepers. Care work is also carried out beyond the private sphere by professionals in health, cleaning, social assistance, education, and food services. This reveals a marked divide between women of different races and classes in Brazil: White women from higher-income backgrounds often have the ability to outsource domestic labor to other women – many of whom work informally or receive low wages.

Regardless of the space in which it is performed – whether in the public or private sphere – and whether it is paid or unpaid, care work is predominantly carried out by women and is generally devalued and rendered invisible.

Despite profound social changes – such as the mass entry of groups of women traditionally excluded from the labor market and shifts in family structures – these patriarchal ideological foundations (namely, the principles of separation and hierarchy) remain deeply embedded in social structures, with severe consequences. These include:

- Romanticization of care work as something innate to women, associated with love and therefore assumed to be voluntary – even though it is, in fact, labor;
- Attribution of certain occupations as typically feminine (e.g., cook, waitress, kindergarten teacher, secretary, flight attendant) or masculine (e.g., chef, maître, university professor, director, aircraft pilot). This influences not only hiring and wages but also women workers’ perceptions of themselves and their roles;

- Unequal distribution of the burden of domestic labor between the sexes and among women from different social groups. As mentioned earlier, some women are able to delegate domestic work to other women, who generally lack the same option;
- Reinforcement of social inequalities across multiple dimensions, including gender, class, and race. Paid domestic and care work – shaped by these intersecting factors – is associated to lower pay, fewer labor rights (lack of formal employment, excessive working hours, unhealthy conditions), and high levels of informality. This contributes to what is known as the “feminization of poverty”;
- Naturalization of women’s primary or exclusive responsibility for care also leads to unequal opportunities and wages in the labor market in everyday life. Since women have less time available for networking and professional development, they often encounter barriers such as the “glass ceiling” or “sticky floor”³⁸.

To know more: Reflecting on how to include women in the labor market is undoubtedly a matter of equality and recognition of rights. However, inclusion can also be analyzed from an economic perspective, given the financial potential of women’s labor, their purchasing power, and the significant contribution their workforce makes to the economy³⁹. According to the World Bank’s report “Women, Business and the Law 2018,”⁴⁰ gender inequalities result in an average income loss of 15% in OECD economies. The study further estimates that “losses are significantly higher in developing countries” and that “legal gender disparities reduce women’s labor force participation and hinder GDP growth.” The International Labor Organization’s “World Employment and Social Outlook – Trends for Women 2017”⁴¹ report indicates that reducing gender inequalities in the labor market by 25% by 2025, through greater participation of women in the workforce, could inject US\$ 5.76 trillion into the global economy.

In view of the above, magistrates are encouraged to consider the factual existence of the sexual division of labor in their decisions, in order to pursue protective and emancipatory solutions.

Key points of the section:

- The sexual division of labor is a social construction that assigns different roles to different genders in relation to work.

³⁸ The “glass ceiling” metaphor refers to the invisible barriers that prevent women from ascending to higher hierarchical levels, while the “sticky floor” refers to the overrepresentation of women in more precarious jobs, characterized by lower wages and limited prospects for mobility.

³⁹ Gonzaga, V. L. C. (2020). Business and human rights: Guiding principles and the 2030 Agenda for sustainable development. In A. C. T. Moreira, C. B. A. Bertazoli, & D. A. Pamplona (Eds.), Economic activity and human rights. Naviraí: Ipuvaíva.

⁴⁰ World Bank. (2018). Women, business and the law 2018: Key findings. Washington, DC: World Bank. Retrieved July 27, 2021, from <https://openknowledge.worldbank.org/bitstream/handle/10986/29498/211252ovPT.pdf?sequence=11&isAllowed=y>.

⁴¹ International Labour Organization (ILO). (2017, June 14). World employment and social outlook: Trends for women 2017. Brasília: ILO News. Retrieved July 27, 2021, from https://www.ilo.org/brasilia/noticias/WCMS_558360/lang--pt/index.htm.

- A classic example of this division is the notion that women are naturally more suited to care work. This idea produces concrete effects, as Brazilian women are over-represented in this type of work – whether paid or unpaid – resulting in disproportionate impacts on their time availability and income.

c. Gender stereotypes

As explained above, the concept of gender refers to a set of socially constructed ideas assigned to certain groups. These ideas are crystallized in what is conventionally called “gender stereotypes.” Stereotypes reflect generalized views or preconceived notions about the attributes or characteristics that members of a particular group possess – or about the roles they play or are expected to play – solely based on their membership in that group, regardless of their individual characteristics⁴². The notion of gender stereotypes is particularly important, as when they influence – either consciously or unconsciously – judicial activity, they can reproduce multiple forms of violence and discrimination⁴³.

Stereotypes are part of our everyday lives. Imagine, for example, someone taking care of a child. Most people – at first glance and even involuntarily – would picture a woman, given the naturalized expectation, as discussed earlier, that women are the ones who take on caregiving roles. While it is possible to stereotype any group, this practice tends to cause greater harm to subordinated groups, as they are often associated with negatively valued characteristics that perpetuate their subordinate status. Not all men are rational, but that is a common stereotype. However, it causes little or no harm to men. On the other hand, the stereotype of irrationality attributed to women is deeply harmful. This is because some stereotypes both stem from and reinforce social hierarchies.

Attention: This does not mean that stereotypes cannot also harm men. This can occur, especially when male gender intersects with other social markers, such as race. Saying that Black men are strong is a stereotype that often reinforces the idea that they are naturally suited for physical rather than intellectual activities.

⁴² Cook, R. J., & Cusack, S. (2010). *Gender stereotyping: Transnational legal perspectives*. Philadelphia: University of Pennsylvania Press, p. 9. When a stereotype attributes a characteristic to a particular group, it operates in its descriptive dimension. When it assigns a role or sets an expectation, it operates in its normative dimension. Mexico. Supreme Court of Justice of the Nation. (2020). *Protocol for Adjudicating from a Gender Perspective*. Mexico City: Supreme Court of Justice of the Nation, pp. 44–47.

⁴³ On the psychological dimensions of stereotyping, see Moreira, A. (2020). *Treatise on anti-discrimination law [Tratado de direito antidiscriminatório]* (p. 367). São Paulo: Contracorrente.

To know more: UN Women launched the “HeForShe” campaign to promote gender equality and women’s empowerment. Throughout the campaign, it highlighted the need to question and challenge the notion of “He is assertive, she is bossy.” In doing so, it problematizes the gender stereotype whereby men in leadership positions are viewed as assertive and ambitious – as if these were an innate leadership traits – while women in the same roles are often perceived as authoritarian or emotionally unstable⁴⁴.

To know more: The National Council of Justice has created the 2030 Agenda Portal, which aims to consolidate data on the institutionalization of the 2030 Agenda for Sustainable Development within the Brazilian Judiciary. Brazil is a global pioneer in both institutionalization and in indexing its database – comprising 80 million legal cases – to each of the 17 Sustainable Development Goals (SDGs). Furthermore, integrating the 2030 Agenda into the Judiciary is enshrined in National Goal 9 of the Brazilian Judiciary⁴⁵.

When thinking about gender stereotypes, it is impossible to compile an exhaustive list of their content. There are many and – as previously noted – they vary according to social markers. Nevertheless, it is helpful to highlight some common patterns of manifestation. Among others, gender stereotypes can be classified as⁴⁶: (i) related to sex; (ii) related to sexuality; (iii) related to roles and behaviors; and (iv) compound stereotypes.

Sex-related stereotypes are those centered on biological differences (e.g., men are more rational than women). Sexuality-related stereotypes define, among other things, what forms of sexuality are considered acceptable (e.g., compulsory heterosexuality) and shape ideas about how different groups behave sexually (e.g., White women are modest, Black women are lustful; men are unable to control themselves). There are also behavior-related stereotypes (e.g., men should be providers and women, caregivers).

Finally, “compound” stereotypes are those that interact with other categorizations which assign attributes, characteristics, or roles to other marginalized groups. Regarding this last category, it is important to reflect on the intersection of social markers, as all stereotypes are, in some way, compounded.

⁴⁴ Gonzaga, V. L. C. (2016, April 19). What does the expression “tchau, querida” tell us about gender inequality? [O que a expressão ‘tchau, querida’ pode nos dizer sobre a desigualdade de gênero?] Carta Capital. <https://www.cartacapital.com.br>.

⁴⁵ More information: National Council of Justice (CNJ). (2021). 2030 Agenda in the Judiciary: Interinstitutional Committee [Agenda 2030 no Poder Judiciário: Comitê Interinstitucional]. Brasília, DF: CNJ. Retrieved August 27, 2021, from <https://www.cnj.jus.br/programas-e-acoas/agenda-2030/>.

⁴⁶ Cook, R. J., & Cusack, S. (2010). Gender stereotyping: Transnational legal perspectives. University of Pennsylvania Press.

Bringing this discussion into the field of law, and in order to make it more concrete, we can identify a number of ways in which gender stereotypes manifest themselves to the detriment of women within judicial activity.

Reflecting on the operation of stereotypes in law and judicial activity – examples and questions⁴⁷

Stereotypes can influence, for example, the assessment of the relevance of a particular fact to the judgment. This occurs when a judge:

- **Confers or minimizes relevance of certain evidence based on preconceived notions of gender.** Examples include situations where, in sexual violence cases, the judge casts doubt on the victim’s account (minimizing relevance) while overemphasizing her behavior before the incident or the clothes she was wearing (conferring excessive relevance), based on the stereotype that women must behave with modesty and decency.
- **Only considers evidence that confirms a stereotypical idea, ignoring evidence that contradicts it.** For instance, when greater weight is given to testimony from individuals in positions of power while disregarding the testimony of women and girls in domestic violence cases or in custody disputes involving allegations of parental alienation, based on the preconceived notion that women are hot-tempered, vindictive, fickle, and less rational than men⁴⁸. Similarly, stereotypes also operate in discrediting the accounts of female workers regarding poor working conditions or situations of harassment⁴⁹.
- **Uses preconceived ideas about gender as maxims of experience to take a fact for granted.** One example is denying the right to adoption by same-sex couples, based on the presumption that the absence of a mother or father could harm a child’s full development. Another is presuming neglect by a mother accused of drug trafficking as a justification for denying house arrest. To avoid this, the universalization of experience must give way to a proper evidentiary analysis, free of bias and attentive to the specifics of each case.

Due to the issues discussed above, it is essential that magistrates remain alert to the presence of stereotypes and adopt an active stance in dismantling them. This involves:

- **Becoming aware of the existence of stereotypes;**
- **Identifying them in specific cases;**
- **Reflecting on the potential harm they may cause; and**
- **Incorporating these considerations into their judicial practice.**

⁴⁷ All examples were taken from the Mexican Protocol. Mexico. Supreme Court of Justice of the Nation. (2020). Protocol for adjudicating under a gender perspective [Protocolo para juzgar con perspectiva de género]. Mexico City: Supreme Court of Justice of the Nation.

⁴⁸ Püschel, F., & Penteadó, T. (2021). The Medea grip in parental alienation: Feminist considerations on gender stereotypes in the Brazilian judicial practice [Manuscript in preparation].

⁴⁹ In Brazilian legal academia, this phenomenon has been critically conceptualized as “in dubio pro stereotipo.” Pandjarian, V., Pimentel, S., & Schritzmeyer, A. L. P. (1998). Estupro: Crime ou “cortesia”? Abordagem sociojurídica de gênero. Sérgio Antonio Fabris Editor.

Key points of the section:

- Stereotypes reflect generalized views or preconceptions about the attributes or roles of members of a given group.
- Many stereotypes are subordinating: they are both the result of and a mechanism for perpetuating structural inequalities.
- Stereotypes vary according to intersections between social markers –there are no universal female stereotypes.

d. Gender-based violence as a manifestation of inequality

Gender-based violence is an extremely complex issue, and unfortunately, this Protocol cannot address all the aspects involved in this important matter (should you wish to explore further, bibliographic references are provided). Nevertheless, a few key elements can be highlighted, which merit particular attention.

Gender-based violence: what it is and why it happens

Gender-based violence is a widespread phenomenon in Brazil. However, it is not always well understood: its distinctive nature lies not in the mere fact that the victim is a woman, but in the fact that it is committed due to gender inequalities (understood as shaped by the interaction of multiple social markers). The distinction is simple: when a woman is hit by a car in traffic, we are not necessarily dealing with gender-based violence – even though there is violence and the victim is a woman. Conversely, when a woman suffers domestic violence, she is subjected to it as a result of a structural power asymmetry that creates the material, cultural and ideological conditions for this type of violence – linked to the domination of one group over another – to occur⁵⁰.

By saying that the phenomenon is poorly understood, we mean that this dimension of inequality – constitutive of gender-based violence – is often disregarded in favor of an individualizing perspective. This individualizing view is evident, for instance, in the Brazilian Criminal Code, which classifies crimes such as rape under offenses against dignity and sexual freedom. Sexual violence is undoubtedly an affront to the freedom and dignity of human beings. However, this view is limited and obscures the structural roots of such violence, namely, the patriarchal foundations of society. A clear indication of this is that the vast majority of victims of sexual violence are girls and women, while the vast majority of perpetrators are men. Sexual violence – like all forms of gender-based violence – is a symptom of a structurally unequal society.

Numerous factors influence gender-based violence. Some key ones include:

⁵⁰ Chauí, M. (1985). Participating in the debate on women and violence [Participando do debate sobre mulher e violência]. In B. Franchetto, M. L. V. C. Cavalcanti, & M. L. Heilborn (Eds.), *Anthropological perspectives on women [Perspectivas antropológicas da mulher]* (Vol. 4). São Paulo: Zahar Editores.

- **Material factors**, such as women’s financial dependence, which is quite common in cases of domestic violence, and subordination in the work place, which often underlies sexual harassment⁵¹;
- **Cultural factors**, such as the persistence of “rape culture”, which authorizes and naturalizes sexual violence and blames the victim. In this regard, the popular saying “don’t interfere in a couple’s fight” greatly facilitates domestic violence, just as the silence surrounding child sexual abuse – by making the subject taboo – prevents appropriate responses and contributes to its perpetuation;
- **Ideological factors**, such as the eroticization of women, which is often behind sexual abuse, as well as misogyny and cis/heteronormativity, which encourage femicides and acts of LGBTphobia.
- **Power-related factors, such as domination and control**, which are the core of the so-called “corrective” rapes of lesbians and transgender individuals, revenge pornography, and forced sterilization⁵².

These factors manifest in an interconnected way in the production of gender-based violence. The common denominator is always structural inequality.⁵³

Attention: Keep in mind that even though not all types of violence are criminalized, this does not make them any less serious or less important.

Common types of violence

Although it is impossible to provide an exhaustive list of all forms of gender-based violence – since every act of discrimination constitutes violence to a greater or lesser extent – it is possible to identify certain patterns, even if the classifications proposed are somewhat artificial.

⁵¹ MacKinnon, C. (2019). *Sexual harassment of working women*. Yale University Press.

⁵² Chamber of Deputies News Agency [Agência Câmara de Notícias]. (2019, February 18). Bill proposes including “corrective rape” in the Criminal Code [Projeto inclui crime de estupro corretivo no Código Penal]. Câmara dos Deputados. <https://www.camara.leg.br/noticias/552107-projeto-inclui-crime-de-estupro-corretivo-no-codigo-penal/>.

⁵³ Ana Paula Araújo compiles a list of forms of abuse and analyzes the power dynamics underlying them. Araújo, A. P. (2020). *Abuse: Rape culture in Brazil [Abuso: a cultura do estupro no Brasil]*. Globo Livros. Marques, E. S., Moraes, C. L., Hasselmann, M. H., Deslandes, S. F., & Reichenheim, M. E. (2020). Violence against women, children and adolescents during the COVID-19 pandemic: Overview, motivations and coping strategies. *Cadernos de Saúde Pública*, 36(4). <https://doi.org/10.1590/0102-311X00074420>; <https://www.scielo.br/j/csp/a/SCYZFVKpRGpq6sxJsX6Sftx/?lang=pt&format=pdf>.

Type	Definition and Examples
Sexual Violence	Non-consensual sexual advances (explicitly sexual or not). Conducts include: rape (individual, gang, corrective, of adults or vulnerable persons), sexual harassment, workplace sexual harassment, forced prostitution, sexual exploitation, revenge porn, etc. Behaviors include: penetration, coercion into other sexual acts, touching, hugging, kissing, exposing sexual organs, ejaculation, making sexual comments, staring, sending unsolicited sexual photos and/or content via social media.
Physical Violence	Physical assaults, whether minor or severe. Conducts include: bodily injury, domestic violence, femicide, obstetric violence.
Psychological Violence	Intimidation, threats of physical violence against the victim, their relatives, or the perpetrator, gaslighting, isolation, unlawful imprisonment, attacks on self-esteem, verbal abuse, exposure on social media, degrading body searches. Law No. 14,188/2021 amended the Criminal Code to criminalize this type of violence in Article 147-B.
Property Violence	Destruction of property and private assets, concealment of assets, subtraction of profit-sharing in business partnerships, exclusion from inheritance, appropriation of income, obstruction of financial autonomy, contract fraud, failure to pay alimony.
Moral Violence	Undermining women’s standing in society or social groups, attempts to devalue women’s behavior in family law proceedings to gain custody of children, revenge porn.
Institutional Violence	Violence perpetrated by institutions, such as companies (ignoring or minimizing sexual harassment complaints), educational institutions (allowing sexist activities, such as hazing and/or misogynistic songs), and the judiciary (exposing or allowing the exposure of, and considering, a rape victim’s sexual history, labeling a woman as vindictive or resentful in custody or divorce disputes).
Political Violence	Any act, conduct, or omission aimed at preventing, hindering, or restricting women’s political rights, depriving them of the ability to actively participate in state decision-making. Any distinction, exclusion, or restriction on the recognition, enjoyment, or exercise of their rights and fundamental political freedoms on the basis of gender also constitutes political violence (Law No. 14,192/2021).

Where it takes place and who perpetrates it

Gender-based violence occurs in all settings – airplanes, subways, trains, buses, public agencies, and institutions. However, it is increasingly evident that the domestic environment plays an especially significant role⁵⁴. Likewise, while women may experience violence at the hands of

⁵⁴ Franco, L. (2019, February 26). Violence against women: New data show that ‘there is no safe place in Brazil’. BBC News Brasil. Retrieved August 27, 2021, from <https://www.bbc.com/portuguese/brasil-47365503>. See also Valdés, I. (2018, June 14). Largest report ever on sexual harassment in U.S. science reveals systematic abuse. El País. Retrieved August 27, 2021, from https://brasil.elpais.com/brasil/2018/06/13/ciencia/1528899877_715296.html, as well as data on the website Libório, B. (2019, March 8). Violence against women in Brazil in five charts. Época. Retrieved August 27, 2021, from <https://>

strangers, the perpetrators are most often individuals known to the victim⁵⁵. A key factor associated with the domestic environment is the creation of opportunities for abuse: most cases of sexual abuse against minors are not committed by men considered to be pedophiles, but rather by men who find the opportunity to sexually exploit a vulnerable person.

Another important issue is the existence of entrenched hierarchies, such as those between fathers and daughters or between husbands and wives. In our society, there is a widespread belief that the domestic environment is one in which people relate in an egalitarian and affectionate way and, therefore, the State should remain distant. This distancing, however, only serves to perpetuate power relations. There must be a balance between what is permissible and what is not, but this dimension of power asymmetry cannot be overlooked. It is also important to bear in mind that hierarchies exist in many spaces. Sexual harassment, for instance, typically – but not exclusively – occurs between individuals in higher-ranking positions and those in subordinate roles within companies.

Did you know? Violence against women and girls increased during the COVID-19 pandemic. Sexual abuse and domestic violence became more common in Brazil and around the world, largely because these violations take place inside the home⁵⁶.

To know more: Recent data from the Brazilian Forum for Public Security are particularly relevant: (i) Brazilian Yearbook of Public Security 2021⁵⁷; and (ii) the report “Visible and Invisible: The Victimization of Women in Brazil” – 3rd Edition, 2021⁵⁸.

epoca.globo.com/a-violencia-contra-mulher-no-brasil-em-cinco-graficos-23506457. For a similar analysis, see Ruic, G. (2018, June 26). These are the worst countries in the world for women. Exame. Retrieved August 27, 2021, from <https://exame.abril.com.br/mundo/estes-sao-os-piores-paises-do-mundo-para-mulheres/>.

⁵⁵ This is the case, for example, with sexual violence. Data collected by IPEA in 2016 show that in 70% of cases, the perpetrator is a close relative (such as a father, grandfather, stepfather, or husband), a boyfriend, friend, or acquaintance of the victim. IPEA. (2014). Technical note: Rape in Brazil – A radiography based on health data (Technical Note No. 11). In D. Cerqueira & D. S. C. Coelho (Eds.), *Rape in Brazil: A radiography based on health data*. Brasília: IPEA.

⁵⁶ Marques, E. S., Moraes, C. L. de, Hasselmann, M. H., Deslandes, S. F., & Reichenheim, M. E. (2020). Violence against women, children, and adolescents during the COVID-19 pandemic: Overview, motivations, and coping strategies. *Cadernos de Saúde Pública*, 36(4). <https://doi.org/10.1590/0102-311X00074420>.

⁵⁷ Brazilian Forum for Public Security [Fórum Brasileiro de Segurança Pública]. (2019). *Brazilian Yearbook of Public Security 2019* (Vol. 13). São Paulo: Fórum Brasileiro de Segurança Pública. Retrieved May 16, 2021, from https://forumseguranca.org.br/wp-content/uploads/2019/10/Anuario-2019-FINAL_21.10.19.pdf.

⁵⁸ Brazilian Forum for Public Security [Fórum Brasileiro de Segurança Pública]. (2021). *Visible and Invisible: The Victimization of Women in Brazil [Visível e invisível: a vitimização de mulheres no Brasil]* (3rd ed.). São Paulo: Datafolha. Retrieved May 16, 2021, from https://forumseguranca.org.br/publicacoes_posts/visivel-e-invisivel-a-vitimizacao-de-mulheres-no-brasil-2-edicao/.

Key points of the section:

- Gender-based violence is that which occurs due to structural gender inequalities.
- Gender-based violence is driven by material factors (such as financial dependence), cultural factors (such as rape culture), ideological factors (such as the eroticization of subordination) and factors related to the exercise of power and domination (such as “corrective” rapes).
- Gender-based violence occurs in all environments, but it is most common in the domestic sphere. Likewise, the perpetrators are, in most cases, people who live in the same household as the victim – such as relatives, boyfriends, and close acquaintances.
- Magistrates committed to adjudicating from a gender perspective should give careful consideration to the inequalities that operate in the real world to reach protective and emancipatory outcomes.

3. Gender and the law

From their first day at law school, young students – who will one day become lawyers, magistrates, prosecutors, among others – come into contact with ideas that they immediately associate with law and its functions. These ideas are the assumptions of liberal legal theory and are certainly familiar to everyone reading this document: objectivity, impartiality, neutrality, universality, rationality, equal treatment, and the boundaries between the State and the individual.

These concepts are the pillars of law and are fundamental to the proper functioning and legitimacy of the democratic rule of law as a whole. Jurists committed to judging with a gender perspective must, however, remain constantly aware that the existence of structural inequalities can, to a large extent, obstruct the realization of these goals.

This section addresses:

- Issues that may hinder equality when the law is applied in a decontextualized and abstract manner;
- Suggestions that, if considered, may help mitigate several issues that contribute to the perpetuation of inequalities.

a. Neutrality and impartiality

At the dawn of the liberal state, neutrality was closely associated with the independence of the Judiciary, within the framework of the separation of powers. Neutrality was characterized by the Judiciary’s detachment from the interests of the different political and party forces, and by the judge’s distance from the parties, who were expected to maintain a neutral, inert, and equidistant human stance in relation to them. The figure of a neutral judge was essential for the consolidation of fundamental rights.

As for impartiality, in its classical conception, it requires the absence of selfish or personal interest on the part of the judge as a guarantee of a fair decision, with emphasis on the grounds for a breach of impartiality as causes for recusal or challenge by the parties.

In line with the Democratic Rule of Law, the contemporary conception of impartiality adds a new perspective: the objective dimension of impartiality, which consists of conducting judicial activity in accordance with the principle of “substantive due process.” Thus, impartiality is no longer limited to the judge’s subjectivity, but encompasses the very pursuit of a fair proceeding from a procedural standpoint.

One of the attributes of impartiality is objectivity, understood as the quality of approaching decisions and truth claims without the influence of personal preference, self-interest, or emotion. Objectivity is therefore a criterion to be observed to prevent discriminatory acts.

As mentioned in the previous sections, it is important to emphasize that Brazilian society is marked by profound inequalities that impose systematic and structural disadvantages on certain social groups. It is also deeply influenced by patriarchy, which assigns to women ideas, social representations, prejudices, stereotypes, positions, and social roles.

The creation, interpretation, and application of the law is no exception to this influence, which permeates all of society. In this context, historically speaking, the law stems from an androcentric worldview. Based on the argument that universality would suffice to produce neutral norms, the law was forged from the perspective of a “universal and abstract legal subject,” whose standard is the “average man,” – that is, a White, heterosexual, adult, and economically privileged man.

This view, however, disregards gender, racial, and class differences that shape people’s daily lives – differences that should inform the very foundation on which the law is created, interpreted, and applied.

In other words, ignoring the economic, cultural, social, and gender differences between the parties in a legal proceeding reinforces a formalist stance and a limited understanding of the case, detached from social reality, ultimately favoring the exercise of dominant power over the pursuit of substantive justice.

In this context, patriarchy and racism influence judicial action. As previously noted,, magistrates are subject – often involuntarily and unconsciously – to reproducing the gender and racial stereotypes present in society.

Under these premises, the idea of legal neutrality is revealed to be a myth, as those who operate the law necessarily act under the influence of patriarchy and racism; alternatively, it may be seen as a form of indifference and insensitivity to the specific circumstances of the case.

Acting in a supposedly neutral manner, in this context, ultimately challenges the very command of impartiality. The application of legal norms that perpetuate stereotypes and prejudices – as well as the biased interpretation of supposedly neutral rules or those that generate disproportionate impacts

across different social segments – ends up reproducing discrimination and violence, in violation of the constitutional principles of equality and non-discrimination.

The belief in neutrality within adjudication informed by the universality of legal subjects is, in itself, enough to generate bias⁵⁹.

An impartial trial therefore presupposes an active effort of deconstruct and overcome bias, and a pursuit of decisions that consider historical differences and inequalities – an essential condition for eliminating all forms of discrimination against women.

Recognizing that stereotypes are embedded in culture, society, institutions, and the law itself, and seeking to identify them in order to avoid the influence of unconscious biases in the exercise of adjudication, is a way to improve objectivity and, consequently, impartiality in the decision-making process. Furthermore, a critical understanding that the judge occupies a particular social position that shapes their worldview –often very different from that of the parties – increases the likelihood of avoiding decisions that reinforce inequality and discrimination.

Confronting the multiple truths at stake in the procedural relationship, identifying stereotypes, and making an effort to dispel any prejudices stemming from unconscious bias contribute to perceiving a more complex reality and to constructing a legal rationality that aligns more closely with the ideal of justice.

Examples can be found in [Part I, Section 2.c.](#)

Did you know? The UN CEDAW Committee has emphasized that gender stereotypes and biases in the justice system have far-reaching consequences for women’s full enjoyment of their human rights. For this reason, the Committee recommended that States parties adopt measures – including awareness-raising and training programs for all judicial actors – to eliminate stereotypes. These programs should specifically address the “issue of the credibility and weight given to the voices, arguments, and testimonies of women as parties and witnesses” (Item 29 of General Recommendation No. 33 of the CEDAW Committee)⁶⁰.

b. Abstract interpretation and application of the law

While some problems stem from the contextualized application of the law, others arise from the very way in which law is conceived – that is, how legal categories, their underlying values, and fundamental principles operate. This means that the egalitarian application of law – for example, free of stereotypes – does not, by itself, have the potential to offer truly emancipatory legal solutions.

⁵⁹ Young, I. M. (2012). The ideal of impartiality and the civic public. *Revista Brasileira de Ciência Política*, (9), 191.

⁶⁰ United Nations. Committee on the Elimination of Discrimination against Women (CEDAW). (2013). General Recommendation No. 33: Women’s access to justice. Lisbon: Plataforma Portuguesa para os Direitos das Mulheres. Retrieved August 27, 2021, from <https://plataformamulheres.org.pt/projectos/cedaw4all/recomendacoes-gerais/>.

Many legal concepts have been constructed and are applied in an abstract manner, disregarding how subordinate groups actually experience reality⁶¹.

Women and other subordinate groups – such as traditional, “Quilombola”, and riverine peoples and communities; as well as Black people in general – have been (and continue to be) historically excluded from the political sphere. This exclusion has prevented their experiences from being taken into account in the conceptualization of legally relevant harm and in the formulation of legal remedies or public policies to address such harm.

To this day, for example in Brazil, hardcore pornography – that is, pornography that portrays women in situations of violence and eroticizes situations of subordination – is not addressed by law. It is not treated as a legally relevant issue, despite its harmful effects on how women are perceived and treated in society. Similarly, for many years, domestic work (predominantly carried out by women) received different legal treatment compared to other types of labor. In both examples, what they have in common is the fact that women are the most disadvantaged and underrepresented in spheres of power, which plays a significant role in whether and how such issues are addressed.

Did you know? Brazil ranks 134th (out of 193 nations) in terms of female representation in parliament. In 2018, 81 senators were elected, and only 12 are women. In the Chamber of Deputies, 513 members were elected, but only 77 were women⁶².

To know more: The report “Democracy and Representation in the 2018 Elections: Electoral Campaigns, Financing and Gender Diversity”⁶³ provides highly relevant information on the women’s participation in politics.

For further reflection: Significant barriers persist in the political emancipation process in Brazil, a country historically hindered by structural factors of gender discrimination. In fact, 89 years after women gained the right to vote, the number of Brazilian women who remain voiceless and excluded from decision-making, is alarming. The heads of government – responsible for shaping public policy – do very little to promote change in this scenario. The judiciary plays a key role in the pursuit of equality, but real equality also requires the active political participation of women.

⁶¹ MacKinnon, C. A. (1991). Reflections on sex equality under law. *The Yale Law Journal*, 100(5), 1281–1328.

⁶² Inter-Parliamentary Union (IPU). (2019). Monthly ranking of women in national parliaments. Geneva: IPU. Retrieved July 27, 2021, from <https://data.ipu.org/women-ranking?month=9&year=2019>.

⁶³ Barbieri, C. H. C., & Ramos, L. O. (Coords.). (2019). *Democracy and representation in the 2018 elections: electoral campaigns, financing and gender diversity. Final report (2018–2019)*. São Paulo: FGV Direito. Retrieved from <https://bibliotecadigital.fgv.br/dspace/bitstream/handle/10438/27646/RELAT%c3%93RIO%20FINAL%202018-2019.pdf?sequence=5&isAllowed=y>.

The cases above are relevant, but we need to think about how the exclusion of diverse perspectives throughout the judicial activity can perpetuate inequalities.

Many rules and principles are applied in an abstract manner, without considering the power relations that exist in society and may influence conflicts and seemingly neutral interpretations of the law. Furthermore, although some interpretations appear to be abstract, they are actually shaped by the personal experiences of judges – based, of course, on the social group to which they belong.

One such example is the so-called “recreational racism.” A possible interpretation in cases of racism or racial insult is that racist “jokes” are less problematic because they allegedly lack the intent *offend*⁶⁴. This interpretation is abstract and based on the experiences of people who do not suffer racism. Perhaps a White person does not consciously intend to cause harm – or perhaps they do, but take advantage of the difficulty in proving such intent. Nevertheless, does the absence of intent make racist “jokes” any less problematic?

An interpretation that takes into account the power relations embedded in society suggests that intent matters little when we consider the harm caused in such situations. This is because this kind of “humor” is not natural, but socially constructed by racial inequalities – and it serves to perpetuate them⁶⁵. This example illustrates the difference between a supposedly neutral application of the law – which is actually based on the experience of a certain group, even if claimed to be abstract – and an interpretation attentive to structural inequalities. It also shows that, in this case, the problem lies not in a stereotype-free application of the law, but in the very way the law is framed. For instance, how should we understand concepts such as humor or intent to cause harm? Both are important concepts for law, and our understanding of them may vary depending on the lens through which we examine them.

You can find gender-related examples in [Part I, Section 3.b.](#)

The answer to this problem – namely, the application of the law in a way that is detached from the lived experiences of subordinate groups – is quite simple: it requires a contextualized reflection on the law, attentive to how problematic issues manifest in real life. This is the core recommendation for those committed to adjudicating from a gender perspective.

For further reflection: All the considerations proposed in this Protocol are applicable to racial inequalities and many others. That is to say, when adjudicating a legal issue involving race, magistrate can apply the same analytical exercises proposed here, just as they would in cases involving gender.

⁶⁴ Gonzaga, V. L. C. (2014). The limits of freedom of expression and stand-up comedy [Master’s thesis, Pontifical Catholic University of São Paulo].

⁶⁵ Moreira, A. J. (2019). Recreational racism. São Paulo: Sueli Carneiro; Pólen.

c. Principle of equality

In the section above, we discussed how legal categories, concepts, and principles can serve either as allies or obstacles in the pursuit of equality, depending on how they are interpreted. While we presented examples, special attention should be given to one principle in particular, which is especially relevant to the scope of this Protocol: the principle of equality.

There are numerous conceptions of equality and its relationship with other legal principles. Equal treatment – treating equals equally and unequals unequally – is the most traditional view⁶⁶. However, over time, this conception has proven ineffective in addressing most of the inequalities found in the real world⁶⁷. As presented in greater detail in [Part I, Section 2.a.](#), when we examine the concrete reality of certain groups, we see that most existing inequalities are not the result of unequal treatment, but rather of subordination. This feminist critique raises doubts as to whether formal legal equality truly leads to emancipation of women, as this has traditionally meant assimilation into the male norm. It questions the totalizing concepts of equality and difference by recognizing that, in some areas, women will demand equality, while in others, they will demand recognition of their specificities. The problem, therefore, does not lie in the existence of differences, but in how they have been assimilated into the concept of inequality – through hierarchical structures that assign greater value to men, their characteristics, attributes, and roles⁶⁸.

Underemployment, unpaid labor, stereotyping, and gender-based violence are all phenomena that do not (only) result from laws that treat individuals differently in an irrational way. They stem from structural inequalities. In other words, what really matters is not merely that certain groups are treated differently, but the fact that they hold less power and therefore occupy a subordinate position. Just as with recreational racism, the conception of equality as mere difference in treatment claims to be neutral – but it is not. It reflects the reality of those who hold power and who are not confronted with issues related to subordination.

If the problem were unreasonable differential treatment between individuals, a principle of equality requiring equal treatment would suffice. However, if we understand the problem as subordination, that conception falls short; we need a principle aimed at dismantling hierarchies. This formulation of equality already exists and is called substantive equality, or anti-subordination.

The use of the principle of equality is often associated with major constitutional claims – generally, in concentrated control actions aimed at declaring rules unconstitutional. But its use is not limited to such declarations. **The principle of equality can also be applied in everyday rulings, serving as an analytical tool and interpretive guide for gender-sensitive adjudication**⁶⁹.

⁶⁶ Rios, R. R. (2008). *Anti-discrimination law: direct and indirect discrimination and affirmative actions* (pp. 23–24). Porto Alegre: Livraria do Advogado.

⁶⁷ MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Cambridge: Harvard University Press. Fredman, S. (2011). *Discrimination law* (2nd ed., p. 8). Oxford: Oxford University Press. Moreira, A. J. (2019). *Thinking like a Black person: an essay in legal hermeneutics* (1st ed.). São Paulo: Contracorrente.

⁶⁸ Facio, A. (2002). *Engendering our perspectives*. *Otras Miradas*, 2(2), 49–79.

⁶⁹ Penteadó, T. (2021). *The abortion jurisprudence in Brazil: An analysis of ADPF 54 from feminist equality-based perspectives*. *International Journal of Constitutional Law*, Oxford. [In press].

The principle of substantive equality can serve two complementary purposes in adjudication:

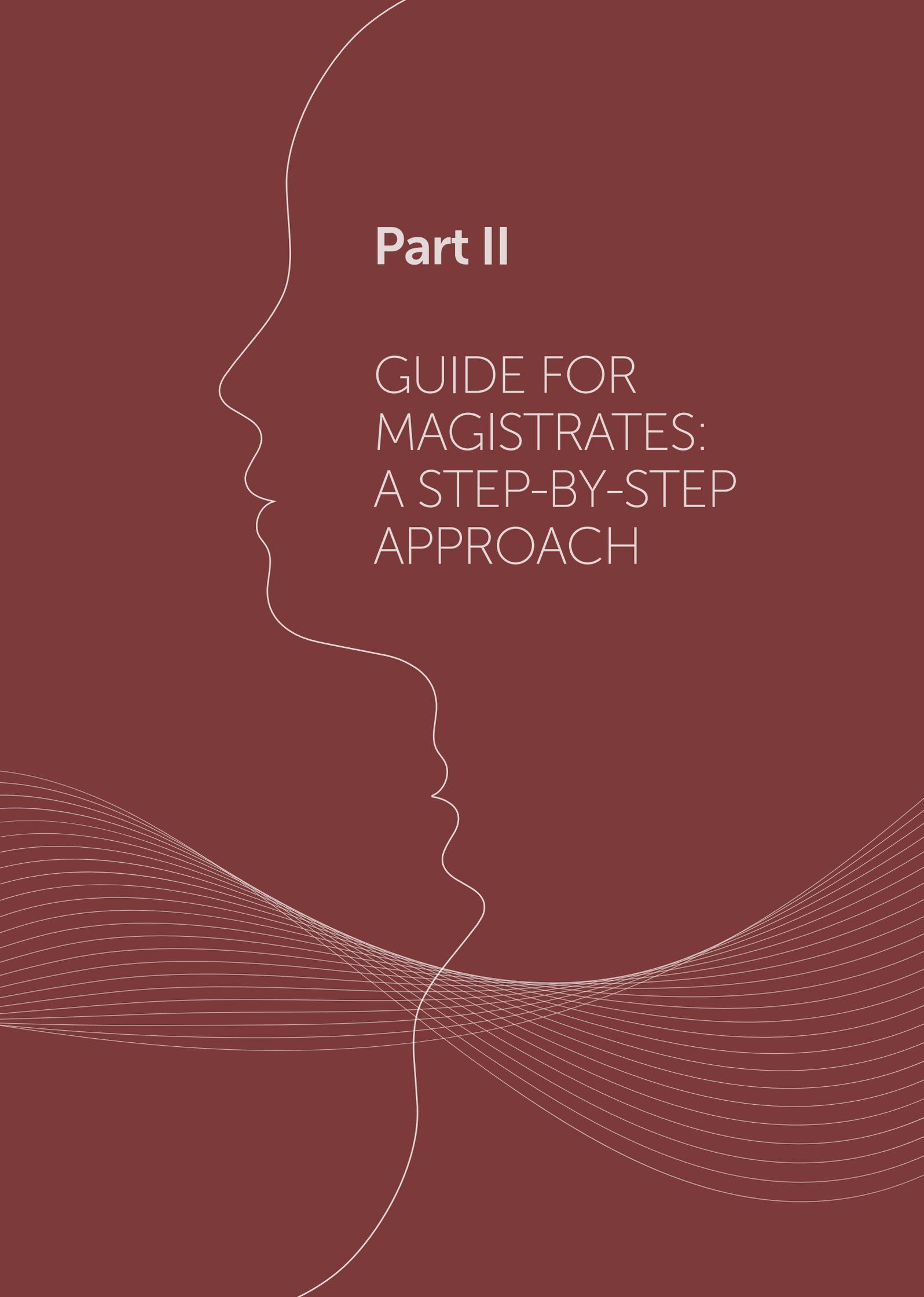
1. First, as a lens through which to view concrete problems. When faced with a legal issue, applying the principle of substantive equality means identifying and making visible the structural inequalities that may underlie a given dispute. **Magistrates concerned with promoting equality can always ask themselves: Even if there is no formal differential treatment under the law, is there any structural inequality at play that may be relevant to the concrete issue?**
2. Once structural inequality has been identified, the principle of substantive equality should guide the interpretation of the law. This means that, the resolution must be aim to challenge and reduce social hierarchies, thereby seeking an egalitarian outcome.

If gender, as previously discussed, is a cultural construction, then gender inequalities are a social fact. And jurisdictional action that aims to be effectively address such inequalities must be grounded in an understanding of how systems of oppression operate, with a view to deconstructing the prevailing normative standard (male/White/hetero/Christian).

The Brazilian judiciary, situated within a context of structural inequality, if guided by the belief in a neutral application of the law and lacking an understanding of the need to reconceptualize legal norms, will only serve to uphold dominant heteronormative, racist, sexist, and patriarchal views – thus acting in contradiction to constitutional and international precepts of substantive equality.

Key points of the section:

- Liberal law is based on the ideals of neutrality, impartiality, and objectivity. Structural inequalities hinder the realization of these ideals.
- Judicial neutrality can be compromised by the existence of biases: socially constructed ideas about certain groups may influence judicial activity, as well as the interpretation and application of the law – regardless of the judge’s awareness.
- Neutrality may also be compromised by the fact that, although interpretation claims to be neutral and abstract, it often reproduces the judges’ own experiences, to the detriment of the lived experiences of subordinate groups.
- One way to mitigate these problems is by applying the principle of substantive equality – a principle aimed at dismantling social hierarchies – as both an analytical tool and an interpretative guide.



Part II

GUIDE FOR MAGISTRATES: A STEP-BY-STEP APPROACH

Now that we have addressed the main concepts, key issues related to gender equality, and the problems that may arise from the application of the law, we can move on to a step-by-step guide on how to adjudicate with a gender perspective. Before doing so, however, a few brief remarks on what it means to adjudicate from a gender perspective are necessary.

Judicial activity is extremely complex and involves multiple stages: engaging with the parties; identifying the facts relevant to the dispute; determining the applicable rules and principles; and applying the law to the facts in order to provide a resolution.

All magistrates reading this Protocol are familiar with the various interpretative methods that guide judicial decision-making. Analogy, deduction, induction, consequentialist reasoning, and the application of legal principles are interpretative methods routinely employed by judges. As noted above, however, these methods are often abstract and may end up perpetuating inequalities. As a complement to these traditional approaches, there is adjudication from a gender perspective – *nothing more than an interpretative-dogmatic method*, as genuine and legitimate as any other⁷⁰.

This method is quite simple: interpret the law in a non-abstract manner, attentive to reality, aiming to identify and dismantle structural inequalities.

Attention: it is not uncommon for judges to be criticized for being partial when adjudicating from a gender perspective. However, as discussed above, in a world marked by structural inequalities, adjudicating in an abstract manner – that is, disregarding how these inequalities operate in concrete cases – not only perpetuates asymmetries, but also fails to contribute to the application of emancipatory law. In other words, partiality lies precisely in the disregard for structural inequalities, not in the effort to address them.

Using this method is an effective way of delivering judicial outcomes that are substantially more aligned with the principle of substantive equality enshrined in the Federal Constitution and in the international human rights treaties to which Brazil is a party.

In this section, we will explore how this method – or perspective – can be applied at each stage of conflict resolution. There is, of course, no ready-made or universal formula; however, we offer some suggestions to ensure that considerations of equality guide the decision-making process⁷¹.

⁷⁰ Bartlett, K. T. (2020). Feminist legal methods. In F. C. Severi, E. W. V. Castilho, & M. C. Matos (Eds.), *Weaving threads of feminist critiques of law in Brazil II: Women's human rights and violence* (pp. 240–342). Ribeirão Preto: FDRP-USP. Available at: <http://themis.org.br/wp-content/uploads/2020/12/Tecendo-Fios-das-Cr%C3%ADticas-Feministas-ao-Direito-no-Brasil-II-%E2%80%93-Volume-1.pdf>.

⁷¹ Mexico. Supreme Court of Justice of the Nation. (2020). Protocol for adjudicating under a gender perspective [Protocolo para juzgar con perspectiva de género]. Mexico City: Supreme Court of Justice of the Nation.

Attention: Applying this interpretative method does not mean that the resolution of the conflict will always favor the claims of subordinate groups. Rather, it ensures that the judicial process is conducted in a more transparent, legitimate, well-reasoned, and respectful manner for all parties involved.

First, we explain the suggestions and present examples that we believe are useful for their implementation. However, readers may go directly to Part II, Section 8, titled [“Guide for magistrates: from a step-by-step approach.”](#) where we offer a suggested roadmap for each stage of adjudication (approach to the case, access to justice, protective measures, evidentiary instruction, fact-finding and evaluation of evidence, and, finally, identification and application of the law).

1. First contact with the case

The first step in adjudicating from a gender perspective is the initial approach to the case. From the very first contact, it is necessary to identify the context in which the conflict is situated. This involves not only defining the branch of law to which the claim pertains – such as family, criminal, civil, or labor law – and the applicable legal frameworks, but also questioning whether gender asymmetries, always through an intersectional lens, are present in the dispute.

Some issues raise red flags almost automatically, as we are accustomed to viewing them as potentially problematic in terms of gender inequality. Examples include cases involving violence against women or labor lawsuits in which claims are based on matters such as maternity leave, sexual harassment, or social security rights.

On the other hand, some situations do not present gender issues in an immediately evident manner.

Examples:

- An inheritance proceeding may at first appear to be gender-neutral. However, when analyzed in context, judges may identify the omission of an advance in the reserved share to male heirs, to the detriment of female heirs. This is a gender issue.
- The definition of severance pay in the workplace may seem neutral. However, considering that women generally earn 30% less than men, a gender issue emerges.

Cases involving the oppression of subordinate groups – such as the demarcation of Indigenous and “Quilombola” lands – are generally viewed as racial or ethnic conflicts. Yet, a closer look reveals that, due to intersectionalities, women within these groups have specific demands. Human rights and violations arising from business operations and activities that significantly affect nearby communities are particularly serious for women and children. Other relevant areas include conflicts related to the environment, freedom of religion, and freedom of expression. These examples highlight how violations are often structured around the logic of gender asymmetries.

Example:

We can recall the case of a mother who lost custody of her daughter after allowing her to participate in a Candomblé⁷² initiation ritual. While the case clearly raises issues related to religious freedom, the custody loss also stemmed from socially constructed expectations of what it means to be a “good mother.” In a predominantly Christian society, a Candomblé-practicing mother may be viewed as “deviant” and, as a result, have her motherhood questioned⁷³.

Gender inequality can permeate a wide range of areas and legal controversies. For this reason, judges are encouraged to pay attention to the concrete circumstances of each case – even when it appears to be “gender neutral.” In this attentive and critical lens that enables the unveiling of the power asymmetries underlying the conflict.

At this initial stage, it is recommended that judges ask themselves: Could structural inequalities play a relevant role in this case? The answer can only be found through a careful examination of the context.

2. Engagement with the parties

Adjudication involves issues that go beyond the case file. One of them is how the parties involved – such as lawyers, prosecutors, witnesses, and other relevant actors – are treated. In their role, judges committed to adjudicating from a gender perspective should be attentive to the structural inequalities that affect individuals’ participation in judicial proceedings.

The key question is: are there specific circumstances that must be taken into account for the justice system to be an equal space for women?

These include, for example:

- **Is any of the individuals attending the hearing currently breastfeeding?**
- **Do any of them have young children?**
- **Does anyone involved present any kind of vulnerability that could make the session uncomfortable?**
- **Do the parties involved in the case understand what is being discussed?**
- **Are the questions directed at the parties sufficiently clear and accessible?**

⁷² Candomblé: Afro-Brazilian religion characterized by the worship of orixás (deities) and rituals involving dance, chants, and offerings.

⁷³ Penteadó, T. (2020, September 3). The “good” mother [A “boa” mãe]. Estadão. São Paulo.

Examples

- The special attention provided for pregnant, breastfeeding, or adopting lawyers under Law No. 13,363/16 should, where applicable, guide the treatment of other women involved in the proceedings. In this regard, magistrates must pay attention to the duration of the procedural acts and to ensuring priority when women in these conditions are involved. Long hearings must be conducted with due regard for the breaks and priority matters required by pregnant and breastfeeding women.
- Oral and written communication directed at the parties must be clear enough to ensure the recipients understand the instructions without confusion. Special attention should be given to in-person acts and interviews. Care must be taken to ensure that language is not a barrier to comprehension. Likewise, attention should be paid to the privacy of those involved, to the extent possible, as well as to the potential need for the party or witness to be referred to a support and protection network. To this end, it is essential to adopt a posture that fosters trust and empathy towards the person being assisted, while always clearly communicating the limits of the court's authority.

3. Special protection measures

Once the demand has been identified as involving gender issues, the next step is to reflect on the need for special protection measures. These considerations, more than ever, must be grounded in reality – whether in terms of the interpersonal relationships in the specific case (e.g., husband/wife, father/children, wife/ex-boyfriend), or in terms of the context experienced by the individuals (economic deprivation, history of violence, or the presence of opportunities for violent behavior to persist)⁷⁴.

Whether or not protection measures are granted must be based on this risk assessment and guided by the principle of precaution. Such measures must be adopted immediately in order to break the cycles of violence that have been established and even intensified by the (social and cultural) asymmetries between men and women.

Relevant questions at this point include:

- **Does the case require any immediate protection measures (e.g., removal of the aggressor, alimony, restraining orders, protective measures)?**
- **Are the parties involved at risk of death or of suffering any violation of their physical and/or psychological integrity?**

⁷⁴ Inter-Agency Gender Group of the United Nations System in Uruguay [Grupo Interagencial de Género del Sistema de Naciones Unidas en Uruguay]. (2020). Guide for the Judiciary on gender stereotypes and international standards on women's rights [Guía para el Poder Judicial sobre estereotipos de género y estándares internacionales sobre derechos de las mujeres] (p. 24). Imprenta Rojo Srl. <https://lac.unwomen.org/es/digiteca/publicaciones/2020/03/guia-poder-judicial-estereotipos-derechos-de-las-mujeres-uruguay>.

- Is there a power asymmetry between the parties involved?
- Are there contextual, socioeconomic or cultural factors (e.g., culture of non-intervention in marital disputes) that may contribute to the risk?
- Are there any out-of-court measures, referrals, or victim assistance actions that should be taken (e.g., access to emergency contraception or pregnancy termination)?
- What does protection mean in this specific case?
- Is the woman's autonomy being respected?

4. Evidentiary proceedings

In cases involving structural inequalities, the hearing is a critical moment, as – if not conducted from a gender perspective – it can become a setting for institutional gender-based violence (as discussed in [Part I, Section 2.d](#)). The subordinate position of a group can give rise to a sense of mistrust toward public authorities⁷⁵, who often occupy different social positions from the victims and, as a result, may find it more difficult to empathize with people whose life experiences differ from their own. In light of this, **a gender-sensitive judge is one who identifies dynamics that stem from and reproduce structural inequalities during the evidentiary phase and who actively works to prevent them.**

As in the case of hearings, **expert evidence** must be produced with careful attention to structural inequalities that may influence the case. It is essential that experts and other actors (such as social workers and police officers) are trained to recognize and attempt to neutralize these inequalities⁷⁶. This means that, in addition to technical expertise, gender must be used as a lens through which events are interpreted throughout all stages of the evidentiary process. In this context, the role of judges is to frame the questions in ways that address the motivations arising from intersectional processes of oppression, such as race and sexual orientation. Furthermore, **gender awareness requires judges to take an active stance when analyzing expert reports**. The sciences can be just as biased as the law, and this is often overlooked.

The key question at this point is: Is the adjudication process reproducing institutional gender-based violence? Is the evidentiary stage providing an environment conducive to the production of high-quality evidence?

⁷⁵ Severi, F. C. (2016). Justice from a gender perspective: Theoretical, normative, and methodological elements [Justiça em uma perspectiva de gênero: Elementos teóricos, normativos e metodológicos]. *Revista Digital de Direito Administrativo*, 3(3), 574–601. <https://www.revistas.usp.br/rdda>.

⁷⁶ CEDAW Committee [Comité CEDAW]. (2015). General Recommendation No. 33 on women's access to justice, paragraph 29 [Recomendación General n.º 33 sobre el acceso de las mujeres a la justicia, párrafo 29].

Other relevant questions include, for example:

- Are the questions reproducing gender stereotypes? (e.g., do they challenge the woman’s fitness as a mother⁷⁷ or her behavior based on socially assigned roles?⁷⁸).
- Are the questions discrediting the testimony in any way? (e.g., do they question the deponent’s feelings toward her ex-husband’s current wife or explore possible resentment between the parties?)
- Could any of the questions cause re-victimization? (e.g., questions that expose the victim’s intimate life or force her to relive traumatic experiences?).
- Does the environment hinder the deponent’s ability to speak freely and comfortably? (e.g., is she surrounded by men? Is the accused present in the room?⁷⁹).
- Is the deponent being interrupted or pressured in a way that prevents her from expressing herself fully?
- Are technical-scientific or social reports imbued with stereotypes – either by overemphasizing aspects that are only relevant due to structural inequalities, or by neglecting elements that can only be identified through attention to such inequalities?

5. Evaluation of the evidence and identification of facts

The first step in analyzing evidence produced during the evidentiary phase is to question whether any missing piece of evidence could realistically have been produced. This is the classic scenario in cases involving abuse that occurs in private spaces, away from public view. Rape, rape of a vulnerable person, and domestic violence are examples in which producing evidence is inherently difficult, since – as discussed in [Part I, Section 2.d.](#) – these acts typically take place in the domestic sphere. The same question applies to circumstances in which witnesses may face formal or informal barriers to testifying – for instance, individuals who witnessed sexual harassment in the workplace but are afraid of losing their jobs if they come forward. In a gender-sensitive adjudication, these considerations are essential, and the woman’s testimony must carry significant evidentiary weight. Gender prejudices – such as the assumption that women are vindictive and therefore lie about abuse – must be set aside.

⁷⁷ It is important to recognize that these expectations are culturally imposed on women and must be challenged in the name of procedural equality. For illustrative purposes, note that men are not questioned about the quality of their fatherhood.

⁷⁸ Unfortunately, in many proceedings investigating rape crimes, victims are subjected to disqualifying questions: “was she drinking or drunk?”, “why was she at the party until dawn?”, etc. These questions suggest that the victim is somehow responsible for what happened, aiming to justify – socially or within the proceedings – the occurrence of “rape.” In the end, a prior categorization is imposed on the victim, implying that such a crime would be “impossible” or “dubious in nature.” Pandjarian, V., Pimentel, S., & Schritzmeyer, A. L. P. (1998). Rape: Crime or “courtesy”? A socio-legal gender approach [Estupro: crime ou “cortesia”? Abordagem sociojurídica de gênero]. Porto Alegre: Sérgio Antonio Fabris Editor.

⁷⁹ Mendes, S. da R. (2020). Feminist criminal procedure [Processo penal feminista] (1st ed.). São Paulo: Atlas.

Another important issue is the level of consistency and coherence expected in testimonies. Abuses – such as those mentioned above – are traumatic events, which often prevent victims from having a linear perception of what happened⁸⁰.

Moreover, it is very common for reports to be filed long after the events took place. This happens due to fear, shame, or even the delay in realizing that the event actually occurred or that something that happened was problematic.

It may sound redundant, but the issue is so significant that it must serve as a lens for scrutiny throughout all stages of adjudication. At this point, attention to stereotypes in the assessment of evidence must be present, as well as self-reflection on how the judge's own experience may influence the evaluation of facts – whether by minimizing or failing to maximize their relevance. See more on gender stereotypes in [Part I, Section 2.c.](#)

Key questions at this point are:

- Could evidence that is generally considered relevant have been produced? (e.g., are there circumstances that may have prevented the production of testimonial evidence, such as fear on the part of eyewitnesses to testify?).
- In light of the answer to the previous question, is it necessary to give different weight to the victim's statement?
- Could the evidence be imbued with gender stereotypes? (e.g., could a witness's statement about a particular incident be based on false assumptions about how the victim should have behaved, or about how men typically behave?).
- Could my personal experiences be influencing my assessment of the facts? (e.g., I've never suffered domestic violence, so it seems unlikely to me that someone in a romantic relationship with a woman would commit any kind of abuse).
- Might I be assigning weight to a fact that only seems relevant because of preconceived notions that shape my worldview? (e.g., testimonies claiming a woman accused her ex-husband out of revenge after infidelity – an idea rooted in popular imagination).
- Likewise, might I be minimizing some relevant fact? (e.g., the harasser did not formally hold a higher position, but informally wielded power because he was close to the boss?).
- Could I be overlooking how structural inequalities impact a person's life? In other words, is it possible that gender dynamics render certain facts significant even if, from my own experience or perspective, they seem irrelevant? (e.g., a woman delayed reporting her ex-husband for domestic violence due to fear of retaliation or financial dependence).

⁸⁰ More information: Araújo, A. P. (2020). Abuse: The rape culture in Brazil [Abuso: a cultura do estupro no Brasil]. Rio de Janeiro: Globo Livros.

6. Identification of the legal framework and precedents

Regarding the application of the law, it is necessary for the judge to identify: (i) the relevant legal frameworks; and (ii) national or international precedents related to the case under analysis, as well as recommendations, advisory opinions, or general comments issued by regional and international human rights bodies.

This means that, the analysis of applicable legal frameworks involves not only domestic legislation, but also international human rights treaties and conventions incorporated into Brazil law. It is important to note that by incorporating an international human rights treaty into their domestic legal system, states are sovereignly expressing their commitment to the human rights protection system and assuming the duty to ensure its effective and efficient implementation. It is therefore essential for judges to carry out conventionality control of the domestic legal system⁸¹. See more on conventionality control in [Part II, Section 9](#) below.

Thus, at this stage of the reasoning process, the judge must:

- Identify the specific circumstances of the case that may influence the determination of the applicable legal framework;
- Be attentive to the national and international legal norms relevant to the case;
- Discern the factual elements that may require an intersectional approach and, based on them, appropriately define the applicable normative framework.

In addition to the applicable norms, the judge must, at this stage, take into account relevant national and international precedents related to the case, and conduct a conventionality control when appropriate. Accordingly, the judge's decision-making should be guided by the *ratio decidendi* established in rulings by national courts or by the Inter-American Court of Human Rights involving women, particularly in their intersection with other markers of difference – such as race, sexual orientation, gender identity, ethnicity, origin, and age – thus ensuring an intersectional approach.

Key questions at this stage include:

- Which national or international legal frameworks apply to the case? Which norm offers the strongest guarantee of the right to equality for the individuals involved?
- What instruments or mechanisms does the applicable normative framework provide to address asymmetries in the legal relationship?
- Are there any pronouncements from regional or international human rights bodies – such as recommendations, advisory opinions, or general comments – that refer to elements of the case?

⁸¹ Barbosa, B., Gonzaga, V. L. C., & Torres, J. H. (2019, September 6). The duty of judges to harmonize domestic law with human rights treaties [O dever dos juizes de harmonizar o ordenamento com os tratados de direitos humanos]. Jota.

- **Is there national case law or precedent applicable to the matter? What were the arguments underlying the decision (*ratio decidendi*)?**
- **Are there any pronouncements or reports issued by regional or international human rights systems that bear similarities to the case? Are the arguments applicable to the matter at hand?**
- **Does the proposed solution align with constitutional principles and guarantees?**

It is essential that principles be applied rigorously, with their content and scope clearly defined by judges, so as to avoid their use assuming a merely rhetorical character⁸².

7. Interpretation and application of the law

Once the facts have been analyzed with attention to structural inequalities, and the applicable norms and principles have been identified, it is time to interpret the law in the light of these facts. Gender-sensitive interpretation may take various forms:

- a. Contextual (non-abstract) interpretation of the law, recognizing that legal concepts, categories, and principles are not universal and may produce more or less subordinating outcomes depending on the lens through which they are applied.
- b. Analysis of how the law itself can be embedded with gender or other stereotypes.
- c. Analysis of how a legal norm may produce directly unequal effect – that is, directly discriminate against certain individuals or groups.
- d. Analysis of how an apparently neutral norm may have a disproportionate negative impact on a specific group.

Let us examine each point individually. Before doing so, however, it is essential to bear in mind that, at every stage of interpretation, magistrates concerned with gender issues must adopt the principle of substantive – or anti-subordination – equality as both an analytical lens and interpretative guide. In other words, they must recognize the existence of structural inequalities rooted in power asymmetries and pursue outcomes that expose and neutralize these inequalities.

a. Non-abstract interpretation of the law

The first step in this type of analysis is to recognize that legal concepts, values, and principles are often defined from the perspective of those who hold power and, because they are disconnected from the lived realities of subordinated individuals, they may exclude such individuals from legal protection or perpetuate their subordination.

Reference is made to the discussion on the criterion of hierarchy in sexual harassment cases (see [Part III, Section 1.a.](#)), in which the contested element is a legal concept – namely, hierarchy. This concept may not appear as open as others, such as “harm,” for instance. However, it is nonetheless a

⁸² Lunardi, S., & Dimoulis, D. (2014). Secredness of constitutional text and interpretative heresy: The Brazilian Supreme Court decision on same-sex civil unions (Direito GV Research Paper Series, No. 91). São Paulo: Direito GV. <https://direitosp.fgv.br>. Gonzaga, V. L. C. (2010). How the Brazilian Supreme Court applies the principle of morality in its decisions [Como o STF usa o princípio da moralidade em suas decisões?]. São Paulo: Escola de Formação da Sociedade Brasileira de Direito Público.

concept whose meaning depends on interpretation. The example is enriching, because it shows how a legal concept may – or may not – be understood from the standpoint of women’s lived experiences.

In [Part III, Section 3.a.1.](#), we also examine the issue of how the procedural nature of emergency protective measures is understood. These measures are aimed at protection. In such cases, their legal characterization cannot be abstract, but rather contextualized. After all, which interpretation actually offers protection? This example demonstrates that the nature of a procedural act is also subject to interpretation and may vary depending on the reality being considered.

Another illustrative case is that of “recreational racism”⁸³, discussed above. In many instances, racist “jokes” have not been recognized as causing harm due to the alleged absence of intent to offend. However, the criterion of intent to offend is a legal construct that is profoundly disconnected from the lived reality of those who experience being embarrassed by a racist “joke.”

This experience demonstrates that harm occurs even in the absence of intent. It is not merely a discourse that causes discomfort – it is a discourse that produces subordination. Even the very concept of “*animus jocandi*” (intent to joke) presents itself as neutral, but it is not: humor is socially constructed. Humor does not exist in a vacuum. What is perceived as humorous in a racist “joke” is made possible by a world structured by inequalities⁸⁴. In simpler terms, the fact that it is a “joke” does not erase the hatred rooted in structural inequalities.

In short: adjudicating from a gender perspective does not necessarily mean invoking constitutional principles or declaring a norm unconstitutional. It also entails being attentive to how the law may present itself as neutral while, in reality, perpetuating subordination due to its disconnection from the lived experiences of subordinated groups. From this recognition, the tasks become interpreting the law in a way that neutralizes such inequalities.

Key question: Does my interpretation of legal concepts reflect the lived realities of subordinated groups, or is it limited to my own worldview?

b. Analysis of laws imbued with stereotypes

A law or legal concept may be subordinating when it is constructed in a manner disconnected from how social dynamics operate. Likewise, the law itself may be imbued with stereotypes. One example is the former regulation issued by the Ministry of Health and the National Health Surveillance Agency prohibiting blood donation by “men who have had sexual relations with other men and/or their sexual partners in the previous 12 months.” The constitutionality of this regulation was challenged, and the Federal Supreme Court recently ruled it unconstitutional⁸⁵. Among other arguments, it may be contended that, by linking the prohibition on blood donation to a group’s sexual orientation, the regulation reproduced stereotypes socially attributed to that group – such as the notion that

⁸³ Moreira, A. J. (2019). Recreational racism [Racismo recreativo]. São Paulo: Sueli Carneiro; Pólen.

⁸⁴ Gonzaga, V. L. C. (2014). The limits of freedom of expression and stand-up comedy [Os limites da liberdade de expressão e o stand-up comedy]. São Paulo: Pontifical Catholic University.

⁸⁵ Brazil. Federal Supreme Court. (2020). DirectAction of Unconstitutionality (ADI) No. 5,543 (Rapporteur: Justice Edson Fachin, May 8, 2020). Brasília. Retrieved from <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=753608126> (Accessed August 27, 2021).

homosexual or bisexual men engage in unprotected sex more frequently than non-homosexual individuals.

In this case, the restriction on blood donation should be based on whether an individual – regardless of sexual orientation – engages in unprotected sex, rather than on their sexual orientation itself.

In a judgment committed to equality, it is essential that legal norms undergo rigorous scrutiny aimed at identifying and neutralizing the stereotypes they may contain.

Key question: Is it possible that a legal norm is grounded in negative stereotypes about subordinated groups?

c. Analysis of directly discriminatory norms

This is perhaps the most evident case in which inequality can be identified, as it evolves situations in which the law expressly discriminates against certain groups⁸⁶. Although increasingly rare, such cases still exist. One example is precisely the rule discussed above, which established a distinction between homosexual and bisexual men and individuals of other sexual orientations. At this point, it is important to emphasize that whenever an explicit differentiation is found in a legal norm, it should raise a red flag. This is because the rationale behind such differentiation may appear neutral, but is, in fact, often rooted in structural inequalities. In the case of blood donation, the justification was that excluded individuals constituted a risk group. However, under rigorous scrutiny, it becomes evident that such reasoning is itself a product of structural inequality⁸⁷.

Key questions: Is there manifestly unequal treatment? If so, is the justification for it rooted in, or does it serve to perpetuate, structural inequalities?

d. Analysis of indirectly discriminatory norms

Indirectly discriminatory norms are those that appear neutral but, in practice, disproportionately harm subordinated groups⁸⁸. One example is the issue of compensation for affective abandonment. In certain decisions, the Superior Court of Justice (STJ) has deemed such compensation unnecessary, arguing that its primary function would be to deter the practice of abandonment, which would ultimately result in the loss of parental authority. However, this consequence does little or nothing to prevent the practice; rather, it reinforces and legitimizes the abandonment. Although the norm may seem neutral, it disproportionately and indirectly affects women, since, as a general rule, it is the father who abandons the family and the mother who assumes the role of primary caregiver⁸⁹.

⁸⁶ Moreira, A. (2020). Treatise on anti-discrimination law [Tratado de direito antidiscriminatório] (p. 388). São Paulo: Contracorrente.

⁸⁷ Rios, R. R. (2008). Anti-discrimination law: Direct discrimination, indirect discrimination, and affirmative action [Direito da antidiscriminação: Discriminação direta, indireta e ações afirmativas]. Porto Alegre: Livraria do Advogado.

⁸⁸ Moreira, A. (2020). Treatise on anti-discrimination law [Tratado de direito antidiscriminatório] (p. 401). São Paulo: Contracorrente.

⁸⁹ Püschel, F. P. (2020). A feminist analysis of affective abandonment in the Superior Court of Justice [Uma análise feminista do abandono afetivo no Superior Tribunal de Justiça]. In F. P. Püschel (Ed.), Law and development in practice: New

Indirect discrimination can often go unnoticed or appear as a neutral element. In other words, differential impact does not arise from random circumstances or individual will, but rather from structural inequalities. Consider, for example, a company in which very few women occupy leadership positions. An employer might justify this by claiming that women are less productive or that they prefer to dedicate more time to their families.

On the other hand, a closer examination of the context in which women are situated reveals that many have their productivity impacted by the fact that they are the primary caregivers for their children. This means that women are not only disadvantaged due to their subordinated status, but also that the promotion criterion – high productivity – reflects the experience of men, or of women who can afford to hire domestic workers and thus dedicate themselves more fully to their professional roles. This criterion, therefore, is imbued with and perpetuates structural inequalities. In this sense, disproportionate impact may often appear neutral, but it is not. What enables such impact to be recognized as discriminatory is the contextualized perspective that gender-sensitive judging demands.

Key question: Does a given rule have a disproportionate impact on a certain group? If so, is this impact the result of, or does it serve to perpetuate, structural inequalities?

Attention: If the judge identifies that the legal norm produces unequal consequences for one of the parties according to their gender, they may adopt the interpretative approach that eliminates the unequal or discriminatory treatment and ensures the fullest possible protection of the parties' rights, including, if necessary, conducting a constitutionality control of the norm⁹⁰.

8. Guide for magistrates: from a step-by-step approach

Premise: To reflect on the law in context, considering how structural inequalities may shape the construction and application of legal concepts, categories and principles.

STEP 1. Initial approach to the case

Guiding question: Could structural inequalities play a significant role in this case?

STEP 2. Engagement with the parties

Guiding question: Are there special circumstances that must be taken into account to ensure that justice is an equal space for women?

perspectives for legal reflection [Direito e desenvolvimento na prática: Novas perspectivas para a reflexão jurídica]. São Paulo: Almedina.

⁹⁰ Mexico. Supreme Court of Justice of the Nation. (2020). Protocol for adjudicating under a gender perspective [Protocolo para juzgar con perspectiva de género]. Mexico City: Supreme Court of Justice of the Nation.

Other questions:

- Is any person present at the hearing breastfeeding?
- Does any person have young children?
- Is any person in a situation of vulnerability that could make a session uncomfortable or distressing?
- Do the parties fully understand exactly what is being discussed?
- Are the questions directed to the parties sufficiently clear?

STEP 3. Special protection measures

Guiding questions: Does one of the parties require protection? If so, what would constitute protection in this specific case?

Other questions:

- Does the case require any urgent protective measures (e.g., removal of the aggressor, alimony, restraining orders)?
- Are the parties at risk of death or of suffering violations of their physical and/or psychological integrity?
- Is there an asymmetry of power between the parties?
- Are there socio-environmental factors (e.g., economic dependence) or cultural elements (e.g., a culture of non-intervention in marital conflicts) that increase the risk?
- Are there any out-of-court measures, referrals, or victim assistance actions that should be taken (e.g., access to emergency contraception or pregnancy termination)?
- What does protection mean in this specific case?
- Is the woman's autonomy being respected?

STEP 4. Procedural instruction

Guiding questions: Is the evidentiary proceeding reproducing institutional gender-based violence? Does the evidentiary proceeding provide an environment conducive to the production of high-quality evidence?

Other questions:

- Do the questions reproduce gender stereotypes? (e.g., do they question the woman’s capacity as a mother⁹¹ or her behavior based on socially assigned roles⁹²?).
- Do the questions undermine the credibility of the deponent’s testimony? (e.g., do they question the deponent’s feelings towards her ex-husband’s current partner or suggest that resentment may exist between the parties?)
- Could the questions be causing re-victimization? (e.g., do they expose the victim’s private life or force her to relive traumatic situations?).
- Does the environment prevent the deponent from speaking freely and in a comfortable setting? (e.g., is she surrounded by men? Is the alleged aggressor present in the room?⁹³).
- Is the deponent being interrupted or pressured in a way that hinders her ability to articulate her testimony?
- Could technical, scientific, or social reports be imbued with stereotypes – either by giving excessive weight to certain elements only relevant because of structural inequalities, or by omitting issues that are only perceptible through an awareness of such inequalities?

STEP 5. Examining evidence and identifying facts

Guiding questions:

- Could evidence generally considered relevant have been produced? (e.g., are there circumstances that may have prevented the production of testimonial evidence, such as fear on the part of eyewitnesses to testify?)
- In the light of the answer to the previous question, is it necessary to assign different weight to the victim’s statement?
- Could the evidence be imbued with gender stereotypes? (e.g., could a statement about the incident rely on false assumptions about how the victim should have behaved or how men typically behave?)

⁹¹ It is important to recognize that such expectations are culturally imposed on women and must be confronted in light of procedural equality. For illustrative purposes, it is worth noting that men are not questioned about the quality of their fatherhood.

⁹² Unfortunately, in many criminal proceedings concerning rape, victims are subjected to disqualifying questions such as: “was she drinking or drunk?” or “why was she at the party until dawn?”—as if these circumstances implied personal responsibility for the assault, aiming to justify, socially or within the case itself, the occurrence of rape. In the end, a prior categorization is imposed on the victim, suggesting that such a crime would be either “impossible” or of “doubtful credibility.” Pandjarian, V., Pimentel, S., & Schritzmeyer, A. L. P. (1998). Rape: Crime or “courtesy”? A socio-legal gender-based approach. Porto Alegre: Sérgio Antonio Fabris Editor.

⁹³ Mendes, S. da R. (2020). Feminist criminal procedure (1st ed., p. 95). São Paulo: Atlas.

- Could my personal experiences be influencing my assessment of the facts? (e.g., I have never experienced violence at home, so I find it difficult to believe that someone in an emotional relationship could commit violence)
- Could I be assigning relevance to a fact that only appears important because of preconceived notions that permeate my worldview? (e.g., testimony suggesting a woman accused her ex-husband out of revenge after infidelity – a notion rooted in popular imagination)
- Likewise, could I be minimizing a relevant fact? (e.g., although the harasser did not formally hold a higher position, he had informal power due to his relationship with the boss)
- Could I be disregarding how structural inequalities shape people’s lives? In other words, could gender dynamics render certain facts important, even if they might seem irrelevant from my own experience or worldview? (e.g., a woman delayed reporting her ex-husband for domestic violence due to fear of retaliation or economic dependence)

STEP 6. Identifying the legal framework and precedents

Guiding questions:

- Which national or international legal framework applies to the case? Which norm offers the strongest guarantee of the right to equality for those involved?
- What tools does the applicable legal framework provide to address asymmetries in the legal relationship?
- Are there any pronouncements from regional or international bodies – such as recommendations, advisory opinions, or general comments – that refer to elements of the case?
- Is there applicable national case law or precedent? On what grounds was the decision based (*ratio decidendi*)?
- Are there any pronouncements, advisory opinions, or reports from the Inter-American Commission on Human Rights, resolutions from the Inter-American Court of Human Rights, or from the international human rights system (such as the United Nations), that bear similarities to the case? Do the arguments presented therein apply to the situation under view?
- Does the proposed solution align with constitutional principles and guarantees?

STEP 7. Interpretation and application of the law

Guiding questions:

- Does my interpretation of legal concepts reflect the lived realities of subordinated groups, or is it limited to my own worldview?
- Could the norm be based on negative stereotypes about subordinated groups?

- Does a certain norm treat groups or individuals in a manifestly unequal manner? If so, is the justification for such treatment rooted in, or does it serve to perpetuate, structural inequalities?
- Does a certain norm have a disproportionate impact on a particular group? If so, is this impact the result of, or does it contribute to the perpetuation of, structural inequalities?

9. Considerations on conventionality control, human rights, and gender perspective

Judging with a gender perspective requires that magistrates understand the concept of “conventionality control,” and recognize the necessity of applying it in the decision-making process in order to ensure the effective realization of human rights and human dignity⁹⁴. Conventionality control is a legal tool that can and should be used to support judicial reasoning grounded in a gender perspective.

Conventionality control performed by magistrates consists of verifying and assessing whether domestic normative acts are compatible with the norms, principles, and decisions established⁹⁵ within international human rights protection systems, in light of their primacy and their binding and normative character⁹⁶.

In this sense, given Brazil’s international commitment to the promotion and protection of human rights, judges – as well as any other public authority – must respect and apply the norms and jurisprudence that form part of the international human rights protection systems, both at the regional and global levels. Within the contemporary paradigm of the constitutional state, the openness of States to international human rights law, and the urgent need to interweave national and international normative orders, national judges have become key protectors of human rights. They have, in conventionality control, a fundamental tool to meet the challenge of ensuring the primacy of human dignity and the supremacy of the human rights protection system⁹⁷. The Judiciary, therefore, plays an important and decisive role in ensuring the respect, protection, and promotion of human rights.

⁹⁴ Notably, the National School for the Training and Improvement of Magistrates Minister Sálvio Figueiredo Teixeira (ENFAM), in its Resolution No. 2 of June 8, 2016 – which sets forth programs for the training and development of magistrates and regulates official courses for judicial entry, initial training, and continuing education of judges and judicial educators – designated the theme of “Human Rights” as essential to the formation and professional development of Brazilian magistrates.

⁹⁵ These include treaties, conventions, case law, advisory opinions, precautionary measures, and other protection instruments.

⁹⁶ Barbosa, B., Torres, J. H., & Gonzaga, V. L. C. (2019, September 6). The duty of judges to harmonize domestic law with human rights treaties. Jota, São Paulo. Retrieved from <https://www.jota.info>.

⁹⁷ We highlight the material produced by ENFAM for the course “Conventionality Control in Judicial Practice.” Brasília, 2018.

Find out more: In Direct Action of Unconstitutionality (ADI) No. 4,275, the Federal Supreme Court of Brazil recognized the right of transgender individuals to change their social name in the civil registry without requiring gender-affirming surgery or hormonal treatment⁹⁸. The majority of the Court followed the dissenting opinion of Justice Edson Fachin, who held that such requirements were unnecessary since, under the principle of self-determination, it is the duty of the State only to recognize the individual’s expressed identity. Justice Fachin grounded his opinion on conventionality control and on Advisory Opinion No. 24 of the Inter-American Court of Human Rights, which affirms that “the recognition of gender identity by the State is of vital importance for guaranteeing the full enjoyment of human rights.”⁹⁹

Now that we have addressed the general understanding of conventionality control, it is important to highlight some of the international instruments that magistrates can – and should – be familiar with, both to carry out conventionality control and to adjudicate from a gender perspective (always, of course, through an intersectional lens).

Universal human rights protection system (United Nations)
General human rights protection instruments
Charter of the United Nations (1945)
Universal Declaration of Human Rights (1948)
International Covenant on Civil and Political Rights (1966)
Optional Protocol to the International Covenant on Civil and Political Rights (1966)
International Covenant on Economic, Social and Cultural Rights (1966)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)
International Convention on the Elimination of All Forms of Racial Discrimination (1969)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
Convention on the Rights of the Child (1990)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

⁹⁸ Brazil. Federal Supreme Court. (2018). Direct Action of Unconstitutionality (ADI) No. 4,275 (Opinion by Justice Edson Fachin, March 1, 2018). Electronic Justice Gazette, Brasília, March 7, 2019. Brazil. Federal Supreme Court. (2018). Extraordinary Appeal No. 670,422 (Reporting Justice: Dias Toffoli; Opinion by Justice Edson Fachin, August 15, 2018). Electronic Justice Gazette, Brasília, March 10, 2020. Topic 761.

⁹⁹ Inter-American Court of Human Rights (IACHR). (2018, January 9). Advisory Opinion OC-24/17 of November 24, 2017, requested by the Republic of Costa Rica: Gender identity, and equality and non-discrimination of same-sex couples. San José. Retrieved from https://www.corteidh.or.cr/docs/opiniones/seriea_24_por.pdf.

The United Nations Declaration on the Rights of Indigenous Peoples (2006)
International Convention for the Protection of All Persons from Enforced Disappearance (2006)
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000)
Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) (2015)
Beijing Rules: United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985)
Yogyakarta Principles (2006)
The Bangaluru Principles of Judicial Conduct (2006)

Gender-specific protection instruments
Convention on the Political Rights of Women (1953)
Convention on the Elimination of All Forms of Discrimination Against Women – CEDAW (1979) and its Optional Protocol (1999)
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women
See recommendations translated into Portuguese at: “Comentários Gerais dos Comitês de Tratados Direitos Humanos da ONU – Comitê para Eliminação da Discriminação contra as Mulheres”. Translated by Núcleo de Estudos Internacionais – Clínica de Direito Internacional dos Direitos Humanos, Law School of the University of São Paulo. Coordination: André de Carvalho Ramos.
CEDAW Committee’s General Recommendation No. 19 on violence against women
CEDAW Committee’s General Recommendation No. 28 on the core obligations of states parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women
General Recommendation No. 33 on women’s access to justice
CEDAW Committee’s General Recommendation No. 35 on gender-based violence against women
Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women – Belém do Pará Convention (1994)
Programme of Action of the International Conference on Population and Development – Cairo Platform (1994) (sexual and reproductive rights)
Declaration and Platform for Action of the Fourth World Conference on Women – Beijing (1995)
United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) – (2010)

Universal system – International Labor Organization
Convention No. 100 – Equal Remuneration for Men and Women Workers for Work of Equal Value
Convention No. 103 – Maternity Protection
Convention No. 111 – Discrimination in Respect of Employment and Occupation
Convention No. 117 – Social Policy (Basic Aims and Standards)
Convention No. 140 – Paid Educational Leave
Convention No. 141 – Rural Workers’ Organizations
Convention No. 168 – Employment Promotion and Protection against Unemployment
Convention No. 169 – Indigenous and Tribal Peoples
Convention No. 189 – Decent Work for Domestic Workers

Non-ratified Conventions
Convention No. 156 – Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities
Convention No. 190 – Violence and harassment in work places

Regional rights protection system (Inter-American Human Rights System)
General human rights protection instruments
American Declaration of the Rights and Duties of Man (1948)
American Convention on Human Rights (Pact of San José, Costa Rica) (1969)
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988)
Inter-American Convention on the Protection of the Human Rights of Older Persons (2015 – in process of ratification)
Inter-American Convention against All Forms of Discrimination and Intolerance (2013)
Advisory Opinion OC-24/17 of the Inter-American Court of Human Rights, requested by Costa Rica: Gender Identity, and Equality and Non-Discrimination of Same-Sex Couples (2017)

Gender-specific protection instruments
Inter-American Commission of Women (CIM) – Reports
Follow-up Mechanism to the Convention of Belém do Pará (MESECVI)

Emblematic cases from the regional and international rights protection systems:

Universal System – CEDAW	Alyne Pimentel v. Brazil (CEDAW, Communication No. 17/2008)	Gender-based violence, maternal mortality, intersectionality. More information: reproductiverights.org
Inter-American Court of Human Rights	González et al. v. Mexico (“Campo Algodonero” or “Cotton Field”), 2009	Violence against women (Femicide) More information: www.corteidh.or.cr
	Espinoza Gonzáles v. Peru, 2014	Sexual violence by State agents during internal armed conflict; gender-based violence. More information: https://www.cnj.jus.br/wp-content/uploads/2016/04/00721d0c2692667c3e35d5303444992e.pdf
	Velásquez Paiz et al. v. Guatemala, 2015	Enforced disappearance, sexual violence, gender-based violence. Failure to investigate and punish perpetrators. More information: https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_por.pdf
	Rosendo-Cantú et al. v. Mexico, 2010	Sexual violence, discrimination, and violence against Indigenous women. More information: https://www.corteidh.or.cr/docs/supervisiones/rosendo_12_03_20.pdf
	Fernández Ortega et al. v. Mexico, 2010	Sexual violence and torture by State armed forces against an Indigenous woman. More information: https://www.cnj.jus.br/wp-content/uploads/2016/04/1ca33df39cf74bbb341c4784e83bd231.pdf
	Atala Riffo and Daughters v. Chile, 2012	Civil rights of LGBTQ+ persons; custody and family discrimination based on sexual orientation. More information: https://www.corteidh.or.cr/docs/casos/articulos/seriec_239_por.pdf
	Cosme Rosa Genoveva, Evandro de Oliveira et al. v. Brazil (“Favela Nova Brasilia” case), 2017	Police violence, due process, gender perspective, and failures in public security policy. More information: https://www.corteidh.or.cr/docs/casos/articulos/seriec_333_por.pdf

Inter-American Commission on Human Rights	Maria da Penha v. Brazil (Case No. 12,051, Report No. 54/01)	State omission in domestic violence cases; basis for national policy and Maria da Penha Law. More information: https://www.cidh.oas.org/annualrep/2000port/12051.htm
	Simone André Diniz v. Brazil (Case No. 12,001, Report No. 66/06)	Racial discrimination; institutional racism; violation of the right to equality and non-discrimination. More information: http://www.cidh.org/annualrep/2006port/BRASIL.12001port.htm
	Marcia Barbosa de Souza and family v. Brazil (Case No. 12,263, Report No. 10/07).	Gender-based violence; State failure to investigate and ensure women’s right to life and protection. More information: http://cidh.org/annualrep/2007port/Brasil12.263port.htm

To know more: Access the Inter-American Court of Human Rights’ Thematic Notebook No. 4 on gender and human rights, which brings together key case law on the topic: “**Cuadernillo de jurisprudencia de la Corte Interamericana de Derechos Humanos No. 4: Derechos Humanos y Mujeres**”. Available at: <https://www.corteidh.or.cr/sitios/libros/todos/docs/cuadernillo4.pdf>.



Part III

GENDER-SPECIFIC ISSUES IN DIFFERENT BRANCHES OF THE JUDICIARY

This section presents specificities of the Federal, State, Labor, Electoral, and Military Court branches regarding gender-related matters, including examples of recurring issues within each segment. However, it is important to emphasize that many issues – when examined within their broader context – may reveal gender dimensions, even if they are not included in the list that follows.

The chapter begins by addressing cross-cutting themes – such as harassment, custody hearings, and imprisonment – as they concern more than one branch of the Judiciary. It then presents illustrative points of attention for each justice sector, considering the specificities of their respective competences.

1. Cross-cutting themes

a. Harassment

Gender-based violence in the form of harassment is an issue that cuts across all branches of the Judiciary, given its pervasive nature and its disproportionate impact on women, particularly those in socially disadvantaged and asymmetrical positions. Both moral (psychological) and sexual harassment rarely consist of isolated and specific acts; rather, they tend to manifest as systemic and continuous patterns of behavior that perpetuate violence against victims within the environments where they occur. Recognizing these patterns of abusive practices is essential to effectively addressing the problem.

As a rule, practices of moral (psychological) and sexual harassment are rooted in asymmetrical power relations typical of labor dynamics, but also present in other social interactions, such as family relationships – particularly in societies fundamentally structured on a patriarchal, White, and heterosexual model. The forms of coercion and humiliation perpetrated by harassers in the workplace are often mirrored in the family environment, and vice versa. These microaggressions, by occurring so frequently in the victims' daily life, tend to become invisible, trivialized, and normalized – leading victims to feel inhibited from reporting the facts, for fear of retaliation or reprimand in the toxic environment surrounding them.

In addition to addressing the oppressor's conduct, judging harassment cases through a gender perspective entails avoiding the excessive exposure and revictimization of those affected, as well as creating restorative mechanisms for preventing harassment, ensuring effective accountability, and enabling the restoration of a life free from violence.

b. Custody hearings

Custody hearings were implemented in Brazil following a precautionary decision issued by the plenary of the Federal Supreme Court in the Allegation of Violation of a Fundamental Precept (ADPF) 347. On that occasion, when declaring the Brazilian prison system to be in a state of unconstitutional affairs, the Court held that presenting detainees before a judicial authority within 24 hours constituted an important mechanism for preventing torture – in accordance with Brazil's international commitments – and for curbing the excessive use of pretrial detention.

The decision acknowledged the immediate applicability of Article 9.3 of the International Covenant on Civil and Political Rights and Article 7.5 of the American Convention on Human Rights.

It is important to note that the prompt presentment of detainees before the competent authority – in Brazil, the judicial authority – is recognized in international instruments as a safeguard of personal liberty. From this standpoint, its application is mandatory. That is to say, the purpose of the hearing must be to assess the necessity of continued detention through the lens of exceptionality.

Following the decision of the Federal Supreme Court, Resolution No. 213 of the National Council of Justice was issued. It encompasses two protocols: (a) procedures for the application and monitoring of precautionary measures other than imprisonment for individuals presented at custody hearings; and (b) procedures for receiving, recording, and forwarding complaints of torture and other cruel, inhuman, or degrading treatment.

Finally, Law No. 13,964/2019, among other provisions, amended the Code of Criminal Procedure to expressly provide for the need to conduct custody hearings. Given their scope – not only to assess the legality of detention, but also to prevent torture – such hearings must be held not only in cases of arrest *in flagrante delicto*, but also upon the execution of pretrial detention or imprisonment to serve a sentence.

The study of criminal law often includes a historical perspective on the State’s right to punish – *jus puniendi* –, which may mistakenly suggest a linear progression of legal thought, always advancing toward a supposedly “higher” or more “developed” stage. In reality, however, the *jus puniendi* – like any other dimension of state power – operates within overlapping and multidirectional logics of greater or lesser respect for individual rights. In other words, instruments that embody important advances in the protection of fundamental rights may coexist, in the same time and space, with tools and practices that undermine those rights. Accordingly, **although custody hearings are a key mechanism for safeguarding inalienable individual rights, conducting them without due consideration for gender perspectives – particularly in their intersectional dimension – can ultimately nullify their intended protective effects.**

Some specific scenarios warrant attention – always bearing in mind that, like any other gender-related issue, they must be examined from an intersectional perspective:

- **Custody and maternity hearings:** In the judgment of Habeas Corpus No. 143,641, the Federal Supreme Court granted a collective order and determined the replacement of pretrial detention with house arrest, throughout the national territory, for women who are pregnant, in the postpartum period, or mothers of children up to 12 years of age or of persons with disabilities, without prejudice to the application of the alternative measures provided for in Article 319 of the Brazilian Code of Criminal Procedure. The ruling excluded this benefit in cases of crimes committed by women with violence or serious threat against their descendants or in “very exceptional circumstances,” which must be duly substantiated in the event of denial of the benefit.

Subsequently, in the process of monitoring compliance with the order granted in *Habeas Corpus* No. 143,641, the Rapporteur, Justice Ricardo Lewandowski, set out circumstances that establish limits to the interpretation of so-called “very exceptional situations.” According to this understanding, the following circumstances – precisely because they are intertwined with gender, racial, and class contexts – cannot be used

to justify the denial of house arrest: (a) drug trafficking within the prison system; (b) the presumption that a mother engaged in drug trafficking poses a risk to her children; (c) drug trafficking in the home, given that the domestic space is, par excellence, the locus of reproductive labor, which is typically performed by women; (d) lack of formal employment, in light of the overrepresentation of women in informal labor; (e) requirement of proof that the child depends on the mother's care; (f) requirement of proof that the pregnancy poses health risks. **It is therefore essential that every member of the Judiciary reflect on why a mechanism intended to guarantee and safeguard liberty has had such a disproportionately negative impact on women in general – and on Black women in particular.**

Given these considerations, the presiding magistrate at the custody hearing must ensure that sufficient information is gathered in order to: (i) assess the legality of the arrest and its execution; (ii) verify respect for the physical integrity of the detainee; (iii) evaluate the possibility of applying precautionary measures other than imprisonment; and (iv) where the restriction of liberty is deemed necessary, assess the applicability of house arrest in light of the parameters established by the relevant collective habeas corpus. During the hearing, the magistrate must take the necessary steps to determine whether the detainee is pregnant or is the mother of a child under the age of 12 or of a person with disabilities. **To that end, in addition to asking the appropriate questions, the magistrate must consult birth registration systems to which the court has access. The magistrate must also ensure that the detainee identifies the location of her children at the time of the hearing and the persons responsible for their care, in order to adopt protective measures if necessary.**

While it is the responsibility of the defense to submit the information necessary to support a finding in favor of release, it is important to consider that the immediacy of the custody hearing – especially, though not exclusively, in cases of arrest *in flagrante delicto* – may present significant challenges for the defense in collecting the required documentation. Therefore, when the court has access to systems containing relevant data, it must provide information regarding the detainee's address, the existence of children, and employment status, if necessary. This is, in fact, the guideline established by Resolution No. 369/2021 of the National Council of Justice regarding the treatment of pregnant and postpartum detainees and other arrestees with children. **The assessment of this information must also be guided by an intersectional perspective.** Depending on the case, it must be taken into account that formal address records may be in the name of third parties – such as parents or partners – and that the absence of formal employment registration does not imply the absence of lawful work, given the high rates of informal labor in Brazil.

The application of an intersectional gender perspective also requires attention to preconceived notions about motherhood that magistrates may hold, which must not constitute an obstacle to granting the benefit to detainees whose family arrangements differ due to socioeconomic or other factors. The treatment of foreign detainees likewise demands a specific and sensitive approach. The mere fact of being a foreign national must not preclude consideration of protections provided under *Habeas Corpus* No. 143,641.

Considering the Brazilian context, in which women still play a central role in the care of children, their imprisonment triggers a negative cascade effect that should be avoided to the greatest extent possible. In this vein, and in accordance with the *habeas corpus* granted by the Federal Supreme Court, **the very exceptional situations that may eventually justify the denial of house arrest or other precautionary measures place a special burden of justification on magistrates to legitimize such a decision.**

- ***Custody hearings and the LGBTQIA+ population***

Magistrates committed to equality must pay close attention to the provisions of Resolution No. 348/2020 of the National Council of Justice, as amended, which addresses the treatment of LGBTQIA+ individuals who are defendants, accused, convicted, deprived of liberty, serving penal alternatives, or under electronic monitoring. The sole criterion for identification is **self-declaration** – as previously noted in relation to the Direct Action of Unconstitutionality (ADI) 4,275 and the Federal Supreme Court's affirmation of the understanding that, *given the guarantee of self-determination, the State is only responsible for recognizing it.* In this context, the person in custody has the right, if they so wish, to be addressed by their social name, even if it differs from the one recorded in their civil registry. The place of potential detention must also receive special attention and be recorded in the judicial decision.

- ***Custody hearings and Indigenous populations***

The intersectional perspective in the custody hearings must also be applied to self-declared Indigenous persons who come into conflict with the law. Accordingly, the procedures established in Resolution No. 287/2019 of the National Council of Justice must take into account the specific mechanisms of the Indigenous community to which the person belongs, in accordance with Article 57 of Law No. 6,001/1973. The same consideration applies to the adoption of precautionary measures other than imprisonment.

c. Imprisonment

Historically, policies on deprivation of liberty and socio-educational measures have been designed with a focus on the male population, resulting in the marginalization of women. The androcentrism of the Brazilian prison system is thus evident: it was conceived by men to deprive other men of their liberty. This is clearly reflected in the lack of quantitative and qualitative data on incarcerated women, as well as in the limited implementation of public policies or programs specifically targeting this population.

With regard to prison facilities, only 6.97% of existing institutions were designed exclusively for women¹⁰⁰, which underscores the prevalence of prison units that merely include separate cells or designated areas for female detainees.

¹⁰⁰ BRAZIL. Ministry of Justice and Public Security. National Prison Department. Thematic report on women deprived of liberty: June 2017. Brasília: Ministry of Justice and Public Security, National Prison Department, 2019. Consultant: Marcos Vinicius Moura Silva. Infopen Women. Available at: http://antigo.depen.gov.br/DEPEN/depen/sisdepen/infopen-mulheres/copy_of_Infopenmulheresjunho2017.pdf. Accessed on: June 23, 2021.

Far from representing progress, such prison units generally lack the facilities necessary to meet the needs of women, such as nurseries, daycare centers, or dedicated spaces for pregnant women, thereby further aggravating their deprivation of liberty. Only 14% of prison facilities have Mother and Child Reference Centers¹⁰¹, which may constitute degrading and inhumane treatment for both the mother and the child.

It is also worth noting the absence of any prison facilities for women within the Military Justice of the Union, which may severely impact compliance with protection rules applicable to imprisoned female military personnel.

Still regarding health and hygiene, it is important to ensure routine exams – such as Pap smears, breast cancer screening, menopause follow-up, treatment for the use of narcotic substances, and, when applicable, prenatal care – as established by Article 2, Item II, of Resolution No. 252/2018 of the National Council of Justice.

With regard to incarcerated women with disabilities, access to medical care is essential, as is the guarantee of accessibility within prison facilities.

Health care also includes mental health care. Therefore, suicide prevention programs, follow-up for psychiatric disorders, and treatment for depression are essential. It is worth noting that, while the suicide rate among women in Brazil is 2.3 per 100,000 inhabitants, this figure rises to 27.5 among incarcerated women.

Another sensitive point refers to the maintenance of family ties. As the number of facilities for incarcerated women is manifestly smaller than those for men, their transfer to locations far from their families is common, which makes visits and the maintenance of affective bonds extremely difficult.

When adopting a gender perspective, attention must also be paid to the decision of the Federal Supreme Court in *Habeas Corpus* No. 118,533¹⁰², which recognized that the offense of privileged drug trafficking is not considered heinous. In such cases, it determined that custodial sentences may be replaced with alternative sanctions restricting rights. Therefore, failure to grant such substitution based on the abstract severity of the offense or on stereotypes related to the female figure runs counter to the guidelines already established by the Supreme Court.

Attention: We highlight Resolution No. 252/2018 of the National Council of Justice, which sets forth principles and guidelines for the monitoring of incarcerated women, including mothers and pregnant women, and provides for other measures. <https://atos.cnj.jus.br/atos/detalhar/2667>

¹⁰¹ Ibid.

¹⁰² Supreme Federal Court. (2013, August 1). *Habeas Corpus* No. 118,533 MS: Constitutional, criminal, and criminal procedural law. Drug trafficking. Application of Law No. 8,072/90 to privileged drug trafficking: inadmissibility. Not considered heinous. Writ granted (Reporting Justice: Carmen Lúcia). <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=11677998>

Legal and jurisprudential parameters for replacing pretrial detention with house arrest

- **Bangkok Rules (UN, 2010) – United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders** – were adopted to address the absence of specific protections for women in the *United Nations Standard Minimum Rules for Non-Custodial Measures* (Tokyo Rules, UN, 1990)¹⁰³. These rules take into account the distinct needs of women deprived of liberty and establish that non-custodial sentences for pregnant women and mothers should be preferred whenever possible and appropriate, with prison sentences considered only in cases of serious or violent crimes.
- **Early Childhood Statute, Law No. 13,257 of March 8, 2016.** To include circumstances related to pregnancy and the existence of a child under 12 years of age among the situations that allow for the conversion of pretrial detention into house arrest (Article 318 of the Brazilian Code of Criminal Procedure).
- **Collective Habeas Corpus No. 143,641 of the Federal Supreme Court, February 2018.** In light of the low level of compliance with Law No. 13,257/2016, the Federal Supreme Court issued a collective *habeas corpus* benefiting all women deprived of liberty – pregnant women, postpartum women, mothers of children or persons with disabilities – as well as adolescents subject to socio-educational measures in the same conditions, across the national territory. Exceptions were made in cases involving: (a) crimes committed with violence or serious threat; (b) crimes against their descendants; or (c) very exceptional circumstances, which must be duly substantiated.
- **Law No. 13,769 of December 19, 2018.** Introduced Article 318-A into the Code of Criminal Procedure to codify the parameters established by the Collective *Habeas Corpus* No. 143,641 of the Federal Supreme Court. It provides for the replacement of pretrial detention with house arrest for pregnant women or mothers or guardians of children or persons with disabilities when: (a) the defendant has not committed a crime involving violence or serious threat; or (b) the crime was not committed against their child or dependent. The law excludes the “very exceptional circumstances,” previously allowed under the Supreme Court ruling. Moreover, unlike Article 318, *caput*, of the Code of Criminal Procedure – which used the expression “may be replaced” – the new provision states “will be replaced,” which may be interpreted as a mandatory substitution in the specified cases rather than a discretionary one. The law also establishes more favorable sentencing regimes for pregnant women and mothers of children up to 12 years old, including in cases involving heinous crimes.

¹⁰³ National Council of Justice (Brazil). (2016). Tokyo Rules: United Nations Standard Minimum Rules for the Development of Non-Custodial Measures (22 pp.). Brasília: CNJ. (International Human Rights Treaties Series). <https://www.cnj.jus.br/wp-content/uploads/2019/09/6ab7922434499259ffca0729122b2d38-2.pdf>

Did you know? Brazil has the third largest prison population in the world in relative terms. According to the National Database of Arrest Warrants (BNMP), as of June 2021, 909,267 people in Brazil were deprived of their liberty¹⁰⁴. Of this total, 49,272 were incarcerated women and 156 were women in custodial psychiatric care.

Did you know? According to the Women’s Report 2017 of the National Prison Information System (INFOPEN), from 2000 to 2017, the female prison population increased by 675%¹⁰⁵. This increase is deeply linked to the intensification of mass incarceration policies driven by the “war on drug trafficking”¹⁰⁶. This is clearly shown by the temporal alignment of the restrictive policies, the rise in imprisonment rates, and the fact that approximately 60% of women’s arrests result from the sale of narcotics. Historically, policies on the deprivation of liberty and socio-educational measures were designed for the male population, rendering women invisible. To remedy this situation, incarceration must be addressed with consideration for the concrete realities of women’s lives.

Attention: Targeted care for incarcerated women may be divided into four main aspects: (a) physical infrastructure and health and hygiene care; (b) pregnant women, postpartum women, and women with children up to 12 years of age; (c) mechanisms of social reintegration and family contact; and (d) the LGBTQIA+ population (Resolution No. 348/2020 of the National Council of Justice) and Indigenous peoples (Resolution No. 287/2019 of the National Council of Justice).

2. Federal Judiciary

a. Jurisdiction and Gender

Items IV, V, and VI of Article 109 of the Federal Constitution explicitly define the criminal jurisdiction of the Federal Judiciary. The criterion used by the Constitution to delimit this jurisdiction

¹⁰⁴ National Council of Justice (Brazil). (2021). BNMP statistics. Brasília: National Council of Justice. Retrieved June 23, 2021, from <https://portalbnmp.cnj.jus.br/#/estatisticas>

¹⁰⁵ In 2000, Brazil had 5,600 incarcerated women; by 2017, this number had jumped to 37,830. Brazil. Ministry of Justice and Public Security. (2019). Thematic report on women deprived of liberty: June 2017 (Infopen Women, Consultant: Marcos Vinícius Moura Silva). National Penitentiary Department. Retrieved June 23, 2021, from http://antigo.depen.gov.br/DEPEN/depen/sisdepen/infopen-mulheres/copy_of_Infopenmulheresjunho2017.pdf

¹⁰⁶ Wuster, T. (2019). The other incarcerated person: Does being a woman matter to the justice system? (Master’s thesis, Federal University of Paraná, Curitiba, Brazil).

is based on the involvement of assets, interests, and services of the Union (the federal government of Brazil), its autonomous agencies, and state-owned enterprises.

A superficial analysis might lead to the mistaken conclusion that only public entities could be considered passive subjects of crimes within the scope of federal jurisdiction – thereby rendering intersectional gender perspectives irrelevant or inapplicable. However, the daily practice of the judiciary clearly demonstrates that the structural dynamics underpinning gender hierarchies are also present in this jurisdiction.

b. Criminal Law

The criteria that guide secondary criminalization processes – meaning the application of punitive power to specific individuals¹⁰⁷ – must be examined through a gender perspective. The justice system’s inability to address all criminal conduct inherently results in a selective application of criminal law. The challenge posed to the Judiciary is to make visible the criteria by which these choices are made, in order to prevent its practices from reinforcing existing structural inequalities.

To learn more about concrete parameters of criminalization: “Punitive power criminalizes by selecting: (a) individuals who, as a rule, fit criminal stereotypes and therefore become vulnerable, as they are seen as capable only of coarse illicit acts (...) (stereotype-based criminalization); (b) much less frequently, individuals who, although not fitting the stereotype, have acted with such singular brutality that they become vulnerable (...) (criminalization due to grotesque or tragic behavior); (c) in very exceptional cases, someone who, despite having been in a position of near invulnerability to punitive power, is defeated in a confrontation with hegemonic power and thereby experiences a rupture in their invulnerability (criminalization due to lack of protection).” (our translation)¹⁰⁸.

The incorporation of the gender category in its intersectional dimension is particularly relevant to the role of the Judiciary in what may be understood as the final stage of State action in the application of criminal law. It must be recognized that crime is also shaped by defined hierarchies and that social vulnerabilities – including gender – are reflected within this context.

Consider, for instance, the crime of transnational drug trafficking. One of the main challenges lies in identifying so-called drug “mules” – individuals, often lured or coerced into transporting narcotics – and distinguishing them from those more consistently involved in drug trafficking networks. This distinction is critical, as recognizing someone’s role as a mule may lead to the application of the sentence reduction provision set forth in Article 33, Paragraph 4, of Law No. 11,343/06, and, consequently, to the possibility of replacing a custodial sentence with a non-custodial one,

¹⁰⁷ Alagia, A., Batista, N., Slokar, A., & Zaffaroni, E. R. (2011). *Brazilian criminal law: Volume I – General theory of criminal law* (4th ed.). Rio de Janeiro: Revan.

¹⁰⁸ *Ibid.*, p. 48.

depending, of course, on the quantity and type of drug involved. Certain elements may assist in this assessment, including attention to the means of transport and the concealment method used for the illicit substance.

Reflections on Gender — Illustrative Cases and Key Issues

Drug transport. Carrying drugs within one’s own body – for example, in a manner that entails risk of death – may serve as a significant indicator of an individual’s subordinate role within a particular criminal scheme. In cases involving women and transgender individuals, special attention must be paid to the possibility that the criminal act may, in fact, constitute a situation of human trafficking¹⁰⁹, which – when occurring in its transnational form – also falls within the jurisdiction of the Federal Judiciary.

Foreign women. The practice of transnational drug trafficking often involves foreign nationals with no ties to Brazilian territory, who also face language barriers. If female incarceration is already marked by isolation¹¹⁰, this experience is intensified in the case of foreign women. Difficulties in establishing contact with family members or trusted persons must be duly addressed by the justice system, particularly with regard to the guarantee of consular assistance, in accordance with the Vienna Convention, as well as the assurance of full due process rights, including, among other measures, the provision of qualified translators and interpreters to ensure that foreign defendants fully understand the entire proceeding.

The judicial treatment of the crime of human trafficking, which, in its transnational form, falls under the jurisdiction of the Federal Judiciary, must likewise receive special attention. This issue has undergone several legislative reforms. The current legal definition includes serious threat, violence, coercion, fraud, and abuse as constitutive elements of the offense. Situations involving fraud and, especially, abuse require heightened diligence from the judiciary, taking into account, among other factors, the international legal framework governing this matter.

The Palermo Protocol¹¹¹ sets forth the following objectives: (i) to prevent and combat trafficking in persons, paying special attention to women and children; (ii) to protect and assist the victims of such trafficking, with full respect for their human rights; and (iii) to promote cooperation among States Parties to achieve these objectives. The definition of *trafficking in persons* under Article 3(a) of the Protocol includes, beyond the elements already listed in Article 149-A of the Brazilian Criminal Code, the commission of the listed acts by taking advantage of the victim’s situation of vulnerability. Article

¹⁰⁹ According to a report by the Ministry of Justice, there is a predominance of female victims in cases of human trafficking for the purposes of sexual exploitation and slave labor. Brazil. Ministry of Justice; United Nations. United Nations Office on Drugs and Crime. (2017). *National report on human trafficking: Data from 2014 to 2016 [Relatório nacional sobre o tráfico de pessoas: dados 2014 a 2016]*. Brasília: Ministry of Justice. Available at: <https://www.justica.gov.br/sua-protecao/trafico-de-pessoas/publicacoes/relatorio-de-dados.pdf>. Accessed on: June 30, 2021.

¹¹⁰ Santos, J. B. L., & Silva, M. S. da. (2019). Female incarceration: Reflections on affective abandonment and associated factors [Encarceramento feminino: reflexões acerca do abandono afetivo e fatores associados]. *Revista Psicologia Política*, 19(46), 459–474. Available at: http://pepsic.bvsalud.org/scielo.php?script=sci_arttext&pid=S1519-549X2019000300007&lng=pt&nrm=iso. Accessed on: June 30, 2021.

¹¹¹ BRAZIL. (2004, March 15). Decree No. 5,017, of March 12, 2004. Promulgates the Additional Protocol to the United Nations Convention against Transnational Organized Crime, concerning the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children. *Official Gazette of the Union*, Section 1, Brasília, DF, No. 50, p. 10.

3(b), in turn, establishes that the victim's consent is irrelevant in cases that fall within the definition of trafficking in persons provided by the document.

This highlights the need to analyze how the elements of fraud and abuse are configured in the Brazilian Criminal Code, taking into account the concrete reality and vulnerabilities of the victim. In other words, since the offense requires the vitiation of consent by an adult toward participation in criminal activity, the validity of such consent must be assessed in light of the specific individual involved. All prior considerations in this Protocol regarding gender stereotypes and preconceptions must be incorporated into the analysis of cases of this nature.

Attention: The paradigm shift introduced by the Additional Protocol to the Palermo Convention and the reformulation of the criminal offense under Article 149-A of the Brazilian Criminal Code must be included within the interpretive framework of this matter. The original conception of human trafficking focused on the protection of white women, with an emphasis on combating their exploitation for purposes of prostitution. Expectations surrounding female sexual behavior heavily influenced early interpretations of the issue. Today, the prevailing paradigm is the intolerability of exploitation and the protection of individual liberty and human dignity. Moreover, human trafficking involving men also demands attention, particularly with regard to consent. One of the major advancements of the current legal framework was precisely the redefinition of the offense as human trafficking – encompassing any human being as a potential victim (Article 149-A of the Criminal Code) – in replacement of the previous offense of trafficking in women (the repealed Article 231 of the Criminal Code).

Fighting **contemporary slavery** also follows a framework similar to that of the crime of human trafficking. The means of execution, such as subjection to forced labor, exhausting working hours, or degrading conditions, entail a certain degree of objectivity. However, the personal characteristics of the victim may be highly relevant in guiding the evaluation of evidence concerning the restriction of freedom as provided for in Article 149 of the Brazilian Criminal Code (including situations where freedom of movement is restricted by any means due to a debt contracted with the employer or their representative).

The absence of physical restraint does not necessarily imply the absence of a restriction on freedom sufficient to exclude criminal typification, particularly when especially vulnerable victims are more susceptible to immaterial or non-physical means of coercion. The lived reality of women in general – and of mothers in particular – within such scenarios clearly demands analysis through a gender perspective.

Reflections on Gender — Illustrative Cases and Key Issues

Revictimization and Judicial Proceedings. Crimes such as child sexual abuse material (CSAM)¹¹² and non-consensual pornography / revenge pornography¹¹³, when perpetrated through the internet, exemplify situations in which revictimization can occur more explicitly – as previously noted in other parts of this Protocol. In addition to the standard precautions required in cases involving sexual dignity, particular attention must be given to the scope and impact of the harm inflicted upon victims under these circumstances.

Although Brazilian society and its institutions must strive to reject stigmatizing stereotypes, as established in Article 3, Item IV, of the Federal Constitution, it is also necessary to recognize that victims of these crimes experience an additional layer of violence through public exposure. That is, beyond the harm caused by the criminal act itself, its social reverberation constitutes a form of violence that must be taken into account both in the penal response and in the specific care to be exercised during legal proceedings, so that the victims' interaction with the justice system does not deepen their suffering.

Several other criminal offenses falling under federal jurisdiction, such as social security fraud, could also be analyzed from this perspective. However, the considerations above appear sufficient to highlight the main points of concern.

c. Social Security Law

The following text is excerpted from the AJUFE Women Booklet – Adjudicating from a Gender Perspective: A Guide for Social Security Law (*Cartilha Ajufe Mulheres – Julgamento com Perspectiva de Gênero: um guia para o direito previdenciário*)¹¹⁴, published in December 2020. It specifically refers to Chapter 5 (“A Guide to Social Security Law”).

This section presents selected excerpts from the document, with an emphasis on practical aspects that highlight the need for jurisdictional analysis of social security benefits through a gender perspective. Readers are encouraged to consult the full publication, as it addresses numerous other relevant aspects that may be explored in greater depth.

“A Guide to Social Security Law”

The material foundation to which social security law is applied essentially concerns individuals' work histories – a dimension in which gender and racial inequality reveal some of their most significant aspects, given the critical role that social security benefits play in the income composition of Brazilian families, especially those living in rural areas.

¹¹² Articles 241 to 241-D of the Statute of the Child and Adolescent (Law No. 8,069/1990).

¹¹³ Article 218-C of the Brazilian Criminal Code.

¹¹⁴ Wurster, T. M., & Alves, C. da M. S. P. (Eds.). (2020). Adjudicating from a Gender Perspective: A Guide for Social Security Law. Ribeirão Preto: Migalhas; Ajufe. Retrieved from http://ajufe.org.br/images/pdf/CARTILHA_-_JULGAMENTO_COM_PERSPECTIVA_DE_G%C3%8ANERO_2020.pdf (Accessed July 27, 2021).

Thus, the application of a supposedly neutral treatment between men and women – especially when intersected with other prohibited grounds of discrimination – may result in inequalities that ultimately exclude women from access to social security benefits. This often stems from their classification as “housewives” in the division of family labor or from the greater obstacles they face in securing formal employment and meeting eligibility requirements.

Women face numerous adverse conditions in the labor market, including lower average wages, informality, lower-ranking positions, and a concentration in care-related occupations – typically informal and poorly paid – as if women were not suited for roles beyond those resembling domestic work. Additionally, women face higher unemployment rates than men.

Intersecting patterns of discrimination exacerbate the barriers Black women face in accessing social security benefits. They occupy the most disadvantaged position in relation to precarious work: in 2014, Black women accounted for 39% of those engaged in this type of labor, followed by 31.6% of Black men, 27% of White women, and, lastly, 20.6% of White men¹¹⁵.

With the aim of contributing new elements to the debate on adjudication in social security matters, some general aspects related to the most common social security benefits will be outlined, highlighting the legal and economic relevance of the subject. This will be followed by a discussion of the specific challenges faced by women in accessing certain social security benefits. (...)

Data from the recent report “The Judicialization of Social Security and Welfare Benefits,” published by the National Council of Justice (CNJ) based on a study conducted by Insper (Institute of Education and Research), indicate that the profile of social security judicial claims filed by women reflects their lower representation in the formal labor market. The third most common category of affiliation consists of self-employed workers, accounting for just over 14% of total claims, with a significantly higher proportion of women (an average of 61%). This proportion mirrors gendered participation across different occupations, with men more present in the formal labor market and women more often engaged in self-employed work¹¹⁶.

Thus, in order to contribute to an assessment grounded in these fundamental principles of justice and non-discrimination – whether direct or indirect – certain issues that are particularly sensitive to women must be taken into account when adjudicating social security matters.

Undervaluation of women’s rural labor

(...)

Women also face specific obstacles in proving their rural work. The legal exemption from making social security contributions, although clearly a protective rule that acknowledges the vulnerability of this form of labor, ends up generating certain difficulties regarding the burden of proof.

¹¹⁵ Pinheiro, L. S., Lima Junior, A. T., Fontoura, N. O., Silva, R. da, et al. (2016). Women and work: A brief analysis of the 2004–2014 period. Brasília: Institute for Applied Economic Research (IPEA). Retrieved from http://repositorio.ipea.gov.br/bitstream/11058/6524/1/Nota_n24_Mulheres_trabalho.pdf (Accessed on July 27, 2021).

¹¹⁶ National Council of Justice. (2020). Final research report: The judicialization of social security and assistance benefits (p. 54). Brasília: National Council of Justice (CNJ). Retrieved from https://www.cnj.jus.br/wp-content/uploads/2020/10/Relatorio-Final-INSPEER_2020-10-09.pdf (Accessed on July 27, 2021).

The special insured rural worker bears the burden of proving not only the work on the land during the legally required period but also the labor performed under a family economy regime, which defines this category of insured person. The legal premises established for recognizing this particularity of rural labor pose specific challenges for women, whose productive work is routinely assessed through the paradigm of male labor.

The use of vague and indeterminate terms – such as “family economy regime,” “work essential to subsistence,” “mutual dependence,” and “collaboration” – further reinforces this difficulty. These expressions allow the legal operator, whether an administrative authority reviewing benefit applications or a judge ruling on a lawsuit, broader discretion in assessing the evidence presented by the insured. The lack of objective criteria and the necessary exercise of value judgment regarding the type of work performed by rural producers do not contribute to the adequate social security protection of rural working women.

This is because symbolic power, which stems from the paradigm that assigns value to female labor based on male labor, ends up influencing the logic of judicial decision-making. Even when women dedicate the same number of hours to rural work as men – or perform work just as arduous as that of their partners or family members – their contribution requires a heightened evidentiary effort to be recognized. This stems from a common-sense presumption that positions men as providers and assigns to women a merely “auxiliary” role.

Thus, when a family works on small rural properties, there is an automatic presumption that the man is the one cultivating the land. This presumption is not, however, made a priori in relation to the wife. She is often required to prove that domestic work does not consume most of her day, which expands the margin of judicial discretion in deciding whether her labor qualifies as work within the family economy regime.

Since social dynamics symbolically rest on the premise that male labor is essential while female labor is incidental, administrative authorities or judges often presume this symbolic reality and, perhaps unconsciously, demand more robust evidence from women to prove their work as rural producers, along with a greater burden of justification. (...)

Jurisprudence has already settled that the urban work performed by one family member does not necessarily disqualify the family economy regime of the other rural workers within the household¹¹⁷. In other words, even if one member of the family engages in urban employment, this does not invalidate the classification of the others as special insured individuals¹¹⁸. However, judicial decisions regarding the essentiality of rural labor often vary depending on whether the urban worker is a man or a woman.

¹¹⁷ Thus, Precedent 41 of the National Uniformization Panel provides: “The circumstance that one of the members of the family nucleus performs urban activity does not, by itself, imply the mischaracterization of the rural worker as a special insured person, a condition that must be assessed on a case-by-case basis.” Original footnote in AJUFE Booklet No. 101.

¹¹⁸ From another perspective, it can be stated with absolute certainty that only two situations would disqualify the Family Economy Regime: when the combined income generates extraordinary wealth, or when the so-called urban activity consumes the entire workday. Apart from such situations, the condition of Special Insured remains fully preserved. Bicheski, I. (2002). Peasant: family economy regime: dual profession [Campeano: regime de economia familiar: dupla profissão]. *Revista de Previdência Social*, São Paulo, 26(265), 1081–1082. Original footnote in AJUFE Booklet No. 102.

The decisions regarding the characterization of the family economy regime reveal that, when the man works on the land and the woman carries out some form of urban employment – such as a teacher at a rural school, for example – the legal operator responsible for deciding on the essentiality of rural work generally concludes that the man’s labor on the land is more relevant. After all, he is presumed to have the physical strength required to cultivate the land sufficiently to support the family unit, thereby characterizing the male rural worker as a special insured person.

The opposite is generally not true. When the man engages in urban labor – even in simple, lower-skilled, and lower-paid services, such as construction work or driving – the value judgment is reversed, and rural production is deemed a supplement to urban income. In this scenario, rural work symbolically loses its essential nature. Gender stereotypes influence the decision-making process, activating involuntary and unconscious discriminatory patterns that make it more difficult for judges to consider that a woman’s work may hold equal or even greater relevance than that of her husband. After all, if the man is employed, common sense suggests that the woman no longer needs to use physical strength to till the land – a strength that, according to social norms, she is presumed not to possess.

The constitution of evidence regarding the period of rural activity

Another singularity that characterizes rural women – and contributes to the difficulty of establishing evidence of rural labor – must also be highlighted: the indistinction between domestic work and productive rural labor. In the case of women active in the urban labor market, although they have historically accumulated two functions – domestic (caring for the home and children) and economically relevant labor – there is an evident, or at least sufficient, distinction between both spaces. The physical separation between home and workplace contributes to this differentiation, as does the concrete delimitation of the time spent on each activity. Rural women workers, on the other hand, are generally unable to separate domestic tasks from farm labor – except, perhaps, insofar as they cannot rely on the help of their husband or partner when it comes to domestic responsibilities. Finally, this delimitation is further complicated by the fact that the production of the land often serves the family’s subsistence, and any surplus is typically exchanged within the community for other foodstuffs, making monetary remuneration the exception rather than the rule.

(...) The constitution of proof regarding rural activity for women applying for rural retirement must be sensitive to these circumstances – namely, the prominence of documentary evidence under the name and possession of the male partner, and the fact that the work predominantly performed by the woman is often undocumented. Therefore, the identification of the male partner must serve to support the woman’s claim. At this point, an additional consideration is necessary: that of women without a partner – either those who once had one but never formalized the union, or those who have always remained single. For these women, not even a marriage certificate or other documents identifying a partner can support their rural work claims. Thus, recognizing the condition of these women requires an expanded interpretation of what constitutes material evidence. Consequently, it is reasonable to include documents attesting to the rural condition of other family members – such as parents, siblings, or children (for example, their marriage or death certificates, or labor record cards) – as admissible evidence for proving the applicant’s rural activity.

Finally, it is also important to comment on the case of women without children who live or have lived in a stable union with a rural worker. This represents a particularly challenging situation due to the absence of documentary evidence concerning the birth of children, the limited applicability of evidence provided by their parents (who often no longer reside with them), or the lack of a formal marriage, given the existence of an “informal union” / “stable union”. Precedent No. 63 of the National Panel for the Uniformization of Federal Case Law (TNU) waives the requirement for material evidence to prove the existence of a “stable union” for the purposes of granting survivor’s pensions.

(...) Therefore, special attention must be paid to cases in which a woman, having entered into a “stable union”, lacks any documentary evidence to attest to that union – relying solely on witness statements supporting the elements that characterize such a relationship. Once the “stable union” is recognized, the partner’s documents must be used. If those documents clearly identify him as a rural worker, this condition shall be extended to the woman with whom he formed the “stable union”.

Urban retirement and the condition of women in the city

The retirement of women living in urban environments faces challenges rooted in two interrelated realities: limited access to and permanence in the labor market, and the burden of domestic and care-related activities – both marked by deep inequality in relation to men.

The difficulty in proving the incapacity of women dedicated to housework

The perception that positions social reproduction activities as sufficient employment for women has consequences for their access to benefits due to partial or total disability – such as sickness or disability benefits – or even access to the Continuous Payment Benefit under the Organic Law of Social Assistance. As is customary in cases involving disability, controversy usually prompts the need for expert evaluation. However, when it comes to women in the condition of unpaid domestic workers (commonly referred to as “housewives”), experts often assess them as capable of working. Even though the illness they suffer from prevents them from performing other occupations, the argument frequently used is that they remain able to perform domestic and care-related tasks. This same argument, however, is rarely applied when the person unable to perform other activities is a man. Therefore, the Judiciary must be attentive to this circumstance and inquire whether the capacity identified through expert evidence is limited to the realm of social reproduction activities. If so – meaning the woman remains unable to perform activities within the sphere of social production (the labor market) – it is essential to recognize her disability, since the notion of female labor fulfillment must not be restricted to the circle of domestic activities.

Guidelines for Adjudicating and Evaluating Social Security Evidence

(...)

1. When evaluating evidence, social security judges must not disregard the sexual division of labor, according to which women are primarily responsible for care and domestic tasks within family units;

2. Evidence must be admitted beyond the exhaustive list set forth in Article 106 of Law No. 8,213/1991, including videos and photographs capable of demonstrating a female rural worker's status as a special insured person;
3. Questions at the hearing must be formulated clearly enough to prevent the insured woman from disqualifying herself as a contributor to the family's rural work by identifying as "a housewife." Questions like whether she "uses a hoe," "clears fields," or "does heavy labor" should be avoided;
4. Article 11 of Law No. 8,213/1991 must be interpreted in harmony with the Federal Constitution so as not to exclude insured women on the grounds that they do not work "directly" in rural activities, even though they perform domestic tasks that benefit the family unit;
5. There is no hierarchy among the types of evidence that may be admitted in judicial proceedings, nor should marriage certificates or evidence based on patriarchal family structures prevail over other types of documentation presented by single insured women;
6. The analysis of documentation concerning single special insured women must take into account the barriers they face in appearing on property titles. Documents issued in the name of third parties should be given special weight when they are consistent with testimonies and other elements of evidence;
7. When examining expert reports in disability benefit proceedings, judges must reject conclusions that frame domestic activities as unproductive, including when they support the absence of disability by implicitly or explicitly assuming that such tasks require no physical effort;
8. When analyzing documentary evidence related to the eligibility period of urban and rural workers, judges must consider the historical and structural barriers faced by Black women in establishing formal employment relationships, and may assign greater value, in these cases, to testimonial evidence and employment record cards (CTPS), rather than to official records from the National Institute of Social Security (INSS);
9. Judges must take into account studies showing that rural women workers are often responsible for multiple households and tend to use their income primarily for family sustenance rather than for personal expenses. Therefore, engaging in precarious activities and "odd jobs" (such as working as manicurists, day laborers, etc.) out of necessity should not, by itself, exclude women from being recognized as special insured persons;
10. The massiveness of social security judicialization must be understood as a factor that fosters the use of categories and stereotypes in hearings and judicial decisions, shaped by race and gender biases. To achieve qualitative jurisdiction in the social security field, collective and structural solutions to repetitive claims must be prioritized – either through actions informed by such a perspective or through the work of the Federal Justice Intelligence Centers.

d. Civil, Administrative, Tax, and Environmental Law

Regarding claims involving Administrative, Environmental, Civil, and Tax Law issues processed in the Federal Justice system, special attention must be paid to the impacts of direct, indirect, and

institutional discrimination, as well as to the intersectional perspective, since individuals in these cases are directly confronting the State in court.

Attention: Relevant data presented in the report¹¹⁹ organized by UN Women Brazil, the Brazil Office of the Economic Commission for Latin America and the Caribbean (ECLAC), and the Friedrich Ebert Foundation (FES) in Brazil reinforce the need for adjudication from a gender perspective:

- Black, Indigenous, “Quilombola”, low-income women living in marginalized urban areas, and gender-nonconforming feminized bodies are groups especially exposed to the impacts of climate inaction, highlighting the existence of environmental racism.
- The increase in the frequency and intensity of extreme weather events (such as prolonged droughts, floods, storms, landslides, and temperature extremes) within a context of deep structural inequalities places women at greater risk and exposure to adversity than men.
- Socioeconomically vulnerable women tend to have fewer tools and lower income to cope with the impacts of climate change (for example, relocating to a home in an area less prone to landslides or flooding), due to persistent gaps in wages, employment, access to public goods and services, representation, and rights.
- Women are also more likely to experience time poverty as a result of climate change, as they are more frequently the ones caring for the sick, injured, amputees, and bereaved in the wake of extreme events.¹²⁰”

Reflections on Gender — Illustrative Cases and Key Issues

The analysis of structural demands, collective actions, possessory claims, and land demarcation processes involving traditional populations requires unveiling the social structures to which they are connected and exposing the underlying subtexts that influence procedural relations and must be brought to light.

The examination of cases involving migration and displacement, without prejudice to other legal actions, must take into account the need for protective measures for children, women, and self-declared LGBTQIA+ individuals, as highlighted in the research

¹¹⁹ Olivera, M., Podcameni, M. G., Lustosa, M. C., & Graça, L. (2021). The gender dimension in the Big Push for sustainability in Brazil: Women in the context of the social and ecological transformation of the Brazilian economy (Project Documents). Economic Commission for Latin America and the Caribbean (ECLAC). https://repositorio.cepal.org/bitstream/handle/11362/46643/1/S2000925_pt.pdf

¹²⁰ Olivera, M., Podcameni, M. G., Lustosa, M. C., & Graça, L. (2021). The gender dimension in the Big Push for sustainability in Brazil: Women in the context of the social and ecological transformation of the Brazilian economy (Project Documents). Economic Commission for Latin America and the Caribbean (ECLAC). https://repositorio.cepal.org/bitstream/handle/11362/46643/1/S2000925_pt.pdf

“Gender, Nationality, and Race/Ethnicity Violence in Two Cities in Roraima¹²¹”, released in October 2020, which states: “Women living in humanitarian emergency contexts are particularly vulnerable to various forms of violence and exploitation.”

When analyzing individual claims, in addition to the volitional or intentional aspect that may be under investigation, special attention must be paid to the institutional structure in which the dispute arises, given the particular nature of litigation in the federal courts involving public institutions or entities. Examples include lawsuits related to moral damages, harassment, and the granting of leave to civil servants. In this respect, it is important not to overlook rulings by the Federal Supreme Court (STF) that prohibit interpretations and understandings which, under the guise of neutral application of the law, transform maternity into a burden for women and impose unequal barriers to access or promotion to public positions or employment – such as in the Direct Action of Unconstitutionality (ADI) No. 1,946, National Confederation of Health Workers v. Union (the federal government of Brazil), and the judgments of the Extraordinary Appeal (RE) 576,967/PR – National Institute of Social Security (INSS) v. Rosana da Silva Boccato, and Extraordinary Appeal (RE) No. 1,058,333 – Union (the federal government of Brazil) v. Silvia Letícia Pinto da Silva. According to the Court, “in addition to pregnancy not being a disease, the special condition of bearing a child cannot count against a woman¹²².”

Acting from an intersectional gender perspective requires attention at all stages of the judicial procedure – as repeatedly emphasized in this Protocol – while actively avoiding stereotypes, biases, and structural inequalities. This entails: (i) ensuring that the analysis of the burden of proof distribution takes into account the potential impossibility of its production by vulnerable groups, as well as the potential undervaluation of such evidence when presented by these groups in pre-procedural stages; (ii) considering accessibility when scheduling hearings, including agenda preparation and the logistical barriers to accessing either physical court facilities or virtual platforms – while also ensuring adequate support for older adults and children who may need to accompany family members; (iii) conducting hearings in a manner that respects diverse linguistic expressions, cultural backgrounds, and regional differences; (iv) recognizing and accommodating difficulties in oral expression stemming from limited formal education; and (v) acknowledging the intimidating nature of state institutions for individuals who are unfamiliar with procedural rites.

The description is not intended to be exhaustive but rather to offer general guidelines, as already outlined in the section on adjudication with a gender perspective in this Protocol, exemplified within the context of the Federal Justice system.

¹²¹ United Nations Population Fund (UNFPA). (2020). Gender-based violence, nationality and race/ethnicity in two cities of Roraima: Executive summary. Datamétrica Pesquisa & Consultoria (Research & Consulting); coordinated by UNFPA, with support from UNHCR Brazil and funding from the European Union. https://brazil.unfpa.org/sites/default/files/pub-pdf/violencia_de_genero_nacionalidade_e_raca-etnia_em_duas_cidades_de_roraima.pdf

¹²² Supreme Federal Court. (2018, October 21). General Repercussion in Extraordinary Appeal No. 1,058,333 (Reporting Justice: Luiz Fux). Retrieved from <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=753327328>. Accessed on August 27, 2021.

3. State Judiciary

The State Courts are part of the Common Justice System and have residual jurisdiction to process, adjudicate, and enforce cases that do not fall under the jurisdiction of the Federal or Specialized Courts (Military and Electoral). According to the 2020 Justice in Numbers Report, 64.5% of the judicial units at the First Instance level are part of the Courts of Justice of the States and the Federal District¹²³.

Gender-based violence may arise in lawsuits filed before the State Courts, in their various areas of jurisdiction. Therefore, when adjudicating from a gender perspective, judges must act to contain harm and interrupt actions involving offensive, disqualifying, or stereotyped vocabulary and/or language – whether spoken during hearings or embedded in procedural documents – by including a formal record in the case file to support the analysis under this perspective, in accordance with Brazil’s international commitments.

In fact, there are accountability mechanisms available in such cases (e.g., striking offensive words from the record, interrupting procedural acts, imposing restrictions, procedural fines, and even convictions for acts that offend the dignity of justice, without prejudice to the removal of documents or images deemed violative).

Any occurrence that exceeds the boundaries of the judicial process as a constitutional institution requires the adoption of appropriate procedural measures, including the extraction of records for the initiation of specific proceedings regarding the crimes identified in the act (Articles 138, 139, 140, 146, 151, 153, 154-A, 158, 218-C, and 216-B of the Brazilian Criminal Code), as such conduct disqualifies parties, victims, and witnesses, thereby contaminating an environment that should safeguard the construction of “the constitutionally guaranteed due process.”

The fundamental objectives of the Federative Republic of Brazil must be upheld, namely to “promote the well-being of all, without prejudice as to origin, race, sex, color, age and any other forms of discrimination” (Article 3, Item IV, Federal Constitution). Effective action must also be taken to ensure the “prevalence of human rights” (Article 4, Item II), without neglecting the core foundation of human dignity (Article 1, Item III), which stands as the highest foundation of the legal order, including for the realization of citizenship (Article 1, Item II). These are the reasons underlying the legal instruments that provide for the punishment of “any discrimination that may attempt against fundamental rights and liberties” (Article 5, Item XLI). One must not disregard the central role of magistrates in fulfilling these constitutionally guaranteed values.

a. Gender-based violence and procedural law issues

The introduction of General Recommendation No. 35 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) highlights the recognition of the prohibition of gender-based violence against women as a principle of customary international law. It refers to the general obligation of States Parties, particularly in the judicial sphere, to ensure legal proceedings that

¹²³ National Council of Justice (Brazil). (2020). Justice in Numbers 2020: Base Year 2019. Brasília, DF: National Council of Justice. Available at: <https://www.cnj.jus.br/wp-content/uploads/2020/08/WEB-V3-Justi%C3%A7a-em-N%C3%BAmeros-2020-atualizado-em-25-08-2020.pdf>. Accessed on: July 29, 2021.

are not only impartial and fair but also free from gender stereotypes or discriminatory interpretations (Section III, Paragraph 26(c), with reference to Articles 2(d), 2(f), and 5(a) of the Convention).

In this vein, considering that procedural law encompasses principles and rules aimed at the realization of jurisdiction as a means of resolving conflicts of interest – whether between private parties or between individuals and the State¹²⁴ – it is essential to recognize that magistrates must exercise jurisdiction from a gender perspective, thereby addressing procedural issues that may cause undue imbalance in the relationship between the parties involved in the proceedings.

a.1. Emergency Protective Measures and the National Risk Assessment Form

The emergency protective measures, provided for in Articles 22 and following of the Maria da Penha Law (No. 11,340/2006), are classified as urgent measures aimed at protecting victims of physical, sexual, psychological, moral, or property-related violence against women, committed in the domestic or family environment or within an intimate relationship of affection, due to their gender.

These emergency protective measures serve as an effective instrument for the prevention and combat of violence against women, with the capacity to prevent the recurrence of violent acts and reduce femicide rates.

To learn more: Research conducted by the Public Prosecutor’s Office of the State of São Paulo¹²⁵ demonstrated that in 97% of femicides that occurred in São Paulo in 2017, the victims were not under the protection of emergency protective measures. This underscores that the granting of such measures can

Under the terms of Statement No. 45 of the National Forum of Judges on Domestic and Family Violence against Women (FONAVID), “the emergency protective measures provided for in Law No. 11,340/2006 may be granted autonomously, based solely on the victim’s statement, when other evidentiary elements are absent from the records.” This means that they are autonomous in relation to the main proceedings, and the victim is exempt from submitting a formal representation in cases of conditionally prosecutable public criminal actions.

The autonomy of emergency protective measures enables their granting both in specific proceedings and in response to incidental requests made within any ongoing action in the Judiciary, considering that harm or threat to the legally protected good (namely, the life and physical integrity of women) can be established in any type of proceeding. Any interpretation to the contrary would constitute insufficient protection of the legal interest at stake, which is inadmissible under the Brazilian legal system.

¹²⁴ Reale, M. (2002). Preliminary lessons on law (27th ed.). São Paulo: Saraiva.

¹²⁵ São Paulo (State). Public Prosecutor’s Office. (n.d.). X-ray of femicide in São Paulo: It is possible to prevent death. São Paulo: MPSP. Available at: http://www.mpsp.mp.br/portal/page/portal/Nucleo_de_Genero/Feminicidio/RaioXFeminicidioC. PDF. Accessed on August 27, 2021.

The peculiar characteristics of violent dynamics – which usually take place within the home or in secrecy – require that the victim’s word be given special evidentiary value, as acknowledged in the final part of FONAVID Statement No. 45.

In working under a gender perspective, the application of the National Risk Assessment Form (Law No. 14,149/2021 and Joint Resolution No. 5/2020 of the National Council of Justice – CNJ – and the National Council of the Public Prosecutor’s Office – CNMP) proves to be instrumental in supporting judicial decisions, serving as a tool of paramount importance for granting the most appropriate protection to victims – especially with regard to emergency protective measures.

In fact, in addition to providing the magistrate with a detailed overview of the situation of both direct and indirect victims to assist in their decision-making, the form also aims to prevent revictimization, which may constitute institutional violence in accordance with Article 10-A, Paragraph 1, Item III of the Maria da Penha Law, as well as to prevent femicide.

An important measure to be adopted is the indication, in screening certificates, of proceedings (ongoing or archived) involving the same parties, especially those related to the Maria da Penha Law and those reporting crimes against sexual dignity.

As for the databases related to emergency protective measures, they must be updated in accordance with the guidelines of the National Council of Justice (CNJ) and the Disciplinary Boards of the Courts of Justice, so that searches can assess the effectiveness of the jurisdictional provision.

a.2. Probative value of the victim’s testimony

Victims’ statements qualify as a means of evidence of unquestionable importance when addressing gender-based violence, particularly in light of the procedural vulnerability of the offended party, who is often silenced by the difficulty of proving the absence of consent. This highlights the low credibility frequently attributed to the testimony of female victims, especially in crimes against sexual dignity, where they are burdened with the difficult task of proving the violence they have suffered¹²⁶.

Judgments under a gender perspective entail a high evidential value attributed to the statements of women who are victims of gender-based violence, without implying any procedural imbalance. This differentiated evidential weight is legitimized by the procedural vulnerability of the offended party within the legal relationship, thus qualifying the jurisdictional activity carried out in this manner as impartial and consistent with the substantive dimension of the principle of equality (Article 5, Item I, of the Federal Constitution).

a.3. Testimony of victims in situation of age-related vulnerability

Regarding sexual crimes against children and adolescents, a careful look at reality reveals that most abuses are perpetrated by aggressors who do not fit the stereotype of a pedophile. In other words, they are seen by society as non-deviant individuals. However, they exercise power over minors and take advantage of opportunities created by structural inequality.

¹²⁶ Mendes, S. da R. (2020). *Feminist criminal procedure* (1st ed., pp. 95–97). São Paulo: Atlas.

Furthermore, data¹²⁷ show that most victims are girls and that the crimes often take place inside the home, perpetrated by those who should be protecting them.

Protective listening of girls – vulnerable victims due to both their gender and age – poses a challenge to the gender-based violence prevention and response network. Acts of violence are often perpetrated by individuals within the victims’ immediate circle, which, in addition to instilling fear, generates feelings of guilt in the child for identifying the perpetrator in court. This emotional burden can obstruct the revelation of the facts and contribute to an undue sense of impunity.

According to Law No. 13,431/2017, protective listening is divided into (a) specialized listening and (b) special testimony. The latter refers to the hearing of the child or adolescent before a police or judicial authority, conducted under interinstitutional protocols and, “whenever possible,” carried out “only once” as a precautionary measure of early judicial evidence production, particularly when the child or adolescent is under seven years old or in cases of sexual violence.

Moreover, a new testimony may be admitted if “its indispensability is justified by the competent authority and there is the consent of the victim or witness, or their legal representative.” This interpretation results from the combined reading of Articles 8 and 11, caput, and Paragraphs 1 and 2 of Law No. 13,431/2017, and reflects the intent to prevent revictimization through repeated hearings on the same facts.

The interinstitutional protocols establish a coordinated chain of actions specifically aimed at integrating the actors responsible for receiving and referring victims and witnesses, as well as for conducting specialized listening and special testimony regarding the violence experienced or witnessed. The goal is to implement and effectively enforce the provisions set forth in Law No. 13,431/2017.

The special testimony constitutes a form of oral and expert evidence, which must be presented to the victim and their legal representative for the purpose of instructing the case. Whenever possible, and if preferred by the victim or their representative, it may be conducted directly by the magistrate, in accordance with Article 12, Paragraph 1, of the aforementioned special legislation.

If the magistrate opts for direct testimony, they must use comprehensible language, avoid repetitive questioning, act in a welcoming and respectful manner, and allow the victim or witness to express themselves in the manner that makes them feel most comfortable – whether verbally, in writing, or through gestures.

The delay in hearing individuals in a condition of age-related vulnerability regarding the violence they have suffered or witnessed may cause profound distress and, consequently, hinder their regular physical, mental, and psychological development. Such delay runs counter to the guidelines established by international treaties and instruments governing the fundamental rights of children and adolescents – and further discredits the justice system.

¹²⁷ Childhood Brazil. (2019, August 14). Child sexual violence in Brazil: Understand the scenario of sexual violence against children and adolescents in Brazil and learn how to prevent it. São Paulo. Available at: <https://www.childhood.org.br/a-violencia-sexual-infantil-no-brasil>. Accessed on: August 27, 2021.

a.4. Legal representation of the victim

Article 28 of the Maria da Penha Law guarantees that women victims of gender-based violence are entitled to legal representation before the police and the judiciary. Often, in addition to criminal proceedings, the victim depends on a legal professional with standing to bring property-related lawsuits on her own behalf and on behalf of her children.

Although the Public Prosecutor's Office holds the prerogative of criminal prosecution, pursuant to Article 129, item I, of the Federal Constitution, due to the often intimate relationship between the victim and the accused, as well as the circumstances of subordination, hierarchy, and social discrimination that intersect in gender-based violence, the representation of the victim by a legal professional is essential to prevent trials from reproducing prejudices, stereotypes, and derogatory assessments of the victim's behavior. Such representation complies with the legal framework that safeguards women's human rights and demonstrates adherence to the obligation of adjudicating under a gender perspective, in accordance with the due diligence standard¹²⁸.

Because of these advances, magistrates' concern with enforcing Article 28 of the Maria da Penha Law aligns with the guidelines that structure adjudication under a gender perspective, aimed at preventing gender imbalance within the judicial process and the perpetuation of violence – now in the form of institutional violence.

a.5. Effects of conviction and the victim's right to compensation

The victim of gender-based violence is entitled to full reparation under the terms of Article 9, Paragraph 4, of the Maria da Penha Law. This provision aligns with Article 387, Item IV, of the Brazilian Code of Criminal Procedure, amended by Law No. 11,719/2008, which authorizes the conviction of the aggressor for the reparation of damages caused by the offense, considering the harm suffered by the victim.

The new criminal procedural framework allows the defendant to be sentenced in the criminal conviction itself – without the need for a separate civil action *ex delicto* – to pay compensation for the material and moral damages caused to the victim, due to the violation of a legal right held by them.

Article 63, sole paragraph, of the Code of Criminal Procedure allows for enforcement proceedings, thus materializing the right to reparation, which is of paramount importance given the harm that acts of violence often inflict on the physical, mental, and psychological development of victims of gender-based violence.

¹²⁸ Maria Teresa Féria de Almeida states that International Human Rights Law establishes three levels of obligations for States Parties regarding human rights: to respect, to protect, and to fulfill, the latter being guided by the due diligence standard – that is, the adoption of appropriate means to achieve the best possible results. In justifying the nature of the obligation to adjudicate under a gender perspective, the author cites General Recommendation No. 28, paragraph 9, which urges States Parties to adopt “measures directly aimed at eliminating customary and all other practices that foster prejudice and perpetuate the notion of inferiority or superiority of either sex and of stereotyped roles for men and women. The obligation to fulfill requires that States parties take a wide range of measures to ensure that women and men enjoy equal rights *de jure* and *de facto*” (our translation).

Regarding the conviction of the aggressor to pay a minimum amount of compensation for the damage caused to the victim, if the criminal action is successful, an express request by the Public Prosecutor's Office or by the victim is required, according to the legal thesis established by the Third Section of the Superior Court of Justice (STJ) when adjudicating repetitive special appeals (Theme 983)¹²⁹.

The protection system established by the Maria da Penha Law provides mechanisms to ensure the dignity of victims of gender-based violence, including those required for full reparation, such as the actions taken by the magistrate to determine compensation from a gender perspective.

b. Criminal Law

Criminal Law typifies conducts considered criminal, highlighting in the criminal legal system offenses that take into account the episodic vulnerability of the female gender in order to protect a specific legal interest, aiming to safeguard it from offenses – often recognized as recurring within a certain group.

The identification of gender-based violence in interindividual relationships and the criminal classification of such conduct under Criminal Law reveal a society marked by gender hierarchy and resistance to the affirmation of substantive equality. It is essential to organize society not only to preserve legal order but also to mitigate the effects of criminal conduct.

The principle of judicial integrity – characterized by the convergence of the law and the fundamental principles of human rights in the exercise of jurisdiction – must be emphasized as aligned with the duty of adjudicating under a gender perspective. This duty aims to displace inequality from judicial discourse – inequality that affects women subjected to gender-based violence through unequal and hierarchical treatment. It also seeks to reduce their suffering within judicial proceedings and to recognize their right to a dignified life free from violence, by means of decisions that neutralize asymmetrical power relations evidenced in each specific case¹³⁰.

¹²⁹ Brazil. Superior Court of Justice (Third Panel). Special Appeal No. 1,643.051/MS. Reporting Justice: Rogério Schiatti Cruz. February 28, 2018. Electronic Justice Gazette, Brasília, DF, March 8, 2018. Available at: https://processo.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=1669781&num_registro=201603259674&data=20180308&peticao_numero=-1&formato=PDF. Accessed on: Sept. X, 2021. Brazil. Superior Court of Justice (Third Panel). Special Appeal No. 1,675.874/MS. Reporting Justice: Rogério Schiatti Cruz. February 28, 2018. Electronic Justice Gazette, Brasília, DF, March 8, 2018. Available at: https://processo.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=1669780&num_registro=201701403043&data=20180308&peticao_numero=-1&formato=PDF. Accessed on: Sept. 10, 2021. These cases were submitted to the Repetitive Appeals System, establishing the legal thesis that, in cases of violence against women in the domestic and family context, it is possible to set a minimum compensation amount for moral damages, provided that there is an express request from the Prosecution or the offended party – even if the amount is unspecified and regardless of evidentiary instruction. Brazil. Superior Court of Justice. Motion for Clarification in Special Appeal No. 1,671.528/MS. Reporting Justice: Sebastião Reis Júnior. August 27, 2018. Electronic Justice Gazette, Brasília, DF, August 29, 2018. Available at: <https://aus.stj.jus.br/websecstj/cgi/revista/REJ.cgi/MON?seq=86983347&tipo=0&nreg=201701184395>.

¹³⁰ The Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-based Violence against Women and Girls, developed by the United Nations Office on Drugs and Crime (UNODC, Vienna, 2019), aims to strengthen the institutional capacity of the judiciary to handle cases of gender-based violence against women and girls. It sets out the following objectives: “Sensitize the judiciary to recognize and overcome structural discrimination and promote gender equality • Enhance standards and behaviors of judges and improve judicial performance • Improve access to justice for victims of gender-based violence and reduce the risk of their secondary victimization • Promote the sharing of the good practices introduced by criminal courts around the world to help ensure that women and girls, as complainants, receive adequate protection and support during the criminal justice process” (p. 2). The document further states that

b.1. Obstetric violence

Although Brazil has not yet classified obstetric violence as an autonomous crime, the Federal Constitution, infraconstitutional legislation, and technical regulations, together with international treaties and documents, serve the purposes of criminal liability, including when such violations of the human rights of women and girls occur during the provision of essential and emergency services to parturient women¹³¹. This framework allows these acts of violence to be categorized as psychological, moral, and physical, in accordance with the life and reproductive cycles of women.

In this context, the World Health Organization (WHO) has identified seven types of obstetric violence experienced by women, namely physical abuse, sexual abuse, verbal abuse, stigma and discrimination, poor relationship between healthcare professionals and patients, inadequate health service infrastructure, and lack of patient care due to deficiencies in the health system.

Gender-based violence in obstetrics constitutes a violation of the right of pregnant women and girls to dignified care – care that does not silence their vulnerabilities and expressions, that avoids gender stereotypes, and that provides appropriate responses to their health needs, including maternity care free from risk, delivered by trained professionals capable of offering adequate obstetric care.

In 2011, the CEDAW Committee issued a decision in the *Alyne da Silva Pimentel* case, holding the Brazilian State responsible for violations of the following articles: (a) 2(c), regarding access to justice; (b) 2(e), concerning the State's obligation to regulate the activities of private health providers; and (c) Article 1, which prohibits discrimination against women. These provisions were read in conjunction with General Recommendation No. 24 (on women and health), No. 28 (relating to Article 2 of the CEDAW Convention), and Article 12 of the same international treaty, concerning access to health. These instruments serve as guiding frameworks for the issue and can strengthen the legal reasoning behind judicial decisions addressing gender-based and obstetric violence against women, aiming to combat such violations and identify the respective responsibilities of States, institutions, and healthcare professionals.

“Incorporating a gender perspective in judicial decision-making requires judges to assess the facts in accordance with a careful understanding of the law, free from any gender biases and harmful gender stereotyping. This not only applies to the decision itself but also to the process by which the decision is made. This section covers issues around fact determination; interpreting the applicable law based on human rights standards in decision-making; legal reasoning and crafting judicial decisions.” (p. 99). Moreover, it emphasizes that “All judges, both women and men judges, have a role to play in addressing gender discrimination in courts. They have an obligation to ensure that the court offers equal access and equal protection to women and men” (p. 153), in line with the Bangalore Principles of Judicial Conduct. United Nations Office on Drugs and Crime. (2019). Handbook for the judiciary on effective criminal justice responses to gender-based violence against women and girls. Vienna: United Nations. Retrieved from https://www.unodc.org/pdf/criminal_justice/HB_for_the_Judiciary_on_Effective_Criminal_Justice_Women_and_Girls_E_ebook.pdf.

¹³¹ There are several legal provisions that can be invoked in these situations, including, for example: at the national level, the Federal Constitution of Brazil (Article 1, III; Article 5, III and X; Article 6), Law No. 8,078/1990 (Consumer Protection Code), Article 14; the Brazilian Criminal Code, Article 121, §§ 2 and 7; the Code of Medical Ethics (CFM Resolution No. 1,931/2009); and the Code of Ethics for Nursing Professionals (Resolution No. 564/2017). At the international level, the relevant instruments include the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights (Articles 10.2, 12.1, and 12.2(d)); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 1; and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention), Articles 1, 2, 3, and 4.

b.2. Criminal responsibility in abortion and infanticide

Since authorship in abortion and infanticide crimes is most often attributed to women, magistrates must be particularly vigilant regarding the influence that stereotypes may exert on the arguments presented by the prosecution and defense, as well as on the reasoning behind judicial decisions.

In cases of infanticide, stereotypical notions of what constitutes “healthy motherhood” frequently arise during trials, often to the detriment of women¹³².

Regarding abortion, it is important to highlight that the constitutionality of criminalizing the conduct has been debated in the Federal Supreme Court (STF) for nearly a decade, with particular emphasis on the significance of Allegation of Violation of a Fundamental Precept (ADPF) 54 decided in 2012. In this ruling, the Constitutional Court determined that the early termination of pregnancy in cases of fetal anencephaly constitutes an atypical act, and that contrary interpretations would violate fundamental principles and rights¹³³.

Moreover, Habeas Corpus 124,306 (2016) was adjudicated with an incidental ruling declaring the criminalization of abortion up to the 12th week unconstitutional, and the judgment of Allegation of Violation of a Fundamental Precept (ADPF) 442, which aims to declare the criminalization of abortion up to the 12th week unconstitutional with erga omnes effect, is currently pending.

The aforementioned decisions demonstrate, to some extent, adjudication from a gender perspective, distancing themselves from stereotypes regarding the expected behaviors of women in relation to motherhood and sexuality, and aligning rulings with the rights to physical and mental health and access to information. They also consider the precarious conditions in which many women experience pregnancy (with obstetric violence highlighted in [Part III, Section 3. b.1](#)), the lack of resources and support for child-rearing in Brazil, and the health and life risks faced by many women who resort to clandestine procedures.

b.3. Sexual autonomy and integrity

When investigating crimes affecting sexual autonomy and integrity, it is essential to adjudicate with a historical and social perspective on behaviors considered acceptable and valid for women and men. Otherwise, significant violations risk being overlooked, and androcentric law may prevail – one unable to distinguish between a victim’s lack of consent, non-consent, and dissent.

Social stereotypes and expectations for men and women influence what is understood as lack of consent for sexual acts, which can lead to significant distortions in the investigation of facts.

¹³² Angotti, B. (2019). From the solitude of the act to judicial exposure: An anthropological-legal approach to infanticide in Brazil (Doctoral thesis, Faculty of Philosophy, Languages and Human Sciences, University of São Paulo). <https://doi.org/10.11606/T.8.2019.tde-16092019-153730>.

¹³³ Machado, M. R. de A., & Cook, R. J. (2018). Constitutionalizing abortion in Brazil. *Revista de Investigações Constitucionais*, 5(3), 185–231.

When campaigns such as “No means No” (“Não é Não” in Portuguese) and “#MeToo” arise as social responses, the intention to protect women also resonates in criminal law, which safeguards sexual dignity; in cases of its violation, a woman’s dissent is not necessary, only the absence of consent.

On the other hand, this shift in values also affects the characterization of the absence of consent when the victim lacks the capacity to understand and consciously accept the sexual act.

Thus, if it is established that the party is incapable of consenting – including in cases of voluntary or involuntary intoxication – any inquiry that belittles the victim or assigns them co-responsibility for the act is inappropriate.

Regarding sexual violence, reporting often suffers delays, and it is prudent to reflect on the level of rigor expected concerning the consistency of accounts about dates or events that occurred long ago. It should be noted that delayed reporting and/or rapid dismissal of accusations often result from inequalities – such as the silencing of minors, fear of blame, and difficulties in confronting the issue due to social, economic, and religious factors – rather than implying a presumption of false accusation.

b.4. Stalking

Acts committed against women because of their gender are, as a rule, progressive and characterized by an escalation of violence and violations. Often, femicides and bodily injuries are preceded by repeated stalking behaviors that restrict the victim’s freedom or privacy.

Article 147-A, Paragraph 1, Item II, of the Brazilian Criminal Code, introduced by Law No. 14,132 of March 31, 2021, also establishes an aggravating circumstance if the crime is committed against a woman because of her female sex, with reference to Article 121, Paragraph 2-A of the same Criminal Code. This demonstrates that the legislator has attributed greater severity to the offense when committed in a context of gender-based violence.

It is important to emphasize that the repetition of acts does not necessarily equate to the repetition of criminal behaviors. In fact, it is quite common that none of the repeated acts constitute crimes in isolation, as in the case of a stalker surveilling the places frequented by the victim without an explicit threat, where the symbolic violence represented by the act alone suffices.

It is worth noting that, as this is a formal crime, the analysis of the evidentiary context is limited to elements supporting conviction regarding the perpetrator’s intent, and proof of the naturalistic result is unnecessary, as it merely represents the completion of the criminal conduct.

In this regard, the application of the National Risk Assessment Form provides important support to magistrates’ decisions in characterizing conduct as the crime of stalking, especially concerning the history of violence, given the difficulties that may arise in proving repeated and persistent persecution. However, it is during the evidentiary phase, through questions about the behavioral history within the relationship, that stalking will be more easily detected, and what would otherwise be an isolated and punctual aggression may be recharacterized as stalking, requiring an amendment.

Although stalking is a persistent crime, recidivism may occur in a new case (a set of reiterated acts), as the perpetrator often perceives himself as being caught in a “cycle of crises,” during which months or even years may pass without repetition before the perpetrator resumes the stalking behavior.

It is important to consider that, as a continuous crime and given the necessity of reiteration of acts for the application of the type established in Article 147-A of the Criminal Code, there is no need for the first act of stalking to be identified after the effective date of the law that introduced the offense. This prevents allegations of violation of the principle of legality, as provided for in Article 5, Item XXXIX, of the Federal Constitution and Article 1 of the Criminal Code, which establish that there is no crime without a prior law defining it, nor a penalty without prior legal provision.

b.5. Revenge pornography

It is not uncommon for legal actions concerning moral violations or other forms of persecution related to the vulnerability of women in the media to be filed. These indemnity claims attest to the demand for a comprehensive understanding of the harm that gender-based violence causes to victims¹³⁴. Furthermore, the dissemination of intimate photos and videos, as well as revenge pornography (non-consensual pornography), has become increasingly common, particularly in cases involving the refusal to accept the end of an intimate relationship¹³⁵.

Due to the distinct contexts experienced by women, damage to their image and honor manifests in ways that differ from those affecting the male population.

In this scenario, the typical offense provided for in Article 218-C of the Criminal Code (revenge pornography) must be examined. Indeed, the exposure of intimacy or intimate acts causes greater harm to women than to men. This results from the processes of subjectivation regarding individuals' sexuality, which expect different behaviors from men and women: while men are encouraged to have an active sexuality, women are expected to adopt a passive role¹³⁶.

Moreover, the dissemination of intimate videos and images is frequently carried out as an act of revenge against women and adolescent girls, with the clear intent to damage the victim's image and honor.

¹³⁴ See the discussion in Carneiro (2012), Ianni (1999), and Lima (2004). Carneiro, A. G. (2012, April 1). Virtual crimes: Elements for reflection on the problem of typification. *Âmbito Jurídico*. Retrieved July 23, 2021, from <http://www.ambito-juridico.com.br>. Ianni, O. (1999). *The Electronic Prince [O príncipe eletrônico]*. São Paulo: Perspectivas. Lima, V. A. (2004). Seven theses on media and politics in Brazil [Sete teses sobre mídia e política no Brasil]. *Revista USP*, (61), 48–57.

¹³⁵ See Valente, Neris, Ruiz, and Bulgarelli (2016). Valente, M. G., Neris, N., Ruiz, J. P., & Bulgarelli, L. (2016). *The body is the code: Legal strategies to combat revenge porn in Brazil [O corpo é o código: estratégias jurídicas de enfrentamento ao revenge porn no Brasil]*. São Paulo: InternetLab. Retrieved August 27, 2021, from <http://www.internetlab.org.br/wp-content/uploads/2016/07/OCorpoOCodigo.pdf>.

¹³⁶ Zanello, V. (2018). *Mental health, gender, and dispositifs: Culture and processes of subjectivation [Saúde mental, gênero e dispositivos: cultura e processos de subjetivação]* (Vol. 1, 1st ed., 303 p.). Curitiba: Appris.

b.6. Defenses in property crimes

Applying a gender perspective may require the exercise of conventionality control over the grounds for exemption from punishment and the representation provided for in Articles 181 and 182 of the Criminal Code, which is established as a basis in the provisions of the Belém do Pará Convention (Conventionality Control, [Part II, Section 9 below](#)).

Indeed, the exemption from punishment provided for in Article 181 and the representation established in the Criminal Code hinder the recognition of women as holders of their own legal property, separate from that of their spouse or other family members, thereby obstructing the characterization of property violence as provided for in Article 7, Item IV, of the Maria da Penha Law.

Furthermore, this provision dates back to the promulgation of the Brazilian Criminal Code in 1940, when the general marital property regime was total community, unlike the current regime (partial community). It was only revisited upon the enactment of the Statute of the Elderly, which, moreover, excludes the aforementioned articles from its scope of application and provides for an increased penalty if the specified conditions are met.

c. Femicide

Law No. 13,104/2015, by adding Item VI and Paragraph 2-A to Article 121 of the Criminal Code in Brazilian criminal law, introduced the qualifying circumstance of femicide, which constitutes the homicide of women in the context of domestic and family violence or due to contempt or discrimination based on their female sex.

The typification of femicide highlights the need not only to investigate, prosecute, and adjudicate manifestations of gender-based violence in a differentiated manner – given that they arise from a society structured on social, economic, and cultural bases that privilege hierarchical relationships between men and women – but also to identify their underlying causes and promote changes aimed at reducing such violence.

This measure aligns with the evolutionary process aimed at changing cultural behavior and achieving gender equity and substantive equality, as opposed to formal equality, which often conceals reality.

The classification of femicide aligns with the guidelines of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and, when considered together with the protocols for investigating femicide and domestic violence crimes, constitutes a document suitable for immediate application of a gender perspective in adjudication, with the primary purpose of confronting gender-based violence.

According to the research “Visible and Invisible: The Victimization of Women in Brazil,” conducted by the Brazilian Forum for Public Security, more than 17 million Brazilian women have suffered some form of violence or aggression since the onset of the COVID-19 pandemic – that is,

one in every four Brazilian women over the age of 16 has experienced violence, equivalent to eight assaults per minute ¹³⁷.

It should be emphasized that femicide and the violent death of women may occur outside the affective-family context and for political reasons, which in no way excludes the classification of the conduct under the typical legal definition and the necessary protection against gender-related prejudices, including, within the judicial sphere, adjudication from a gender perspective.

c.1. Constitutional jurisdiction of the Jury Court

The jurisdiction of the Jury Court to try femicide, an intentional crime against life, is constitutional and derives from Article 5, Item XXXVIII(d) of the Federal Constitution.

c.2. Application of the Maria da Penha Law

In compliance with the constitutional mandates aimed at preventing and containing violence within family relationships, established in Article 226, Paragraph 8 of the Federal Constitution, the Maria da Penha Law was enacted.

In this regard, although jurisdiction over the trial of femicide, an intentional crime against life, belongs to the jury court – being material and therefore absolute – the assistance and protective measures provided for in the Maria da Penha Law may be applied in femicide cases during both phases of the criminal prosecution.

c.3. Framing of femicide in jury questions

Article 482 of the Code of Criminal Procedure clearly states that the questions must be drafted in affirmative, simple, clear, and precise propositions. In cases of attempted or completed femicide, it is important that the magistrate specify what is necessary to investigate the fact, clarifying the form of domestic, family, or gender-based violence involved.

This occurs because the way questions are framed tends to influence jurors' understanding of what is being asked and may affect their answers. The wording of the question helps jurors comprehend the criminal dynamics¹³⁸.

¹³⁷ Brazilian Forum for Public Security [Fórum Brasileiro de Segurança Pública]. (2021). Visible and invisible: The victimization of women in Brazil [Visível e invisível: a vitimização de mulheres no Brasil] (3rd ed.). São Paulo: Datafolha. Retrieved May 16, 2021, from https://forumseguranca.org.br/publicacoes_posts/visivel-e-invisivel-a-vitimizacao-de-mulheres-no-brasil-2-edicao/.

¹³⁸ NUPEGRE Research Reports. (2020). Femicide: A study on cases tried by the Criminal Chambers of the Court of Justice of the State of Rio de Janeiro [Feminicídio: um estudo sobre os processos julgados pelas Câmaras Criminais do Tribunal de Justiça do Estado do Rio de Janeiro] (No. 5). Rio de Janeiro: EMERJ. Retrieved July 29, 2021, from https://www.emerj.tjrj.jus.br/publicacoes/relatorios_de_pesquisa_nupegre/edicoes/numero5/relatorios-de-pesquisa-nupegre_numero5.html.

c.4. Honor-based self-defense

In March 2021, the Federal Supreme Court (STF), in Allegation of Violation of a Fundamental Precept (ADPF) No. 779¹³⁹, declared it inadmissible to invoke the argument of honor-based self-defense at any procedural or pre-procedural stage in the trial of attempted or completed femicide cases, as it contravenes the constitutional precepts of human dignity, the prohibition of discrimination, and the rights to equality and life.

Such a decision, while highlighting the construction of Brazilian society on foundations of gender inequality – evidencing a historical pattern of disregard for women’s lives and integrity – also constitutes a historical milestone in adjudicating from a gender perspective by the Constitutional Court. It provides guidance not only for judicial decisions but also for actions taken during both phases of criminal prosecution.

d. Family and Succession Law

In family law, acting from a gender perspective is essential to the realization of justice, considering that domestic relations are characterized by the naturalization of unpaid care responsibilities assigned to women, and by the predominant reservation of positions of power – and paid labor – for men.

It must also be emphasized that the construction of gender stereotypes related to the roles and social expectations assigned to women as family members can lead to the structural violation of women’s rights. It is not uncommon for women to leave relationships (marriage or “stable unions” / “informal unions”) facing financial losses and an overload of responsibilities, especially because they need to restart their professional life and, while dealing with financial hardship, are expected to provide the primary care for their children – even in cases of shared custody.

Alongside the romantic ideal of motherhood, women who fail to conform to social expectations are often labeled with stereotypes – such as “the vengeful one,” “the crazy one,” or “the one who exaggerates or fabricates situations for personal gain” – in other words, women’s statements and intentions are constantly questioned.

Hence the importance of legal analysis from a gender perspective, with the purpose of ensuring proceedings guided by impartiality and equity, aimed at eliminating discrimination, prejudice, and evaluations based on societal stereotypes that contribute to injustices and violations of women’s fundamental rights. Institutions must uphold the principles of equality and human dignity when addressing the human rights of women and girls, as determined by the Federal Constitution. Analyzing and adjudicating a case from a gender perspective in contexts of asymmetric power relations means applying the principle of equality in response to the constitutional and conventional obligation to combat all forms of gender discrimination, ensuring real access to justice through

¹³⁹ Brazil. Federal Supreme Court. (2019, March 15). Preliminary injunction in the Action for Breach of Fundamental Precept No. 779 [Medida Cautelar na Arguição de Descumprimento de Preceito Fundamental 779]. Rapporteur: Justice Dias Toffoli. Available at: <https://stf.jusbrasil.com.br/jurisprudencia/1211707732/referendo-na-medida-cautelar-na-arguicao-de-descumprimento-de-preceito-fundamental-adpf-779-df-0112261-1820201000000/inteiro-teor-1211707763>. Accessed on: August 27, 2021.

the acknowledgment of historical, social, political, economic, and cultural inequalities, in order to preserve the human dignity of women and girls.

Acting under a gender perspective requires attention not only to adjudication but also to the procedural course of the case. When there is a delay in rendering a decision on the merits, specific difficulties often arise – especially for women – such as the lack of income and access to jointly owned property, while they bear the full burden of caring for their children. Furthermore, procedural instructions may turn into true moral trials of women, in which their intimate lives are scrutinized and their personal behaviors judged, as if these were justifications for rendering their rights invisible or denying them altogether. The historical inequalities and gender-based vulnerabilities that exist in all social relationships are also projected onto intimate and family relationships.

d.1. Parental alienation

In child custody disputes, the allegation of parental alienation has frequently been used as a strategy by men who have committed acts of violence or abuse against their former partners and children. This tactic aims to undermine reports of violence and to seek rapprochement or even obtain unilateral custody of the child or adolescent.

It is important to conduct a joint analysis of the cases filed and the special testimony of minors, in accordance with the procedures established by Law No. 13,431/2017. It should be noted that reports of violence may be collected through protective listening not only in criminal proceedings. Upon the first mention of any form of violence, magistrates may submit children or adolescents to special testimony – an oral and expert evidence mechanism that may be used in all related proceedings, including to prevent undue revictimization.

d.2. Child support obligations and property violence

The provider who has economic means may sometimes adopt subterfuges to avoid paying child support, withholding or misappropriating amounts intended for the subsistence of the children. This conduct constitutes psychological, moral, and property violence against the children's mother, who is often in a situation of episodic vulnerability due to the dissolution of the relationship.

Failure to comply with child support obligations entails both civil and criminal sanctions for the defaulting provider, who, in this context, may be penalized for appropriating funds intended for the subsistence of children who have been materially and morally abandoned. It is important to note that the act of appropriation cannot be justified, nor can the corresponding sanctions be waived, by merely alleging temporary or permanent unemployment.

These actions correspond to the conducts described in Articles 224 (caput and sole paragraph), 246, and 168 of the Criminal Code, characterizing, respectively, the crimes of material abandonment, intellectual abandonment, and misappropriation, when committed in the context of domestic and family violence against women, pursuant to Article 5 of the Maria da Penha Law.

d.3. Distribution of assets

In the distribution of assets, the prejudiced and mistaken notion of the sexual division of labor – where men are always viewed as providers and women as caregivers – can lead to undesirable distortions. Based on the biased belief that women are “incapable” of performing in the business world, it is often presumed during litigation that they are unable to manage rental properties, participate in business profits, or even administer companies.

e. Child and Youth Law

In Child and Youth Law, adoption stands out as a matter that underscores the need for adjudication from a gender perspective, given the stereotypes and prejudices that permeate the discussions held during the proceedings – and, notably, even before they begin.

Numerous factors related to gender inequalities are involved, such as, for example, stereotypes of the “good family” presumed to have the capacity to welcome and care for children.

In many cases, due to socially assigned roles and the patriarchal family model, homosexual couples, single-parent families, or non-White families (e.g., Black or Indigenous families) are perceived – often unconsciously – as suspicious or inappropriate. Another relevant factor is the potential power asymmetry between the parties involved in an adoption process.

In addition to the child or adolescent, the woman who places a son or daughter for adoption is often also in a situation of vulnerability.

The decision to place a child for adoption may be influenced by poverty, family abandonment, or pressure from others. Often, the adopting couple occupies a position of privilege – in various senses – in relation to the woman. In this context, magistrates must always be attentive to the power asymmetries that may be influencing the process.

At this point, magistrates must ensure that the woman is truly in emotional and psychological condition to make the legal surrender of the child (voluntary termination of parental rights). Therefore, this consent must be analyzed from a gender perspective.

f. Administrative Law

In the administrative sphere, various circumstances must be considered that may lead to unlawful dismissals or removals from office when they are conditioned by previous situations of gender violence, particularly when stemming from the victim’s refusal to accept harassment, abuse, or other violations.

The critical factor in characterizing harassment (both moral and sexual, from a gender perspective) is not the hierarchical position of the harasser or the harassed, but rather the nature of the conduct: the repeated imposition of humiliating situations of subjugation and abuse that condition women to a subservient and objectified role in the workplace, culminating in another unlawful act –

such as the improper dismissal or removal from office of the victim – which causes disproportionate harm to her life and psychological well-being¹⁴⁰.

Conducting administrative proceedings from a gender perspective is of fundamental importance, given the fear that female civil servants may have of creating the mistaken impression of being unfit for the job due to the overload imposed by the double shift to which they are often subjected.

The pressure to deliver satisfactory results, coupled with the concealment of domestic issues – sometimes related to gender-based violence – can affect the physical and psychological health of female public servants. It is therefore recommended that Ombuds Offices be established to act, when necessary, in favor of improving public service performance, always guided by the principles of impersonality, efficiency, morality, and legality.

g. Intersectionality

The Judiciary must be capable of understanding how social inequalities and hierarchies between people are constructed, and how these differences are directly related to gender-based violence. In the daily work of judicial units, it is essential to consider that violence affects Black women, persons with disabilities, Indigenous peoples, “Quilombola” women, older women, and LGBTQIA+ individuals in different ways and to varying degrees. Women are plural.

Abundant data demonstrate that race and gender social markers are crucial for analyzing violence inequality in Brazil. The 2020 Atlas of Violence¹⁴¹ found, by analyzing the period from 2008 to 2018, how overlapping oppressions can intensify inequalities. While the homicide rate of non-Black women in Brazil dropped by 11.7%, the rate among Black women increased by 12.4%. According to the 2021 Brazilian Yearbook of Public Security¹⁴², in 2020, Black women accounted for 61.8% of femicide victims, compared to 36.5% of White women, 0.9% of Indigenous women, and 0.9% of East Asian-descendant women. These figures show that the intersection of vulnerabilities – race and female gender – results in the highest number of deaths in the country.

Beyond the intersections between race and gender, there are other intersectionalities. Gender is intertwined with other forms of marginalization, such as age or generational marginalization, disability, ethnicity, sexual diversity, among others.

Indigenous women have primarily been victims of the invisibility of data related to gender-based violence. Nevertheless, in the state of Mato Grosso do Sul – which has the second largest Indigenous population in Brazil, accounting for approximately 3% of the state’s total population –

¹⁴⁰ National Council of the Public Prosecutor’s Office (Brazil). (2016). Moral and sexual harassment: Prevent it. Brasília: CNMP. Available at: <http://www.mpf.mp.br/sc/arquivos/cartilha-assedio>. Accessed on: August 27, 2021.

¹⁴¹ Institute for Applied Economic Research (IPEA) & Brazilian Public Security Forum. (2020). Atlas of violence 2020. Brasília: IPEA. Available at: https://www.ipea.gov.br/portal/images/stories/PDFs/relatorio_institucional/200826_ri_atlas_da_violencia.pdf. Accessed on: July 29, 2021.

¹⁴² Brazilian Forum for Public Security [Fórum Brasileiro de Segurança Pública]. (2021). Brazilian Yearbook of Public Security 2021. São Paulo: FBSP. Available at: <https://forumseguranca.org.br/wp-content/uploads/2021/07/anuario-2021-completo-v2.pdf>. Accessed on: July 29, 2021.

out of 61 femicide cases that entered the Mato Grosso do Sul Judiciary system, six involved an Indigenous woman, representing 10% of the total.

For Indigenous women's social movements, one of the reasons for the increase in domestic violence is related to territory – or rather, the lack of it. The confinement of Indigenous populations in reserves alters their social systems, disrupting their “way of being”¹⁴³. Therefore, special attention must be given to defense arguments, whether they stem from anthropological reports or technical-legal defenses, that attempt to use the cultural specificities of each social group to justify acts of violence. Culture and customs cannot serve as legal arguments to excuse acts of violence against women or to exempt their perpetrators from punishment.

According to CEDAW General Recommendation No. 33, special attention must be paid to ensuring access to justice for these vulnerable groups. Therefore, considering the criterion of accessibility, magistrates must collaborate to enable the swift and effective analysis of requests for assistance, in a manner that respects the language in which the victim communicates. This includes, for example, distributing informational booklets and launching communication channels in Indigenous languages, allowing complaints to be filed in Brazilian Sign Language (Libras), and ensuring the availability of service points and educational campaigns in rural areas, Indigenous villages, and the remaining “Quilombola” communities.

Regarding older women, CEDAW General Recommendation No. 27 highlights that although both men and women experience age discrimination, women face aging in a distinct way. The effects of gender inequalities, experienced throughout life and exacerbated in old age, are often rooted in deeply entrenched cultural and social norms. The discrimination endured by older women frequently results from an unfair distribution of resources, mistreatment, neglect, and limited access to basic services.

Women with disabilities, of all ages, often face difficulties in physically accessing health services. CEDAW General Recommendation No. 24 highlights that women with mental disabilities are particularly vulnerable, and that there is generally little knowledge about the vast range of mental health risks to which women are especially exposed due to gender discrimination, poverty, and other forms of social deprivation – such as violence.

As for trans women, beyond their social invisibility, Brazil ranks first in the world for murders of transgender people, whose average life expectancy is just 35 years. Data from the Dossier on Murders and Violence Against Brazilian “Travesties” and Transgender People, published by ANTRA and IBTE, recorded at least 175 murders of trans people in 2020, all of whom were “travesties” or transgender women. Furthermore, the report identified not only an increase in the number of murders but also a rise in online violence, attempted murders, and suicides. It is important to highlight that, as a rule, these killings are marked by extreme cruelty, and gender is a determining factor in these deaths.

¹⁴³As an example of institutional practices that ensure Access to Justice, the Public Defender's Office of the State of Mato Grosso do Sul has published two booklets on gender-based violence and the Maria da Penha Law, specifically aimed at Indigenous populations – one in Guarani and the other in Terena.

Due to the treatment of the transgender population in Brazil, the Inter-American Commission on Human Rights (IACHR), in its recent report Human Rights Situation in Brazil, approved on February 12, 2021, clearly recommended that Brazil: “Investigate, prosecute, and punish—with a gender perspective and as a matter of priority—the violations of the human rights of women and girls, especially the femicides of trans women¹⁴⁴.”

Learn more: It is important to note that the mere performance of formal investigative acts does not fulfill the recommendation of the Inter-American Commission on Human Rights (IACHR). This was evident in the condemnation of Mexico in the Ciudad Juárez case, where the formal compliance with investigative procedures – without a genuine commitment to uncovering the facts and disregarding relevant testimonies and evidence – led to the State being held responsible for its omission in investigating the systemic disappearance of women¹⁴⁵.

On June 13, 2019, the Plenary of the Brazilian Federal Supreme Court (STF) declared the existence of an unconstitutional omission by the National Congress for failing to enact legislation criminalizing acts of homophobia and transphobia. In the judgment of the Action for Breach of Fundamental Omission (ADO) No. 26¹⁴⁶, reported by Justice Celso de Mello, and Injunction Warrant (MI) No. 4733, reported by Justice Luís Edson Fachin, the Court, by majority vote, recognized the legislative delay in criminalizing acts that violate the fundamental rights of members of the LGBTQIA+ community.

Did you know? Regarding violence against the LGBTQIA+ population, assaults increased by more than 20% during the pandemic, and murders rose by more than 24% – Brazilian Forum for Public Security ¹⁴⁷.

On the other hand, the National Council of Justice issued Provision No. 73/2018, which regulates the annotation of changes in name and gender in the birth and marriage records of transgender people in the Civil Registry of Natural Persons. Two essential achievements of this normative act include: (a) the possibility of administratively changing one’s name and gender; and (b)

¹⁴⁴ Inter-American Commission on Human Rights. (2021). Human Rights Situation in Brazil: Approved by the Inter-American Commission on Human Rights on February 12, 2021. [s.l.]: IACHR. Available at: <http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>. Accessed on: July 29, 2021.

¹⁴⁵ Amnesty International (Ed.). (2003). Intolerable killings: Ten years of abductions and murders in Ciudad Juárez and Chihuahua. [s.l.]: Amnesty International. AI Index: AMR 41/027/2003. Available at: <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr410272003en.pdf>. Accessed on: August 27, 2021.

¹⁴⁶ Brazil. Federal Supreme Court. (2019, June 13). Action for Breach of Fundamental Omission No. 26. Reporting Justice: Celso de Mello. Available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=4515053>. Accessed on: July 29, 2021.

¹⁴⁷ Brazilian Forum for Public Security [Fórum Brasileiro de Segurança Pública]. (2009). Brazilian Public Security Yearbook (Vol. 13). São Paulo: Brazilian Forum for Public Security. Available at: https://forumseguranca.org.br/wp-content/uploads/2019/10/Anuario-2019-FINAL_21.10.19.pdf. Accessed on: May 16, 2021.

the application of an emancipatory human rights ethics, since it values the recognition of a person's gender identity over its determination by third parties.

Thus, the procedure has been simplified and no longer requires a court order, nor is it necessary to undergo gender reassignment surgery, medical treatment, or present medical or psychological reports.

It should be emphasized that judicial oversight, both in ordinary and extraordinary correction procedures, must ensure the effective enforcement of the provision, preventing requests for unnecessary documentation that may hinder the exercise of the right to amend records, and guaranteeing that the procedure is free of charge for those who cannot afford the registration costs.

Regarding access to health services, it is essential to guarantee care regardless of the existence or regularity of the documentation of the person seeking assistance. It is the duty of the public authorities to promote the regularization of documents for the LGBTQIA+ population, always respecting the use of the person's social name, in accordance with the Yogyakarta Principles. Therefore, conditioning the scheduling of medical appointments, exams, and surgeries on the presentation of an identification card or individual taxpayer identification number may constitute undue indirect institutional discrimination and unjustifiably hinder access to health care for vulnerable individuals.

Given all these intersections between subalternizing categories, gender issues, and violence, it is imperative that magistrates act to identify inequalities and work to overcome, within judicial activity, the ideologies that sustain systems of oppression – including racism and sexism.

h. Gender-based violence prevention and response network

The vulnerability of women subjected to domestic and family violence forms the legal basis for Law No. 11,340/2006 (the Maria da Penha Law), which establishes mechanisms to prevent and curb domestic and family violence against women, pursuant to Article 226, Paragraph 8 of the Federal Constitution. It is also grounded in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which endorses the Declaration and Programme of Action of the World Conference on Human Rights (Vienna, 1993), and in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), which asserts that the development of a fairer, more supportive, and peaceful society depends on respect for the rights and freedoms of women. Other international conventions and treaties ratified by Brazil also support this framework.

In this context, the Maria da Penha Law is part of the global system of guarantees aimed at investigating, prosecuting, and adjudicating crimes committed against vulnerable individuals – generically understood as those who, due to gender, social, political, economic, or generational conditions, require specific state protection.

The network for the prevention and response to gender-based violence is an organic concept, embodied in the set of governmental, non-governmental, and civil society organizations – which gives it a heterogeneous nature – that work to develop measures aimed at preventing all forms of

gender-based violence, guaranteeing rights, and providing the necessary assistance to women. This concept is based on Article 8 of the Maria da Penha Law, which specifically refers to public policies and the integration of actions.

In this context, the network operates through four interconnected axes: (1) counteraction, (2) prevention, (3) assistance, and (4) guarantee of rights. This highlights the organic nature of the concept, which seeks to identify the actors who collaborate in overcoming patterns of violence and their respective contributions to this process of rupture, ensuring that women who report an episode of violence receive a rapid, effective, and comprehensive response.

The articulation of this system is not a discretionary act for magistrates but rather an essential duty for the proper delivery of justice and the exercise of their legal functions (Article 9, caput and Paragraph 1, of the Maria da Penha Law, and FONAVID Statements 52 and 53). Particular attention must be given to the magistrate's role in presiding over the proceedings and in drafting the ruling, which represents the culmination of the victim's path in seeking State protection after reporting the episode of gender-based violence.

The conduct of magistrates directly impacts the way specialized services are provided to women in situations of violence. Acting with commitment, knowledge, and empathy throughout the proceedings and in articulating this network of services and protections reduces the risks to which victims of gender-based violence are exposed.

Thus, one of the challenges for magistrates is to make judicial proceedings more accessible and understandable for women, who are often lost amid unfamiliar terminology and bureaucratic procedures. These women seek a welcoming environment due to the severe state of vulnerability they endure as a result of violence, a situation that must not be institutionally repeated.

Likewise, by fostering collaboration with this network, magistrates enable multidisciplinary assistance for both direct and indirect victims of gender-based violence and promote community engagement in the social reintegration process, which is essential for rebuilding daily life and breaking the cycle of violence¹⁴⁸.

In short, the gender-based violence prevention and response network represents a collective effort to which magistrates are committed, aiming to resolve conflicts in an increasingly humanized and technically refined manner. This is part of an irreversible path toward building a peaceful society, one characterized by effective prevention measures rather than merely by reparative responses.

4. Labor Judiciary

Labor law is a branch of law that arises from the structural asymmetry between capital and the workforce, precisely due to the imbalance between these two sides of the productive sphere. However, the regulation of this asymmetrical relationship is carried out from a hegemonic perspective

¹⁴⁸ National Forum of Judges on Domestic and Family Violence against Women (FONAVID). (2020). Guide to strengthening the women's support and protection services network and combating domestic violence. National Forum of Judges on Domestic and Family Violence against Women (FONAVID).

– that of those who occupy positions of power – including in the drafting and application of legal norms. This perspective is typically that of the White, heterosexual man from a specific social class.

Legislative choices aimed at protecting certain groups to the detriment of others historically marginalized become evident when the legislature itself opts to formally protect only employed workers, leaving aside all those who do not fit into the formal model of the production process.

Hence the undeniable importance of the protection afforded by labor standards, several of which have even been elevated to constitutional status under Article 7 of the Federal Constitution. However, the special section of this Protocol seeks to highlight the need to interpret labor standards through the lens of the gender perspective, as a way of balancing the asymmetries embedded in supposedly neutral and universal rules that, in practice, affect the individuals to whom they are directed in different ways.

Labor law encompasses countless claims that require a gender perspective, both due to the asymmetrical power relationship that is intrinsic to every employment contract – regardless of the parties involved – and because such asymmetries are often compounded by other vulnerabilities, as well as by the rights at stake in specific cases. Given this context, the methodology adopted in this Protocol consists of a systematization into four broad segments, each with its respective subdivisions: inequalities, discrimination, harassment/violence, and work safety and occupational health.

a. Inequalities and asymmetries

Even in the 21st century, the sexual division of labor remains one of the main factors hindering women’s career advancement and perpetuating wage inequality. As previously noted [[Part I, Section 2.b.](#)], the sexual division of labor is characterized by the prioritization of men in the productive sphere and women in the reproductive sphere, alongside the male occupation of functions with high social added value (high-ranking decision-making positions, political, religious, and military roles, among others). This form of social labor division is organized around two core principles: separation (men’s work versus women’s work) and hierarchy (men’s work is valued more than women’s work)¹⁴⁹.

This institutionalized sex-based division of labor perpetuates what is known as the “double female shift,” that is, the accumulation of unpaid domestic, caregiving, or reproductive work hours with the hours of paid labor, whether formal or informal.

¹⁴⁹ Kergoat, D. (2009). Sexual division of labor and social relations of sex. In H. Hirata, F. Laborie, H. Le Doaré, & D. Senotier (Eds.), *Critical dictionary of feminism* (pp. [página se conheceda]). São Paulo: UNESP.

Did you know? Research published by the Brazilian Institute of Geography and Statistics (IBGE) in 2018¹⁵⁰ indicates that women spend approximately 21.3 hours per week on unpaid domestic and caregiving work, while men dedicate only 10.9 hours per week to these activities. In other words, women work more than 51% of their time on tasks that bring no financial return and do not contribute to their professional advancement, further limiting their opportunities to access better jobs.

The supposed neutrality and universality of formal and abstract rules have proven insufficient to resolve these inequalities, as they aim to apply equally to all individuals but overlook existing differences, often resulting in even greater disparities. This happens because the very foundations upon which the law is built are permeated by gender markers.

Within this supposed neutrality of the rule – elaborated from an androcentric, White, and heterosexual paradigm – labor law has also built its foundations, disregarding socially constructed gender differences that are further intersected by other markers such as race, social class, and sexual orientation.

In this context, inequalities manifest themselves in various forms and at different stages of women’s professional lives.

a.1. Unequal access and career progression

Despite the advances made by women in the labor market, including in activities that were traditionally male-dominated, it is important to emphasize that patriarchal patterns have not changed, nor have discriminatory biases been revised.

Thus, a paradoxical antagonism is established, which sociologists Helena Hirata and Danièle Kergoat¹⁵¹ call the “delegation model.” According to this model, “in order for women to ascend to higher and executive positions, their domestic and care activities are delegated to other women, maintaining a high number of women in these undervalued, often precarious, and unpaid activities.”

The unequal distribution of care tasks generates a vicious cycle that keeps low-income women in precarious and underpaid jobs. On the other hand, women who manage to achieve professional advancement often subject themselves to the “male standards” of the labor market, which frequently implies giving up motherhood and personal choices. The woman who “dares” to reconcile all her roles faces the “time scarcity” resulting from the multiplicity of responsibilities that are “naturally” assigned to her, a situation that the constitutionalization of the principle of equality and social rights has failed to overcome.

¹⁵⁰ Neto, J. (2019, May 31). Women spend almost twice as much time as men on household chores. IBGE News Agency. São Paulo. Available at: <https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/24267-mulheres-dedicam-quase-o-dobro-do-tempo-dos-homens-em-tarefas-domesticas>. Accessed on: August 27, 2021.

¹⁵¹ Hirata, H., & Kergoat, D. (2007). New configurations of the sexual division of labor. *Cadernos de Pesquisa*, 37(132), 595–609.

In a context where the legal framework not only regulates but also facilitates and encourages broad flexibility of working hours – as established in Item XIII of Article 7 of the Federal Constitution, especially after the so-called Labor Reform (Law No. 13,467/2017) – women, precisely because of the double shift, have less availability to work overtime, to travel, or to endure shift work. These factors reduce their opportunities for entering and advancing in their careers¹⁵². The so-called “glass ceiling,” already mentioned in [Part I, Section 2.b.](#) represents another barrier to women’s advancement. The purported idea of equal opportunities creates the false impression that there are no obstacles to career progression. However, sexist stereotypes that still perceive women as fragile or unfit to assume leadership roles, management positions, or even the notion of motherhood as a justification for professional interruption, constitute issues that limit women’s career advancement. These limitations are based on socially assigned or delegated roles, which render their abilities and competencies invisible¹⁵³.

A gender-based perspective on these situations, when brought before the Judiciary, allows for the overcoming of invisible barriers created by the alleged neutrality of the law, especially in a labor market that remains reluctant to ensure gender symmetry.

a.2. Wage disparities

The wage disparity between men and women is the most empirically evident issue, as consistently shown by various studies and research that portray this reality.

Research published by DIEESE in 2020¹⁵⁴ points out that women continue to earn less than men, even when the comparison is made based on the hourly wage for the same position or when analyzing occupations that require higher education.

	Women	Men
Average monthly salary	R\$ 2.191,00	R\$ 2.694,00
With higher education	R\$ 3.910,00	R\$ 6.363,00
In occupations that require higher education	R\$ 4.913,00	R\$ 8.136,00
Hourly wage amount when they occupy the same job	R\$ 32,35	R\$ 45,83

¹⁵² Ferrito, B. (2021). Law and inequality: an analysis of discrimination against women in the labor market based on time use. São Paulo: LTr.

¹⁵³ Ibid.

¹⁵⁴ Brazilian Institute of Geography and Statistics (IBGE). (2019–2020). Continuous National Household Sample Survey (PNAD Contínua) – data obtained in the second quarter of 2019 and 2020. Inter-Union Department of Statistics and Socioeconomic Studies (DIEESE). (2021). The insertion of women in the labor market. São Paulo: DIEESE. Available at: <https://www.dieese.org.br/outraspublicacoes/2021/graficosMulheresBrasilRegioes2021.html>. Accessed on: July 29, 2021.

When additional markers such as race, social class, and sexual orientation are considered, these distortions become even more pronounced¹⁵⁵.

	Black Women	Non-Black Women	Black Men	Non-Black Men
Leadership positions	1,9%	5,3%	2,4%	6,6%
Average income	R\$ 1.573	R\$ 2.660	R\$ 1.950	R\$ 3.484
Unprotected work	44%	32%	45%	32%

The precariousness of several jobs socially considered as female occupations – such as cleaning and maintenance, telemarketing, domestic work, among others – combined with the scarcity of time resulting from multiple responsibilities, directly impacts wage disparities and the employment models to which women (usually low-income) are more frequently subjected, such as intermittent employment¹⁵⁶ or part-time¹⁵⁷ contracts. Data from the Brazilian Institute of Geography and Statistics (IBGE)¹⁵⁸ collected in 2016, indicate that part-time work is predominantly female. Among the White population, 25% of these contracts are held by women, while only 11.9% are held by men. When analyzing the racial dimension, this proportion remains consistent: 31.3% of Black women are engaged in part-time work compared to 16% of Black men.

The repercussions of this reality transcend the scope of labor law. These workers have fewer chances – if any – of accessing more qualified and better-paid jobs, partly because their lack of time (and resources) prevents them from seeking professional training or advancement. Moreover, they are excluded from several social security benefits because they receive wages below the legal minimum. For example, they are not entitled to maternity pay, and the period worked under such conditions is not counted toward retirement purposes¹⁵⁹.

¹⁵⁵ Inter-Union Department of Statistics and Socioeconomic Studies (DIEESE). (2021). The inclusion of the Black population and the labor market. São Paulo: DIEESE. Retrieved July 29, 2021, from <https://www.dieese.org.br/outraspublicacoes/2020/graficoNegros.html>.

¹⁵⁶ Intermittent work was incorporated into the Brazilian Consolidation of Labor Laws (CLT) by Law No. 13,467/2017, known as the “Labor Reform.” It is defined in Paragraph 3 of Article 443 as follows: “Paragraph 3. An intermittent employment contract is one in which the provision of services, under subordination, is not continuous, occurring with alternation of periods of service provision and inactivity, determined in hours, days, or months, regardless of the type of activity performed by the employee or the employer, except for aeronauts, who are governed by specific legislation.”

¹⁵⁷ According to Article 58-A of the Brazilian Consolidation of Labor Laws (CLT): “Article 58-A. Part-time work is defined as work that does not exceed thirty hours per week, with no possibility of overtime, or work that does not exceed twenty-six hours per week, with the possibility of adding up to six additional hours per week.” (Wording provided by Law No. 13,467/2017). Paragraph 1 of the same provision clarifies that “the salary to be paid to part-time employees shall be proportional to their working hours, compared to employees who work full-time in the same positions.” In other words, given that the Federal Constitution provides for a minimum wage based on a 44-hour workweek, the immediate consequence is that part-time workers will receive an income lower than the national minimum wage.

¹⁵⁸ Brazilian Institute of Geography and Statistics (IBGE). (2016). Continuous National Household Sample Survey: Consolidated first interviews (PNAD Contínua).

¹⁵⁹ Ordinance No. 450 of April 3, 2020, of the National Institute of Social Security (INSS) – “Article 28. The period for which the contribution paid is lower than the minimum monthly contribution shall not be considered for any purpose, including the

Another factor that contributes to pay disparities is the occurrence of certain interruptions in women’s career trajectories, such as pregnancy, motherhood, or the need to care for other family members, which directly impact their professional advancement. This stems from the fact that motherhood is still viewed as an “obstacle” to women’s career growth in a labor market that remains unwelcoming and tends to devalue a condition that is specific to them (pregnancy, breastfeeding, motherhood). This scenario requires female workers to adapt to work environments and institutions that are structured around a male-centered model¹⁶⁰.

At this point, an analysis from a gender perspective allows for questioning how the interpretation and application of legal norms can serve as a pathway to reduce these inequalities.

To learn more: There is a growing understanding of the role and responsibility of the private sector in human rights matters, given the impact of its activities on these rights concerning employees, business partners, the surrounding community, and consumers. Companies play a significant role in the areas where they operate and are part of increasingly complex and geographically dispersed value chains. In this scenario, a minimum standard of conduct is expected from companies – regardless of their nature (whether transnational or national), size, sector, location, or structure¹⁶¹. Of particular note are the United Nations Guiding Principles on Business and Human Rights¹⁶², promulgated in 2011, which constitute the first international normative framework to identify and clarify the responsibilities of companies and States regarding human rights.

b. Discrimination

Discrimination cases in the Labor Judiciary are broad and diverse, occurring at all stages of the employment relationship. This includes the pre-contractual phase, during job advertisement, recruitment, and hiring, throughout the employment relationship, and upon dismissal. The workplace is, in fact, fertile ground for discriminatory practices, as the inherent asymmetry in labor relations fosters the covert practice of discriminatory conduct. This does not exclude the possibility of such conduct occurring between colleagues at the same hierarchical level.

calculation of the benefit amount, the grace period, the maintenance of insured status, or the contribution time.” Article 201, Paragraph 2, of the Federal Constitution of Brazil – “No benefit that replaces the contribution salary or the income from the insured’s work shall have a monthly value lower than the minimum wage.”

¹⁶⁰ Severi, F. C. (2016). Justice from a gender perspective: Theoretical, normative, and methodological elements. *Revista de Direito Administrativo*, 3(3), 574–601. p. 584.

¹⁶¹ Gonzaga, V. L. C., & Piovesan, F. (2018). Businesses and human rights: Challenges and perspectives in light of international human rights law. In F. Piovesan, I. V. P. Soares, & M. Torelly (Eds.), *Businesses and human rights* (Republished by TRF1). São Paulo: Jus Podium.

¹⁶² Brazil. Ministry of Women, Family and Human Rights. (2019). *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (Brazilian government translation of the original Guiding Principles on Business and Human Rights). Brasília: Ministry of Women, Family and Human Rights. Available at: https://www.gov.br/mdh/pt-br/assuntos/noticias/2019/outubro/Cartilha_versoimpresso.pdf. Accessed on: August 27, 2021.

When discriminatory practices are analyzed from a gender perspective – combined with other intersectional factors such as sexual orientation, race, and social class – they take on even greater proportions. This is especially the case because these workers remain at the bottom of the organizational hierarchy, making them more likely targets of discrimination, which is often normalized and rendered invisible.

Discrimination has long been the subject of regulation under both domestic and international law¹⁶³, as exemplified by several ILO Conventions¹⁶⁴ that address the issue. However, this normative concern has not been sufficient to prevent such conduct in labor relations. For example, relevant provisions include Article 7, Item XXX, of the Federal Constitution; Article 373-A of the Consolidation of Labor Laws (CLT); Law No. 9,029/1995; and Articles 391 et seq. (Chapter V) of the CLT, among others.

For systematization purposes, workplace discrimination will be analyzed from the moment the discriminatory act takes place.

b.1. Pre-contractual stage – automated screening

In the phase preceding the formalization of the employment relationship – that is, during personnel selection when no contractual bond has yet been established – discrimination often occurs in a covert manner, as employers may use subtle methods to prevent the hiring of a candidate for reasons unrelated to the professional duties required for the position.

In this scenario, since no formal employment bond has yet been established, there is usually less resistance from victims of this type of discrimination, as they are generally unaware of the actual reason for the refusal to hire them.

Even though legislation explicitly prohibits any form of discrimination in accessing or maintaining an employment relationship on the grounds of sex, origin, race, color, marital status, family situation, disability, vocational rehabilitation, age, among others (Article 1 of Law No. 9,029/1995 and Article 1 of ILO Convention No. 111), and categorically forbids requiring tests, examinations, expert reports, certificates, declarations, or any other procedure related to sterilization or pregnancy status (Article 2, Item I of Law No. 9,029/1995), the factual reality, unfortunately, shows that discrimination – used as a means to hinder the hiring of certain groups of workers, when viewed from the broader mosaic of intersectionalities – remains highly prevalent¹⁶⁵.

Veiled discrimination in selection processes becomes even more concerning as many of these processes are now conducted by automated systems, based on algorithmic formulas that lack

¹⁶³ As an example, we can mention Article 7, Item XXX of the Federal Constitution; Article 373-A of the Consolidation of Labor Laws (CLT); Law No. 9,029/1995; and Articles 391 et seq. (Chapter V) of the CLT, among others.

¹⁶⁴ International Labour Organization. (n.d.). Convention No. 111 concerning Discrimination in Respect of Employment and Occupation [Convenção nº 111 sobre Discriminação em Matéria de Emprego e Ocupação]; Convention No. 117 concerning Basic Aims and Standards of Social Policy [Convenção nº 117 sobre objetivos e normas básicas da política social]; Convention No. 168 concerning Employment Promotion and Protection against Unemployment [Convenção nº 168 sobre Promoção do Emprego e Proteção Contra o Desemprego]; Convention No. 103 concerning Maternity Protection (Revised 1952) [Convenção nº 103 relativa ao amparo à maternidade (Revista 1952)].

¹⁶⁵ The statistical data presented in the previous sections confirm this discrimination, as Black women still make up the majority of positions with lower wages and less decision-making power within organizational structures. The same applies to the LGBTQIA+ community, which is mainly inserted into precarious, poorly paid, and stigmatized activities.

transparency regarding the criteria used to reject or select certain résumés. This form of selection tends to penalize minority groups more harshly – those who have historically been subjected to discrimination or face greater barriers to occupying certain spaces, especially in leadership positions – such as Black and LGBTQIA+ women. This occurs because algorithms are built from mathematical models in which someone determines what is considered relevant, thus reproducing human prejudices, misconceptions, and biases¹⁶⁶.

When an algorithm is designed to select candidates for a given position that has historically been occupied by White, heterosexual men, it is highly likely that the selection criteria will reproduce this same profile, thereby perpetuating discriminatory bias against all other groups outside this dominant pattern.

Given that the upper echelons of corporate hierarchies are predominantly occupied by White, heterosexual men, what is the likelihood that an automated selection process for management positions, based on algorithmic criteria, will select someone who does not conform to this profile?

Conversely, considering that the vast majority of low-income women work in care-related occupations, what is the likelihood that algorithmic formulas will use this profile to filter resumes for positions in cleaning and maintenance services?

The opacity of these algorithms, combined with the fact that information technology teams are still predominantly composed of White, heterosexual men, allows “machines” to replicate in their algorithmic formulas the same discriminatory biases found in human-led selection processes.

In this context, if identifying discriminatory practices during the pre-contractual stage was already a challenge, this difficulty is exacerbated when such practices are concealed behind automated and “depersonalized” decision-making¹⁶⁷.

An analysis from a gender perspective in claims challenging discriminatory selection processes – whether human-led or automated – could allow for the reversal of the burden of proof as a means of safeguarding justiciability, in line with CEDAW General Recommendation No. 33, paragraph 15, point g¹⁶⁸, or even pursuant to the principle of dynamic distribution of the burden of proof, enshrined in Article 818, paragraph 1, of the Brazilian Consolidation of Labor Laws (CLT).

¹⁶⁶ O’Neil, C. (2018, November 21). The privileged are analyzed by people; the masses, by machines: A Harvard PhD in mathematics fights to raise awareness about how, according to her, ‘big data’ increases inequality [Interview by A. Torres Menárguez]. *El País*. Available at: https://brasil.elpais.com/brasil/2018/11/12/tecnologia/1542018368_035000.html. Accessed on: August 27, 2021.

¹⁶⁷ Article 20 of the Brazilian General Data Protection Law (LGPD – Law No. 13,709/2018, as amended by Law No. 13,853/2019) expressly guarantees the right to review automated decisions: “Data subjects have the right to request the review of decisions made solely based on automated processing of personal data that affect their interests, including decisions aimed at defining their personal, professional, consumer, and credit profile or aspects of their personality.” However, this review may also be conducted by machines, since paragraph 3 of the same article – which provided for the possibility of human review – was vetoed. Brazil. (2018). Law No. 13,709, of August 14, 2018. Provides for the protection of personal data and amends Law No. 12,965, of April 23, 2014 (Civil Rights Framework for the Internet). Presidency of the Republic. http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13709.htm.

¹⁶⁸ CEDAW General Recommendation No. 33, paragraph 15, point g, states: “Revise the rules on the burden of proof in order to ensure equality between the parties in all fields where power relationships deprive women of fair treatment of their cases by the judiciary” (United Nations, 2013). This recommendation aligns with the understanding that an analysis from a gender perspective in claims challenging discriminatory selection processes – whether human-led or automated – may justify the

Reversing the burden of proof in cases such as these would allow victims of discrimination – particularly those belonging to vulnerable groups, for whom discriminatory practices may even be presumed in work environments that are statistically unwelcoming – to have the opportunity to demonstrate that their non-hiring resulted from prejudiced and exclusionary reasons unrelated to the required professional qualifications¹⁶⁹.

In cases of indirect discrimination – where there is no explicit intent to discriminate and no use of legally differentiated treatment, yet the outcome disproportionately affects members of excluded groups¹⁷⁰ – proving intent is not required. This is because the mere application of a given rule in such contexts results in a disproportionate impact on groups that already face structural disadvantages, hindering their ability to achieve the same outcomes as those to whom they are compared¹⁷¹.

Indirect discrimination, therefore, is identified by the differentiated outcomes (objective element) produced by a rule – whether autonomously or heteronomously established – that is supposedly general and neutral but nonetheless disproportionately affects certain groups, even if this was not its “intention.”

To learn more: Direct Action of Unconstitutionality (ADI) No. 1946/DF¹⁷², is a concrete example of indirect discrimination. In this case, the Federal Supreme Court (STF) reviewed the constitutionality of applying the ceiling on social security benefits, established by Constitutional Amendment No. 20/1998, to maternity pay. The STF upheld the action, providing an interpretation in accordance with the Constitution to Article 14 of Constitutional Amendment No. 20/1998. The Court concluded that transferring to employers the burden of paying the portion of maternity benefits exceeding the social security ceiling, under an apparently neutral rule, would disproportionately affect the hiring of women and the possibility of raising their salaries above the social security cap.

reversal of the burden of proof as a means of safeguarding justiciability, or even support the application of the principle of dynamic distribution of the burden of proof, enshrined in Article 818, paragraph 1, of the Brazilian Consolidation of Labor Laws (CLT). United Nations. (2013). General Recommendation No. 33: Women’s access to justice. Portuguese Platform for Women’s Rights. <https://plataformamulheres.org.pt/projectos/cedaw4all/recomendacoes-gerais/>

¹⁶⁹ Precedent No. 443 of the Superior Labor Court (TST) authorizes the reversal of the burden of proof in cases of dismissal of employees belonging to vulnerable groups: “DISCRIMINATORY DISMISSAL. PRESUMPTION. EMPLOYEE WITH A SERIOUS ILLNESS. STIGMA OR PREJUDICE. RIGHT TO REINSTATEMENT – Res. 185/2012, DEJT released on September 25, 26, and 27, 2012. The dismissal of an employee living with HIV or with another serious illness that gives rise to stigma or prejudice is presumed to be discriminatory. If the act is found invalid, the employee is entitled to reinstatement in employment”. Brazil. Superior Labor Court (TST). (2012). Precedent No. 443: Discriminatory dismissal. Presumption. Employee with a serious illness. Stigma or prejudice. Right to reinstatement (Res. 185/2012, DEJT released on September 25, 26, and 27, 2012). Superior Labor Court. https://www3.tst.jus.br/jurisprudencia/Sumulas_com_indice/Sumulas_Ind_401_450.html.

¹⁷⁰ Moreira, A. J. (2017). What is discrimination? Belo Horizonte: Letramento; Casa do Direito; Justificando.

¹⁷¹ Ibid.

¹⁷² Brazil. Federal Supreme Court. (2003, April 3). Direct Action of Unconstitutionality No. 1,946. Rapporteur: Justice Sydney Sanches. Federal Supreme Court. <https://stf.jusbrasil.com.br/jurisprudencia/14745019/acao-direta-de-inconstitucionalidade-adi-1946-df>.

b.2. Employment stage and contract termination

The efforts of women and other minorities – considering the various intersectionalities involved – to remain in a labor market that systematically fails to welcome them foster discriminatory practices that are no less perverse and exclusionary. The same prejudices, myths, and beliefs deeply rooted in the social imaginary are reproduced throughout the employment relationship, intensifying inequalities that, due to their constant repetition, become invisible and imperceptible. This process reinforces the position of inferiority assigned to these groups within the social hierarchy¹⁷³.

Sexual orientation remains a stigmatizing factor within the employment relationship. Since sexual orientation is often neither declared nor identifiable prior to hiring, it is during the contractual phase that workers frequently encounter discriminatory conduct – whether direct, intentional, arbitrary, or veiled, subtle, and covert – that makes it impossible for them to remain in the workplace. This often results in flawed resignations, induced by a toxic work environment.

A similar situation occurs with pregnant and breastfeeding workers. Even though there is an express prohibition of direct discrimination based on this biological condition particular to women, they often become victims of discrimination arising from their insertion into a model of rules and work routines established from a masculine paradigm – designed around the standards of the “average man”.

In this scenario, Fabiana Severi explains¹⁷⁴, “Pregnancy is perceived as an attribute of women, a difference in relation to the standard for which the work environment was designed (man), breaking the undeclared expectation that people must conform to. Similarly, the ability to see, to hear, Whiteness, heterosexuality, and masculinity: all differences are defined in relation to generally accepted standards of normality. As a result, these differences become entirely incompatible with the supposed similarity required by an equality-based analysis” (our translation).

Within this sexist arrangement of employment relationships, actions such as changing work hours or workplace during pregnancy and breastfeeding are perceived as natural consequences of the employer’s power, legitimized by Article 2 of the Brazilian Consolidation of Labor Laws (CLT). In reality, however, these measures often conceal clearly discriminatory practices aimed at removing or preventing these women from exercising or maintaining their professional duties.

The situations described are merely illustrative of the discriminatory practices that permeate labor relations, extending beyond the formal bonds of employment contracts. When analyzed from a gender perspective, these practices acquire multiple dimensions within the sexist, patriarchal, and racialized environment that still persists in the world of work.

¹⁷³ Ferrito, B. (2021). *Law and inequality: An analysis of the discrimination against women in the labor market based on the uses of time*. São Paulo: LTr.

¹⁷⁴ Severi, F. C. (2016). *Justice from a gender perspective: Theoretical, normative, and methodological elements*. *Revista de Direito Administrativo*, 3(3), 574–601. p. 589.

Attention: Guiding questions for the gender perspective analysis of situations indicating discriminatory conduct in labor claims:

1. Does the worker belong to a vulnerable or historically discriminated group?
2. In the work environment where the person or group is inserted, are there other workers with the same characteristics?
3. In the selection processes, what were the profiles of the selected candidates?
4. If the questioned conduct were practiced toward majority groups, would it produce the same consequences?
5. Does the employer's usual practice lead to discriminatory outcomes, even in the absence of intent to discriminate?
6. Is the employer's practice related to the work itself and consistent with the nature of the business?

c. Workplace violence and harassment

c.1 Moral and sexual harassment in the workplace

The capitalist labor relationship is both a social and a power relationship, expressed through the subordination – directive power dynamic, whereby asymmetry and vulnerability are, as a rule, inherent to the worker's condition. However, the employment contract cannot normalize violence and harassment as if they were “part of the job.” On the contrary, the employer has a duty to promote a healthy and balanced work environment.

Unbalanced power relations based on gender and poverty, race and ethnicity, social and educational background, as well as discrimination on other grounds (such as disability, HIV status, sexual orientation, gender identity, migrant status, and age) – whether isolated or in an intersectional combination of factors – can further expose certain groups to experiences of violence and harassment, both in society at large and in the world of work.

In Convention No. 190, still pending ratification by the Brazilian State, the International Labour Organization (ILO) recognizes that gender-based violence and harassment in the world of work disproportionately affect women and girls. Addressing this issue requires an inclusive, integrated, and gender-responsive approach that tackles the underlying causes and risk factors, including gender stereotypes, as well as the various forms of discrimination and inequality in power relations based on gender.

The concept of violence and harassment in the world of work, as provided for in Convention No. 190, is broad and comprehensive, dispensing with the need for the conduct to be repeated over time in order to be legally relevant. Beyond the binary and sexual dimorphism, gender-based violence encompasses issues related to sex, gender, sexual orientation, and gender identity, including situations involving homosexuality, intersexuality, transsexuality, and transvestility.

In economic terms, gender-based violence and harassment constitute a barrier to the integration and retention of women in the workforce. These practices undermine women's ability to secure long-term income and contribute to the gender pay gap, particularly in cases of variable remuneration. Refusing to tolerate sexual harassment by supervisors or clients can jeopardize a worker's ability to earn the amount of commissions or tips necessary to support herself and her family. The impoverishment of victims of sexual violence at work may also result from leaving their jobs: one in six harassed women resigns.

Beyond employability and income, violence and harassment can also undermine democratic decision-making within institutions and, consequently, the rule of law. The silencing of voices within organizations can lead to repeated violations, causing victims to feel powerless to react or to seek any form of assistance. Therefore, a victim's lack of immediate reaction or delay in reporting violence or harassment should not be interpreted as acceptance or consent. The very intersection of class and gender, often present in situations of violence or harassment in labor relations, highlights the greater vulnerability of victims, who may perceive any resistance or reporting as grounds for losing their job. Moreover, the burden of the stereotype of women as a kind of "suspicious category" – rooted in the belief that women exaggerate, lie, or misuse the law for revenge or to obtain undue advantage¹⁷⁵ – is often exacerbated when the victim is a female worker.

Regarding sexual harassment at work, it is important to note that the criminal offense defined in Article 216-A of the Brazilian Criminal Code is narrower than the labor law concept, which encompasses two forms of sexual harassment: *quid pro quo* harassment (sexual harassment by blackmail) and environmental or hostile work environment harassment (harassment by intimidation). In this legal gap – including in Convention No. 190 – the concept set forth in National Council of Justice (CNJ) Resolution No. 351/2020 encompasses both types of sexual harassment, reinforcing the well-established labor law doctrinal and jurisprudential framework on the subject, which does not require a hierarchical relationship between the perpetrator and the victim, unlike the criminal sphere. Furthermore, it is worth highlighting that the Inter-American Convention of Belém do Pará also applies to cases of sexual harassment at work, as provided for in Article 2(b).

Violence and harassment in the world of work are closely linked to the gender-based division of labor. The sexual division of labor naturalizes women's responsibility for domestic and care work and affects their participation in the labor market, either through discrimination rooted in stereotypes or through the difficulties of balancing family and work, resulting from the lack of affordable and adequate childcare services and the incompatibility between working hours and those of schools and daycare centers. The fact that Brazilian women, on average, have more years of schooling than men but still earn lower wages reflects this division. Similarly, women's career progression is subject to the so-called "glass ceiling," limiting female participation in decision-making positions and reducing the chances of advancing policies to prevent and combat gender-based violence.

The work environment can be hostile from a gender perspective. Women's participation in meetings, for example, is often curtailed by interruptions of their speech ("maninterrupting"); unnecessary explanations, as if they were incapable of understanding the subject matter ("mansplaining"); and the appropriation of their ideas, which are ignored when voiced by them but later repeated

¹⁷⁵ Severi, F. C. (2016). Justice from a gender perspective: Theoretical, normative, and methodological elements. *Revista de Direito Administrativo*, 3(3), 574–601.

by male colleagues, who then receive the credit (“bropropriating”). Women’s morals, behavior, and image are put on trial by co-workers (“slut shaming”). In order to discredit women’s mental stability, aggressors manipulate facts and cast doubt on their complaints (“gaslighting”). All these forms of microaggressions, violence, or harassment clearly carry a gender bias and, in isolation, may be dismissed as mere oversensitivity. However, when combined with each other or associated with other behaviors – such as “flirting,” inappropriate touching, insistent invitations, stricter goal demands, sexist jokes, removal of job responsibilities, disregard of opinions, or workplace isolation – they create a hostile and intimidating work environment from a gender perspective. Depending on the prevalence of the sexist nature of the conduct, such behavior may constitute environmental sexual harassment or moral harassment.

In judicial proceedings adopting a gender perspective, it is important to bear in mind that violence and harassment usually occur in clandestine or covert ways. This circumstance may warrant a reassessment of the distribution of the burden of proof, as well as careful consideration of the victim’s personal testimony and the relevance of circumstantial and indirect evidence.

Attention: Some reflections may assist in the analysis of concrete cases under a gender perspective:

1. In the drafting or interpretation of the applicable rule, and in the assessment of facts and evidence, are there any prejudices, customs, or practices present that are based on the perceived inferiority or superiority of any gender, or on stereotyped roles assigned to men and women?
2. Does the work environment exhibit the prevalence of a particular social group – for example, in terms of gender, race, ethnicity, or religion – that may be hostile toward individuals perceived as dissonant or outside the dominant pattern?
3. Do the claims or questions raised during procedural instruction involve any kind of moral judgment about the person who is a victim of gender-based violence? Victims must not be blamed for their way of being, acting, relating, dressing, speaking, or for being alone at a particular place or time. Such personal choices do not constitute permission for harassment or any other form of consent.
4. Are the claims made in the pleadings or the questions posed during procedural instruction impertinent or embarrassing, shifting the responsibility from the aggressor to the victim? Care must be taken to prevent revictimization and to ensure respect for the victim’s human dignity. It is the aggressor or harasser who should be judged – not the victim.
5. Are the justifications for the aggressor’s behavior based on stereotypes, pathologies, or vices? These factors cannot be used as safeguards for the perpetrator to naturalize acts of gender-based violence or to exempt them from accountability.
6. Did the interpretation of the facts also consider the victim’s point of view? Studies show that women are more likely than men to recognize situations at work as harassment or coercion.

d. Occupational Safety and Health

d.1. “The average man” standard

The standard of protection for workers’ rights consolidated in the Brazilian Consolidation of Labor Laws (CLT) was built upon an androcentric bias. On one hand, it was based on the false premise of female fragility and perceived the female worker’s body as inherently maternal. On the other hand, it reflected a social protection model aimed at defending the family, ensuring that paid work would not interfere with women’s roles as homemakers, mothers, and wives. These premises gave rise to labor protection norms for women that, in practice, became instruments of discrimination. The belief that “women’s work is expensive for companies” generates disadvantages in the labor market, a situation that is even more severe for lower-class women, for whom income from work is essential for their own survival and that of their dependents. For these women, work is not a choice but an urgent necessity, often forcing them into precarious, low-paid, and frequently informal jobs.

Labor law has been called upon to move beyond the traditional model of protection for women’s work, which is rooted in the discriminatory premise of women as the weaker sex, and to advance toward promoting and ensuring conditions of gender equality. The gender perspective recognizes the differences between the sexes, questioning the meanings assigned to these differences within historically and culturally constructed value systems, rejecting essentialist explanations for the subordination of women in society. Furthermore, it is through a gender perspective that women’s work overload – particularly in the work-health dynamic – becomes visible, due to the sexual division of labor and the so-called “double shift.” This approach enables the analysis of how exposure to the same chemical, ergonomic, and psychological risks in the workplace produces different impacts on men and women, reorganizing scientific knowledge from a standpoint that avoids discrediting based on sexual difference¹⁷⁶.

d.2. Horizontal segregation

The horizontal segregation of the labor market, driven by gender stereotypes, results in women being concentrated in occupations related to social reproduction functions, such as domestic and care work – in sectors like education, health, social services, and domestic services. Women are also channeled into activities that require qualities traditionally stimulated in the socialization of girls, such as patience, docility, meticulousness, and gentleness¹⁷⁷. These qualities, as well as dexterity, organization, and speed, are perceived as innate and therefore undervalued in a sexist labor market, leading to their association with lower-status and lower-paid occupations. One consequence of horizontal segregation is women’s exposure to occupational risks that differ from those experienced by men. There is greater attention to risks in industry and construction – sectors predominantly occupied by men – and an almost complete lack of recognition of the risks present in services and domestic work, where women are the majority. This reveals gender inequality in the field of occupational health and safety.

¹⁷⁶ Oliveira, E. M., & Barreto, M. (1997). Engendering gender in the understanding of repetitive strain injuries. *Saúde e Sociedade*, 6(1).

¹⁷⁷ Vieira, R. S. C. (2019). *Law and gender in women’s occupational health and safety*. Belo Horizonte: Casa do Direito.

The presumption of women’s work as “light work” renders invisible the physical efforts required in certain activities, such as cleaning and maintenance, industrial cooking, and industrial sewing. A gender perspective demands, in these cases, an ergonomic assessment of workstations that goes beyond the issue of load capacity to include factors such as pace, unfavorable postures, repetitiveness, lack of breaks and autonomy, and the absence of equipment adjustments for individuals of shorter stature. Additionally, this approach considers the interaction between unpaid domestic work and paid employment in the unequal health impacts of working conditions on men and women, without reinforcing the false presumption of female fragility. Research shows that women dedicate approximately 20 hours per week to unpaid domestic work, while men dedicate about 10 hours per week. At the other extreme of the stereotype of female fragility, it is also essential to consider unconscious biases that normalize poor working conditions for Black women, particularly in paid domestic work. These biases associate Black women with notions of greater strength and resistance, resulting in the failure to extend to them the same protections afforded to other workers.

Another example of horizontal segregation is the significant concentration of women, Black people, and LGBTQIA+ individuals in call center work – an activity in which public interaction is mediated by technology and marked by several harmful conditions: a fast-paced work environment; lack of breaks for physical recovery; exhausting productivity targets; repetitive movements; constant pressure from supervisors with strict control over tasks; unhealthy working conditions; inadequate furniture and equipment; and prolonged static posture, among others¹⁷⁸.

d.3. Vertical Segregation

Vertical segregation in the labor market based on gender is associated with unconscious biases, such as the perception that leadership, good performance, and professional success are inherently linked to masculinity. To overcome this stereotype, women are often required to work harder than men in the same position to prove their competence and demonstrate their ability to compete for career advancement. In general, this results in longer working hours which, when combined with domestic responsibilities, lead to a lack of rest and to both physical and mental overload¹⁷⁹.

d.4. Ergonomics

The interaction between workers and their environment, methods, and workspaces is the subject of ergonomics, which addresses not only work furniture and tools but also work organization. The International Labour Organization (ILO, 2007) recommends that ergonomics in the workplace move away from fixed models in order to consider the full range of individual human variability, regardless of gender, age, or ethnic characteristics. In this sense, the “average man” paradigm is no longer applicable. Standardizing workstations without the possibility of adjustments can lead to discomfort, as well as occupational diseases and accidents – especially when anthropometric differences between men and women are taken into account¹⁸⁰.

¹⁷⁸ Nogueira, C. M. (2020). The health of telemarketing female workers and online work. In R. Antunes (Ed.), *Uberization, digital labor, and industry 4.0* (pp. xx–xx). São Paulo: Boitempo.

¹⁷⁹ Vieira, R. S. C. (2019). *Vertical segregation: Law and gender in women’s occupational health and safety*. Belo Horizonte: Casa do Direito.

¹⁸⁰ Rosa, M., & Quirino, R. (2017). Gender relations and ergonomics: An approach to women workers in industrial labor. *HOLOS*, 5, 345–359.

Excessive work supervision and productivity demands, in turn, can take on a sexist dimension when managers attribute the failure to meet goals to women's alleged lack of competence, capacity, or intelligence.

The gender perspective in occupational health and safety, therefore, is guided by the promotion of balance in the work environment, considering human variability and ensuring equal rights and protections for all genders. It seeks to eliminate occupational risks for everyone, rather than excluding women from professions that involve risk.

d.5 Pregnant and breastfeeding workers

With regard to pregnant and breastfeeding workers, the Brazilian Regulatory Standards (NR) only prohibit the handling of pesticides, restrict their work in environments with anesthetic gases or vapors, and prevent their participation in activities involving chemotherapy drugs. However, many scientifically recognized risks have not yet been addressed through regulation. The ILO¹⁸¹ recommends additional protections, including the prohibition of any heavy work involving lifting, pulling, or pushing loads; tasks requiring physical exertion, including standing for prolonged periods; work that requires special balance; and work with vibrating machinery. Exposure of pregnant workers to continuous noise above 115 dB or to peak noise levels exceeding 155 dB may cause hearing loss in the fetus, even if the worker uses effective personal protective equipment (PPE), such as ear protectors. Neutralizing the risk for the mother would eliminate the need to change job assignments but would not necessarily protect the fetus.

Attention: In addition to acknowledging that rules for the protection of women's work are often expressions of a legal system based on androcentric criteria, the following questions may assist in the assessment of the specific case:

1. Is the complainant subject to intersectional discrimination resulting from the intertwining of gender, race, and class discrimination?
2. Is the occupational health or safety standard applicable to the specific case compatible with the international legal framework?
3. Does the health or safety standard reflect a specific gender role or stereotype?
4. Is the complainant covered – or made invisible – by the normative protection necessary due to health or safety risks?
5. Does the legal rule create a specific disadvantage, inequality, discrimination, or lack of protection in the specific case?
6. Are the complainant's personal characteristics taken into account in the ergonomic assessment of the workstation?

¹⁸¹ International Labour Organization. (2000). ABC of women workers' rights and gender equality. Geneva: ILO.

5. Electoral Judiciary

a. Legitimacy of gender quotas

The establishment of gender quotas, introduced by Law No. 9,100/1995, was the first affirmative action measure implemented by the Brazilian Electoral Judiciary. This law ensured that 20% of the candidacy slots of each party or coalition would be reserved for women. The policy was later improved by Law No. 9,504/1997, which raised this percentage to 30%, by sex. It is important to note that during the first decade, compliance with the quota was considered optional, becoming mandatory only in 2010. This change, however, did not result in a significant increase in female candidacies or in the occupation of parliamentary seats by women. Paradoxically, despite the numerical majority of women in the electorate, women are not elected in proportion to their representation as voters.

When analyzing compliance with the minimum candidacy requirement by sex in the registration of candidacies – through the Demonstration of Regularity of Party Acts (DRAP) – electoral judges must adopt an active and reality-sensitive approach to prevent circumventions, such as fictitious candidacies. One example of good practice is requiring political parties to present the official application form for candidacy registration, in order to verify the authenticity of the information provided. If a lack of consent or authorization is identified, the corresponding candidacy should be disregarded in the quota calculation. If, as a result, the remaining number of valid candidacies fails to meet the legal minimum, rejecting the registration application of the entire party list is an appropriate measure.

The provision of reserved candidacy slots for proportional elections has been extended to the composition of the executive committees and the national, state, and municipal directories of political parties. This underscores the indispensability of the support provided by the Electoral Judicial Schools, which are responsible for training judges, court officials, and party leaders as multipliers of feminist education for the development of critical consciousness. **Ensuring and regulating the nomination of candidates from these segments and their effective participation in the electoral process is necessary, legitimate, and urgent – including that of transgender individuals, who are counted within gender quotas based on self-declaration.** In cases of fraud, an immediate response from the institution responsible for safeguarding the effectiveness of legal rules – the Electoral Court – is indispensable.

b. Distribution of campaign time

Gender asymmetry is glaring in the electoral process when analyzing the relationship between the gender of candidates and the actual attainment of seats. To address this situation – exacerbated by the absence of specific normative rules mandating a minimum percentage for the distribution of campaign time – the Electoral Court, in Consultation No. 0600252-18/DF, applied the same ratio decidendi as the Federal Supreme Court (STF) in the Direct Action of Unconstitutionality (ADI) No. 5617. The Court recognized the primacy of the principles of human dignity and gender equality, as provided in Article 1, Item III, and Article 5 of the Federal Constitution.

The exposure provided by free electoral broadcast time on radio and television contributes to increasing the number of parliamentary seats occupied by women. For this reason, addressing

the issue requires a more critical approach from electoral judges regarding non-compliance with the minimum 30% gender quota, particularly concerning the timeliness of judicial relief. Post-campaign analysis severely undermines the effectiveness of affirmative action policies by denying women an electoral environment that enables substantive equality.

c. Distribution of electoral funding

One of the causes of gender inequality in politics – resource distribution – was also addressed in Consultation No. 0600252-18/DF. The decision redefined the model of mandatory allocation in campaign financing to prevent non-compliance with the minimum threshold of 30% in the distribution of resources from the Party Fund and the Special Campaign Financing Fund (FEFC) to female candidates. A higher proportion of funding is permitted in cases where the percentage of female candidates exceeds 30%, but funds cannot be diverted to finance male candidacies. In this context, programs to promote and sustain women’s political participation are essential for the equal, plural, and multiracial inclusion of women in spaces of power and decision-making. The role of the Electoral Court in monitoring and encouraging compliance is fundamental, especially through the application of sanctions, including the suspension of Party Fund transfers when the legal minimum allocation is not met. This control is exercised through the review of political parties’ annual financial accounts.

Removing practices that hinder the inclusion of women in the democratic environment is also a priority, and the adoption of affirmative policies is indispensable to this end. This conclusion is reinforced by the recent changes in the composition of parliaments in neighboring countries, which have pioneered the implementation of reserved seats for women in legislative bodies.

6. Military Judiciary

It is important to note that the Military Judiciary in Brazil is composed of both the Federal Military Judiciary and the State Military Judiciary. The Federal Military Judiciary has exclusive jurisdiction over military crimes as defined in the Military Criminal Code (Article 124 of the Federal Constitution). In contrast, the State Military Judiciary has broader jurisdiction: it is competent to try both military crimes and civil suits concerning disciplinary acts committed by officers and enlisted personnel of the Military Police and the Military Fire Brigade.

a. Hierarchy, order, and discipline

Hierarchy, order, and discipline have as their basic purpose the maintenance of an environment of respect and order within the military. However, it is not lawful to use these fundamental elements of military life to justify attitudes that violate the principles of equality and parity of treatment between the genders recognized in society.

When applying a gender perspective within the military sphere, it is necessary to revisit the concepts of hierarchy, order, and discipline, which, although inherent to military life, must not be used to conceal sexist or misogynistic practices, nor to justify discriminatory treatment between men and women. In this regard, the creation of demands, duties, or situations for men and women based solely on the sex, race, or sexual orientation of the person subject to the command or norm

constitutes an unacceptable distortion of the fundamental pillars of military activity – hierarchy, order, and discipline.

An example of sexist treatment, allegedly practiced under the guise of hierarchy, order, and discipline, is found in Case No. 83-08.2010.7.12.0012/AM, decided by the Superior Military Court (STM). In this case, a female sergeant was charged with contempt of a superior officer, a criminal offense provided for in Article 298 of the Military Criminal Code, for opposing certain situations and orders issued by her hierarchical superior. In deciding the appeal, the Court acknowledged that “the discriminatory and sexist treatment given by the superior toward the accused is amply proven in the case records.”

b. Legislative reform in the Military Criminal Code

Brazilian criminal law, considering social reality and the new forms of interaction in daily life, underwent a profound reform that modified the entire framework for the classification of crimes against sexual freedom. While these changes occurred in the General Criminal Law, no corresponding reform has taken place in the Military Criminal Code, **which dates back to October 1969**. As a result, the Military Judiciary still operates under outdated legislation, particularly concerning the protection of sexual freedoms.

The current social context recognizes and respects women, who, for many years, remained on the margins of decision-making centers and social leadership. Female representation has, in a highly legitimate way, begun to occupy spaces that were previously denied to women solely due to gender-based discrimination.

Despite this movement toward the social recognition of women, the Military Criminal Code has not yet been updated to incorporate, in the classification of sexual crimes, the new definitions established in the Brazilian Criminal Code.

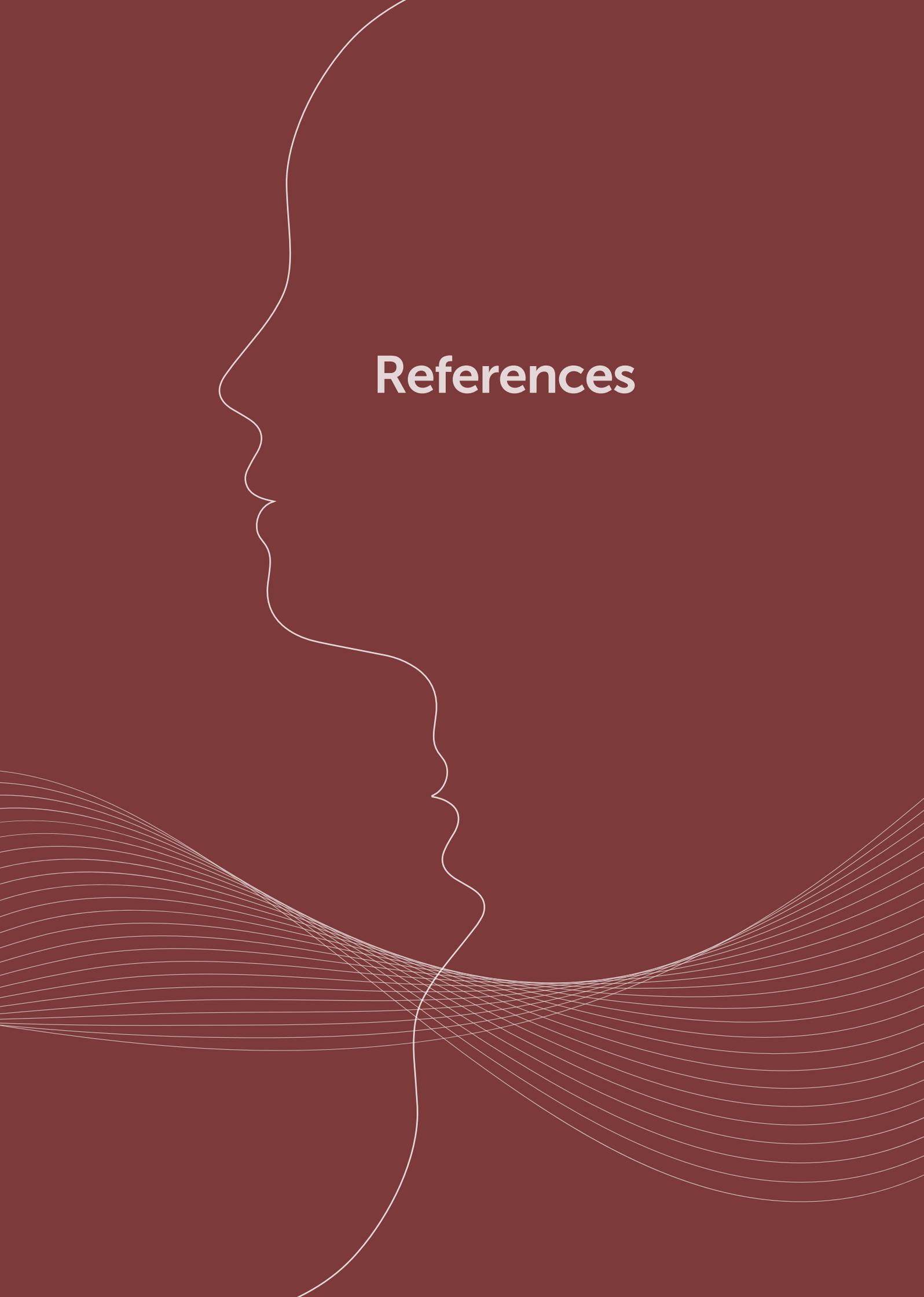
Expectations remain for both a quantitative and qualitative increase in the coming years. Since the 1990s, women have begun entering military academies and, since then, have stood out professionally in all areas of military activity. However, they have also increasingly become victims of such crimes.

Based on these considerations, the following guidelines are proposed for adjudicating cases from a gender perspective within the Military Judiciary:

Carefully monitor the application of hierarchy, order, and discipline in military life to ensure that these elements – while unquestionably lawful and necessary in the military context – are not used to justify sexist or misogynistic behaviors that disrespect women.

Promote the discussion on the necessary amendment of Articles 70, 229, 232, 233, 234, 234-A, and 236 of the Military Criminal Code, in order to align the legal definitions of crimes with the updated descriptions and provisions already established for the same offenses in the Brazilian Criminal Code, in accordance with the terms set forth in the proposed draft bill.

Attention: A critical point for reflection within the Military Judiciary concerns the need to ensure the inclusion of women in the composition of trial bodies (Councils of Justice), military audits, and administrative bodies of the Military Courts, including the Superior Military Court (STM). In this regard, Resolution No. 255 of the National Council of Justice (CNJ) is particularly relevant, as it provides (a) for the participation of female judges in the administrative bodies of the Federal Military Judiciary on an equal footing with male judges; and (b) for the guarantee of the participation of female officers from the Armed Forces, Military Police, and Fire Departments in the Military Justice Councils (escabinato), under the same conditions as male officers.



References

Childhood Brazil. (2019, August 14). *Child sexual violence in Brazil: Understand the scenario of sexual violence against children and adolescents in Brazil and learn how to prevent it*. São Paulo. Retrieved August 27, 2021, from <https://www.childhood.org.br/a-violencia-sexual-infantil-no-brasil>.

Alagia, A., Batista, N., Slokar, A., & Zaffaroni, E. R. (2011). *Brazilian criminal law* (Vol. 1, 4th ed.). Rio de Janeiro: Revan.

Amnesty International. (2003). *Intolerable killings: Ten years of abductions and murders in Ciudad Juárez and Chihuahua* (AI Index: AMR 41/027/2003). Amnesty International. <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr410272003en.pdf>.

Angotti, B. (2019). *Da solidão do ato à exposição judicial: Uma abordagem antropológico-jurídica do infanticídio no Brasil* (Doctoral dissertation, Universidade de São Paulo). Universidade de São Paulo, Faculdade de Filosofia, Letras e Ciências Humanas. <https://doi.org/10.11606/T.8.2019.tde-16092019-153730>.

Brazilian Forum for Public Security. (2009). *Brazilian Yearbook of Public Security* (Vol. 13). Brazilian Forum for Public Security. https://forumseguranca.org.br/wp-content/uploads/2019/10/Anuario-2019-FINAL_21.10.19.pdf.

Araújo, A. P. (2020). *Abuse: The rape culture in Brazil*. Globo Livros.

Barbieri, C. H. C., & Ramos, L. de O. (Eds.). (2019). *Democracy and representation in the 2018 elections: Electoral campaigns, financing, and gender diversity – Final Report (2018–2019)*. São Paulo: FGV Law School. <https://bibliotecadigital.fgv.br/dspace/bitstream/handle/10438/27646/RELAT%20FINAL%202018-2019.pdf?sequence=5&isAllowed=y>.

Barbosa, B., Gonzaga, V. L. C., & Torres, J. H. (2019, September 6). *The duty of judges to harmonize the legal system with human rights treaties*. JOTA. <https://www.jota.info>.

Bartlett, K. T. (2020). Feminist legal methods. In F. C. Severi, E. W. V. Castilho, & M. C. Matos (Eds.), *Weaving feminist critiques of law in Brazil II: Women's human rights and violence* (Vol. 1, pp. 240–342). Ribeirão Preto: FDRP-USP. <http://themis.org.br/wp-content/uploads/2020/12/Tecendo-Fios-das-Cr%C3%ADticas-Feministas-ao-Direito-no-Brasil-II-%E2%80%93Volume-1.pdf>.

Beauvoir, S. de. (2009). *The second sex* (2nd ed.). Nova Fronteira.

Bicichski, I. (2002, December). *Campesino: Family-based economy system – dual occupation*. *Revista de Previdência Social*, 26(265), 1081–1082.

Brazil. (2004, March 15). *Decree No. 5,017, of March 12, 2004. Enacts the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. *Official Gazette of the Union: Section 1*, 50, p. 10.

Brazil. Inter-Union Department of Statistics and Socioeconomic Studies (DIEESE). (2021). *The inclusion of the Black population and the labor market*. DIEESE. <https://www.dieese.org.br/outraspublicacoes/2020/graficoNegros.html>.

Brazil. (2018, August 14). *Law No. 13,709, of August 14, 2018. Provides for the protection of personal data and amends Law No. 12.965, of April 23, 2014 (Brazilian Civil Rights Framework for the Internet)*. Brasília, DF: Presidency of the Republic. http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13709.htm.

Brazil, Ministry of Justice & United Nations Office on Drugs and Crime (UNODC). (2017). *National report on trafficking in persons: Data from 2014 to 2016*. Brasília: Ministry of Justice. <https://www.justica.gov.br/sua-protecao/trafico-de-pessoas/publicacoes/relatorio-de-dados.pdf>.

Brazil, Ministry of Justice and Public Security, National Penitentiary Department. (2019). *Thematic report on women deprived of liberty: June 2017* (Consultant: Marcos Vinícius Moura Silva). Brasília: Ministry of Justice and Public Security, National Penitentiary Department. http://antigo.depen.gov.br/DEPEN/depen/sisdepen/infopen-mulheres/copy_of_Infopenmulheresjunho2017.pdf.

Brazil, Ministry of Women, Family and Human Rights. (2019). *Guiding principles on business and human rights: Implementing the United Nations “Protect, Respect and Remedy” framework* [Brazilian government translation of the original UN document]. Brasília: Ministry of Women, Family and Human Rights. https://www.gov.br/mdh/pt-br/assuntos/noticias/2019/outubro/Carlilha_versoimpresso.pdf.

Brazil. Superior Court of Justice (3rd Panel). (2018, February 28). *Special Appeal No. 1,643,051/MS* (Reporting Justice: Rogério Schietti Cruz). *Electronic Justice Gazette*, Brasília, DF, March 8, 2018.

Brazil. Superior Court of Justice (3rd Panel). (2018, February 28). *Special Appeal No. 1,675,874/MS* (Reporting Justice: Rogério Schietti Cruz). *Electronic Justice Gazette*, Brasília, DF, March 8, 2018.

Brazil. Superior Court of Justice. (2018, August 27). *Motion for Clarification due to Divergence in Special Appeal No. 1,671,528/MS* (Reporting Justice: Sebastião Reis Júnior). *Electronic Justice Gazette*, Brasília, DF, August 29, 2018.

Brazil. Federal Supreme Court. (2018, March 1). *Direct Action of Unconstitutionality No. 4,275* (Reporting Justice: Edson Fachin). *Electronic Justice Gazette*, Brasília, DF, No. 45, March 7, 2019.

Brazil. Federal Supreme Court. (2003, April 3). *Direct Action of Unconstitutionality No. 1,946* (Reporting Justice: Sydney Sanches). <https://stf.jusbrasil.com.br/jurisprudencia/14745019/acao-direta-de-inconstitucionalidade-adi-1946-df>.

Brazil. Federal Supreme Court. (2011, May 5). *Direct Action of Unconstitutionality No. 4.277* (Reporting Justice: Ayres Britto). *Electronic Justice Gazette*, Brasília, DF, No. 198, October 14, 2011.

Brazil. Federal Supreme Court. (2020, May 8). *Direct Action of Unconstitutionality No. 5,543/DF* (Reporting Justice: Edson Fachin). <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=753608126>.

Brazil. Federal Supreme Court. (2019, June 13). *Claim of Unconstitutionality by Omission No. 26* (Reporting Justice: Celso de Mello). <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=754019240>.

Brazil. Federal Supreme Court. (2011, May 5). *Allegation of Violation of a Fundamental Precept No. 132* (Reporting Justice: Ayres Britto). *Electronic Justice Gazette*, Brasília, DF, No. 198, October 14, 2011.

Brazil. Federal Supreme Court. (2015, October 28). *Allegation of Violation of a Fundamental Precept No. 291* (Reporting Justice: Luís Roberto Barroso). *Electronic Justice Gazette*, Brasília, DF, May 11, 2016.

Brazil. Federal Supreme Court. (2019, April 27). *Allegation of Violation of a Fundamental Precept No. 457* (Reporting Justice: Alexandre de Moraes). *Electronic Justice Gazette*, Brasília, DF, June 3, 2019.

Brazil. Federal Supreme Court. (2019, December 12). *Allegation of Violation of a Fundamental Precept No. 600* (Single-judge decision, Reporting Justice: Luís Roberto Barroso). *Electronic Justice Gazette*, Brasília, DF, December 17, 2019.

Brazil. Federal Supreme Court. (2020, May 29). *Allegation of Violation of a Fundamental Precept No. 467* (Reporting Justice: Gilmar Mendes). *Electronic Justice Gazette*, Brasília, DF, July 7, 2020.

Brazil. Federal Supreme Court. (2020). *Diversity: STF case law and thematic bibliography*. Brasília, DF: Federal Supreme Court. <http://www.stf.jus.br/arquivo/cms/publicacaoLegislacaoAnotada/anexo/diversidade.pdf>.

Brazil. Federal Supreme Court. (2013, August 1). *Habeas Corpus No. 118,533/MS. Habeas corpus. Constitutional, criminal, and criminal procedural law. Drug trafficking. Inapplicability of Law No. 8,072/90 to privileged drug trafficking: inadmissibility. Heinous crime not characterized. Petition granted* (Reporting Justice: Cármen Lúcia). <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=11677998>.

Brazil. Federal Supreme Court. (2018, February 14). *Habeas Corpus No. 152,491* (Single-judge decision, Reporting Justice: Luís Roberto Barroso). *Electronic Justice Gazette*, Brasília, DF, February 20, 2018.

Brazil. Federal Supreme Court. (2018, June 29). *Preliminary Injunction in Allegation of Violation of a Fundamental Precept No. 527/DF* (Reporting Justice: Luís Roberto Barroso). *Electronic Justice Gazette*, Brasília, DF, No. 153, August 1, 2018. Pending judgment.

Brazil. Federal Supreme Court. (2019, September 8). *Preliminary Injunction in Claim No. 36.742* (Single-judge decision, Reporting Justice: Gilmar Mendes). *Electronic Justice Gazette*, Brasília, DF, September 12, 2019.

Brazil. Federal Supreme Court. (2019, September 8). *Preliminary Injunction in Suspension of Injunction No. 1,248* (Single-judge decision, Reporting Justice: Dias Toffoli). *Electronic Justice Gazette*, Brasília, DF, September 11, 2019.

Brazil. Federal Supreme Court. (2017, May 10). *Extraordinary Appeal No. 646,721* (Reporting Justice: Marco Aurélio). *Electronic Justice Gazette*, Brasília, DF, September 11, 2017.

Brazil. Federal Supreme Court. (2018, August 15). *Extraordinary Appeal No. 670,422-RG* (Reporting Justice: Dias Toffoli). *Electronic Justice Gazette*, Brasília, DF, No. 52, March 10, 2020.

Brazil. Federal Supreme Court. (2019, March 15). *Ratification of the Preliminary Injunction in Allegation of Violation of a Fundamental Precept No. 779* (Reporting Justice: Dias Toffoli). <https://stf.jusbrasil.com.br/jurisprudencia/1211707732/referendo-na-medida-cautelar-na-arguicao-de-descumprimento-de-preceito-fundamental-adpf-779-df-0112261-182020100000/inteiro-teor-1211707763>.

Brazil. Federal Supreme Court. (2019, November 7). *General Repercussion in Extraordinary Appeal No. 1,211,446/RG* (Reporting Justice: Luiz Fux). *Electronic Justice Gazette*, Brasília, DF, November 19, 2019. Topic 1,072. Merits pending judgment.

Brazil. Federal Supreme Court. (2018, October 21). *General Repercussion in Extraordinary Appeal No. 1,058,333* (Reporting Justice: Luiz Fux).

Brazil. Superior Labor Court. (2012). *Summary No. 443: Dismissal of an employee with HIV or another serious illness that generates stigma or prejudice is presumed discriminatory. The dismissal is invalid, and the employee is entitled to reinstatement*. Brasília, DF: Superior Labor Court. https://www3.tst.jus.br/jurisprudencia/Sumulas_com_indice/Sumulas_Ind_401_450.html.

Butler, J. (2003). *Gender trouble: Feminism and the subversion of identity* (R. Aguiar, Trans.). Rio de Janeiro: Civilização Brasileira.

Carneiro, A. G. (2012, April 1). *Cybercrimes: Elements for a reflection on the problem of legal classification*. *Âmbito Jurídico*, São Paulo. <http://www.ambito-juridico.com.br>.

Carneiro, S. (2011). *Blackening feminism: The situation of Black women in Latin America from a gender perspective*. *E-Disciplinas USP*, São Paulo. https://edisciplinas.usp.br/pluginfile.php/375003/mod_resource/content/0/Carneiro_Feminismo%20negro.pdf.

Cerqueira, D., & Coelho, D. de S. C. (Eds.). (2014). *Rape in Brazil: A profile based on health data* (Technical Note No. 11). Brasília: IPEA – Institute for Applied Economic Research.

- Chauf, M.** (1985). Participating in the debate on women and violence. In B. Franchetto, M. L. V. C. Cavalcanti, & M. L. Heilborn (Eds.), *Anthropological perspectives on women 4* (pp. [n.n.]). São Paulo: Zahar Editores..
- Inter-American Commission on Human Rights (IACHR).** (2019, May 22). *IACHR publishes report on progress and challenges in the recognition of the rights of lesbian, gay, bisexual, trans, and intersex persons in the Americas* (OAS Press Release No. 126). Washington, D.C. <https://www.oas.org/pt/cidh/prensa/notas/2019/126.asp>.
- Collins, P. H.** (2019). *Black feminist thought: Knowledge, consciousness, and the politics of empowerment* (J. P. Dias, Trans.; 1st ed.). São Paulo: Boitempo Editorial .
- Inter-American Commission on Human Rights (IACHR).** (2021). *Situation of human rights in Brazil: Approved by the Inter-American Commission on Human Rights on February 12, 2021.* [n.p.]: IACHR. <http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>.
- National Council of Justice (Brazil).** (2021). *2030 Agenda in the Judiciary: Interinstitutional Committee.* Brasília, DF: National Council of Justice. (CNJ 2030 Agenda Portal). <https://www.cnj.jus.br/programas-e-acoas/agenda-2030/>.
- National Council of Justice (Brazil).** (2021). *BNMP statistics.* Brasília: National Council of Justice. <https://portalbnmp.cnj.jus.br/#/estatisticas>.
- National Council of Justice (Brazil).** (2020). *Justice in numbers 2020: Reference year 2019.* Brasília, DF: National Council of Justice. <https://www.cnj.jus.br/wp-content/uploads/2020/08/WEB-V3-Justi%C3%A7a-em-N%C3%BAmeros-2020-atualizado-em-25-08-2020.pdf>.
- National Council of Justice (Brazil).** (2016). *Tokyo Rules: United Nations standard minimum rules for the administration of non-custodial measures* (Human Rights International Treaties Series). Brasília: National Council of Justice. <https://www.cnj.jus.br/wp-content/uploads/2019/09/6ab7922434499259fca0729122b2d38-2.pdf>.
- National Council of the Public Prosecutor's Office (Brazil).** (2016). *Moral and sexual harassment: Protect yourself.* Brasília: CNMP. <http://www.mpf.mp.br/sc/arquivos/cartilha-assedio>.
- Cook, R. J., & Cusack, S.** (2010). *Gender stereotyping: Transnational legal perspectives* (p. 9). University of Pennsylvania Press.
- Inter-American Court of Human Rights.** (2018, January 9). *Advisory opinion OC-24/17 of November 24, 2017, requested by the Republic of Costa Rica: Gender identity, equality, and non-discrimination of same-sex couples.* San José. https://www.corteidh.or.cr/docs/opiniones/seriea_24_por.pdf.
- Crenshaw, K.** (2004). *Intersectionality in race and gender discrimination.* In Race and gender crossroads: Panel 1 (pp. 7–16). Brasília: UNIFEM. http://www.acaoeducativa.org.br/fdh/?p=1533&hc_location=ufi.
- Crenshaw, K.** (2002). *Document for the meeting of experts on gender-related aspects of racial discrimination.* *Revista Estudos Feministas*, 10(1). <https://www.scielo.br/pdf/ref/v10n1/11636.pdf>.
- Delphy, C.** (2009). *Patriarchy (theories of).* In H. Hirata, F. Laborie, H. Le Doaré, & D. Senotier (Eds.), *Critical dictionary of feminism* (São Paulo: UNESP).
- Facio, A.** (2002, December). *Engendering our perspectives.* *Otras Miradas*, 2(2), 49–79.
- Ferrito, B.** (2021). *Law and inequality: An analysis of the discrimination against women in the labor market based on time use.* São Paulo: LTr.
- Brazilian Forum for Public Security.** (2021). *Visible and invisible: The victimization of women in Brazil* [Visível e invisível: a vitimização de mulheres no Brasil] (3rd ed.). [São Paulo]: Datafolha. https://forumseguranca.org.br/publicacoes_posts/visivel-e-invisivel-a-vitimizacao-de-mulheres-no-brasil-2-edicao/.

Franco, L. (2019, February 26). *Violence against women: New data show that 'there is no safe place in Brazil'*. *BBC News Brasil*. <https://www.bbc.com/portuguese/brasil-47365503>.

Fredman, S. (2011). *Discrimination law* (2nd ed., p. 8). Oxford University Press.

United Nations Population Fund (UNFPA). (2020). *Gender-based violence, nationality and race/ethnicity: In two cities of Roraima: Executive summary*. Brasília: UNFPA. https://brazil.unfpa.org/sites/default/files/pub-pdf/violencia_de_genero_nacionalidade_e_raca-etnia_em_duas_cidades_de_roraima.pdf.

Gonzaga, V. L. C. (2010). *How does the Brazilian Supreme Court use the principle of morality in its rulings?* São Paulo: Escola de Formação da Sociedade Brasileira de Direito Público.

Gonzaga, V. L. C. (2020). *Business and human rights: The guiding principles and the 2030 Agenda for sustainable development*. In A. C. T. Moreira, C. B. A. Bertazolli, & D. A. Pamplona (Eds.), *Economic activity and human rights*. Naviraí: Ipuvaíva.

Gonzaga, V. L. C. (2014). *The limits of freedom of expression and stand-up comedy*. São Paulo: Pontifícia Universidade Católica.

Gonzaga, V. L. C. (2016, April 19). *What can the expression "tchau, querida" tell us about gender inequality?* *Carta Capital*. São Paulo.

Gonzaga, V. L. C., & Piovesan, F. (2018). *Business and human rights: Challenges and perspectives in light of international human rights law*. In F. Piovesan, I. V. P. Soares, & M. Torelly (Eds.), *Business and human rights*. São Paulo: Jus Podium. (Republished by TRF1).

Gonzalez, L. (2020). *For an Afro–Latin American feminism: Essays, interventions, and dialogues* (F. Rios & M. Lima, Eds.; 1st ed., p. 58). Rio de Janeiro: Zahar.

Grupo Interagencial de Género del Sistema de Naciones Unidas en Uruguay. (2020). *Guide for the Judiciary on gender stereotypes and international standards on women's rights* (p. 24). Montevideo: Imprenta Rojo SRL. Available at: <https://lac.unwomen.org/es/digiteca/publicaciones/2020/03/guia-poder-judicial-estereotipos-derechos-de-las-mujeres-uruguay>. Accessed on: May 10, 2021.

Heilborn, M. L. (2006). *Within the threads of Brazilian sexuality*. *Revista Estudos Feministas*, 14(1), 43–59. Available at: http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104026X2006000100004&lng=en&nrm=iso.

Hirata, H., & Kergoat, D. (2007). *New configurations of the sexual division of labor*. *Cadernos de Pesquisa*, 37(132), 595–609.

Hooks, b. (2020). *Ain't I a woman?: Black women and feminism* (B. Libanio, Trans.; 7th ed., pp. 104–107). Rosa dos Tempos.

Ianni, O. (1999). *The electronic prince*. Perspectivas.

Lima, V. A. (2004). Seven theses on media and politics in Brazil. *Revista USP*, (61), 48–57.

Institute for Applied Economic Research (Brazil). (2020). *Atlas of violence 2020*. https://www.ipea.gov.br/portal/images/stories/PDFs/relatorio_institucional/200826_ri_atlas_da_violencia.pdf.

Inter-Parliamentary Union (IPU). (2019). *Monthly ranking of women in national parliaments*. Geneva: [n.p.]. <https://data.ipu.org/women-ranking?month=9&year=2019>.

Jesus, J. G. de. (2012). *Guidelines on gender identity: concepts and terms. Technical guide on transsexual, travesty and other transgender people for opinion makers* (2nd ed.). Brasília, DF: [n.p.].

Kergoat, D. (2009). *Sexual division of labor and social relations of sex*. In H. Hirata, F. Laborie, H. Le Doaré & D. Senotier (Eds.), *Critical dictionary of feminism*. São Paulo: UNESP.

- Kilomba, G.** (2019). *Plantation memories: episodes of everyday racism* (1st ed., J. Oliveira, Trans.). Rio de Janeiro: Cobogó.
- Libório, B.** (2019, March 8). *Violence against women in Brazil in five charts*. *Época*. Rio de Janeiro. Available at: <https://epoca.globo.com/a-violencia-contra-mulher-no-brasil-em-cinco-graficos-23506457>.
- Lunardi, S., & Dimoulis, D.** (2014). *Sacredness of constitutional text and interpretative heresy: The Brazilian Supreme Court decision on same-sex civil unions*. *Direito GV Research Paper Series*, (91). São Paulo.
- Machado, M. R. de A., & Cook, R. J.** (2018). *Constitutionalizing abortion in Brazil*. *Revista de Investigações Constitucionais*, 5(3), 185–231.
- MacKinnon, C. A.** (1991). *Reflections on sex equality under law*. *The Yale Law Journal*, 100(5), 1281–1328.
- MacKinnon, C. A.** (2011). *Substantive equality: A perspective*. *Minnesota Law Review*.
- MacKinnon, C. A.** (1989). *Toward a feminist theory of the state*. Cambridge: Harvard University Press.
- MacKinnon, C.** (2019). *Sexual harassment of working women*. New Haven: Yale University Press.
- Marques, E. S., Moraes, C. L. de, Hasselmann, M. H., Deslandes, S. F., & Reichenheim, M. E.** (2020). *Violence against women, children and adolescents in times of the COVID-19 pandemic: overview, motivations and ways of coping* [A violência contra mulheres, crianças e adolescentes em tempos de pandemia pela COVID-19: panorama, motivações e formas de enfrentamento]. *Cadernos de Saúde Pública*, 36(4). Available at: <https://www.scielo.br/j/csp/a/SCYZFVKpRGpqq6sxJsX6Sftx/?lang=pt&format=pdf>.
- Mathieu, N.-C.** (2009). *Sex and gender* [Sexo e gênero]. In H. Hirata, F. Laborie, H. Le Doaré, & D. Senotier (Eds.), *Critical dictionary of feminism* [Dicionário crítico do feminismo] (p. 222). São Paulo: UNESP.
- Mendes, S. da R.** (2020). *Feminist criminal procedure* [Processo penal feminista] (1st ed.). São Paulo: Atlas.
- México. Suprema Corte de Justicia de la Nación.** (2020). *Protocol for adjudicating under a gender perspective* [Protocolo para juzgar con perspectiva de género]. Ciudad de México: Suprema Corte de Justicia de la Nación.
- Moreira, A. J.** (2019). *Thinking like a Black person: an essay on legal hermeneutics* [Pensando como um negro: ensaio de hermenêutica jurídica] (1st ed.). São Paulo: Contracorrente.
- Moreira, A. J.** (2017). *What is discrimination?* [O que é discriminação?]. Belo Horizonte: Letramento; Casa do Direito: Justificando.
- Moreira, A. J.** (2019). *Recreational racism* [Racismo recreativo]. São Paulo: Sueli Carneiro; Pólen.
- Moreira, A.** (2020). *Treatise on anti-discrimination law* [Tratado de direito antidiscriminatório]. São Paulo: Contracorrente.
- World Bank.** (2018). *Women, business and the law 2018: Key findings* [Mulheres, empresas e o direito 2018: principais resultados]. Washington, DC: World Bank. Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/29498/2/11252ovPT.pdf?sequence=11&isAllowed=y>.
- United Nations. Committee on the Elimination of Discrimination against Women (CEDAW).** (1999). *General Recommendation No. 24: Article 12 of the Convention (women and health)*. Lisbon: Portuguese Platform for Women's Rights. Available at: <https://plataformamulheres.org.pt/projectos/cedaw4all/recomendacoes-gerais/>.

United Nations. Committee on the Elimination of Discrimination against Women (CEDAW). (2008). *General Recommendation No. 26: Women migrant workers*. Lisbon: Portuguese Platform for Women's Rights. Available at: <https://plataformamulheres.org.pt/projectos/cedaw4all/recomendacoes-gerais/>.

United Nations. Committee on the Elimination of Discrimination against Women (CEDAW). (2013). *General Recommendation No. 29: Economic consequences of marriage, family relations, and their dissolution*. Lisbon: Portuguese Platform for Women's Rights. Available at: <https://plataformamulheres.org.pt/projectos/cedaw4all/recomendacoes-gerais/>.

United Nations. Committee on the Elimination of Discrimination against Women (CEDAW). (2013). *General Recommendation No. 33: Women's access to justice*. Lisbon: Portuguese Platform for Women's Rights. Available at: <https://plataformamulheres.org.pt/projectos/cedaw4all/recomendacoes-gerais/>.

Neto, J. (2019, May 31). *Women devote almost twice as much time as men to household chores*. IBGE News Agency, São Paulo. Available at: <https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/24267-mulheres-dedicam-quase-o-dobro-do-tempo-dos-homens-em-tarefas-domesticas>.

Nogueira, C. M. (2020). *The health of telemarketing workers and online work*. In R. Antunes (Ed.), *Uberization, digital work, and Industry 4.0*. São Paulo: Boitempo.

O'Neil, C. (2018, November 21). *The privileged are analyzed by people; the masses, by machines: Harvard mathematician fights to raise awareness about how 'big data' increases inequality* [Interview by A. Torres Menárguez]. *El País*. Available at: https://brasil.elpais.com/brasil/2018/11/12/tecnologia/1542018368_035000.html.

Oliveira, E. M., & Barreto, M. (1997). *Engendering gender in the understanding of repetitive strain injuries*. *Saúde e Sociedade*, 6(1).

Olivera, M., Podcameni, M. G., Lustosa, M. C., & Graça, L. (2021). *The gender dimension in the Big Push for sustainability in Brazil: Women in the context of social and ecological transformation of the Brazilian economy* [A dimensão de gênero no Big Push para a sustentabilidade no Brasil: as mulheres no contexto da transformação social e ecológica da economia brasileira]. Brasília: CEPAL. (Project Documents). Available at: https://repositorio.cepal.org/bitstream/handle/11362/46643/1/S2000925_pt.pdf.

International Labour Organization. (2000). *ABC of women workers' rights and gender equality*. Geneva: ILO.

Pandjarjian, V., Pimentel, S., & Schritzmeyer, A. L. P. (1998). *Rape: crime or "courtesy"? A socio-legal gender approach* [Estupro: crime ou "cortesia"? Abordagem sociojurídica de gênero]. Porto Alegre: Sérgio Antonio Fabris Editor.

Penteado, T. (2020, September 3). *The "good" mother*. *Estadão*, São Paulo.

Penteado, T. (2021). *The abortion jurisprudence in Brazil: An analysis of ADPF 54 from feminist equality-based perspectives*. *International Journal of Constitutional Law*. [Forthcoming].

International Labour Organization. (2017, June 14). *Social and employment outlook in the world: Trends for women in the labor market in 2017* [Perspectivas sociais e de emprego no mundo: tendência para mulheres no mercado de trabalho em 2017]. *ILO News*, Brasília. Available at: https://www.ilo.org/brasilia/noticias/WCMS_558360/lang--pt/index.htm.

Pinheiro, L. S., Lima Junior, A. T., Fontoura, N. de O., Silva, R. da, et al. (2016). *Women and work: A brief analysis of the period 2004–2014* [Mulheres e trabalho: breve análise do período 2004–2014]. Brasília: IPEA. Available at: http://repositorio.ipea.gov.br/bitstream/11058/6524/1/Nota_n24_Mulheres_trabalho.pdf.

Pinheiro, L., Lira, F., Rezende, M., & Fontoura, N. (2019). *The challenges of the past in twenty-first century domestic work: Reflections for the Brazilian case based on continuous PNAD data* [Os desafios do passado no trabalho doméstico do século XXI: reflexões para o caso brasileiro a partir dos dados da PNAD contínua]. Rio de Janeiro: IPEA. (Discussion Paper, 2528). Available at: https://www.ipea.gov.br/portal/images/stories/PDFs/TDs/td_2528.pdf.

Agência Câmara Notícias. (2019, February 18). *Project includes “corrective rape” crime in the Criminal Code* [Projeto inclui crime de “estupro corretivo” no Código penal]. Brasília. Available at: <https://www.camara.leg.br/noticias/552107-projeto-inclui-crime-de-estupro-corretivo-no-codigo-penal/>.

Püschel, F. P. (2020). *A feminist analysis of affective abandonment in the Superior Court of Justice* [Uma análise feminista do abandono afetivo no Superior Tribunal de Justiça]. In F. P. Püschel (Ed.), *Law and development in practice: New perspectives for legal reflection* [Direito e desenvolvimento na prática: novas perspectivas para a reflexão jurídica]. São Paulo: Almedina.

Püschel, F., & Penteadó, T. (2021). *The Medea grip in parental alienation: Feminist considerations on gender stereotypes in the Brazilian judicial practice*. [S.l.: s.n.]. [Forthcoming].

Reale, M. (2002). *Preliminary lessons on law* [Lições preliminares de direito] (27th ed., 346 p.). São Paulo: Saraiva.

National Council of Justice (Brazil). (2020). *Final research report: Justice research: the judicialization of social security and welfare benefits* [Relatório final de pesquisa: justiça pesquisa: a judicialização de benefícios previdenciários e assistenciais] (p. 54). Brasília: CNJ. Available at: https://www.cnj.jus.br/wp-content/uploads/2020/10/Relatorio-Final-INSPER_2020-10-09.pdf. Accessed on: July 27, 2021. (Original footnote in AJUFE booklet No. 89).

NUPEGRE Research Reports. (2020). *Feminicide: A study on the cases tried by the Criminal Chambers of the Court of Justice of the State of Rio de Janeiro* [Feminicídio: um estudo sobre os processos julgados pelas Câmaras Criminais do Tribunal de Justiça do Estado do Rio de Janeiro] (No. 5). Rio de Janeiro: EMERJ. Available at: https://www.emerj.tjrj.jus.br/publicacoes/relatorios_de_pesquisa_nupegre/edicoes/numero5/relatorios-de-pesquisa-nupegre_numero5.html.

Rios, R. R. (2008). *Anti-discrimination law: direct discrimination, indirect discrimination, and affirmative action's* [Direito da antidiscriminação: discriminação direta, indireta e ações afirmativas]. Porto Alegre: Livraria do Advogado.

Rosa, M., & Quirino, R. (2017). *Gender relations and ergonomics: An approach to the work of female factory workers* [Relações de gênero e ergonomia: abordagem do trabalho da mulher operária]. *HOLOS*, 5, 345–359. Natal.

Ruic, G. (2018, June 26). *These are the worst countries in the world for women* [Estes são os piores países do mundo para mulheres]. *Exame*, São Paulo. Available at: <https://exame.abril.com.br/mundo/estes-sao-os-piores-paises-do-mundo-para-mulheres/>. Accessed on: August 27, 2021.

Saffioti, H. (1987). *The power of the male* [O poder do macho] (pp. 9–10). São Paulo: Moderna.

Santos, J. B. L., & Silva, M. S. da. (2019). *Female incarceration: Reflections on affective abandonment and associated factors* [Encarceramento feminino: reflexões acerca do abandono afetivo e fatores associados]. *Revista Psicologia Política*, 19(46), 459–474. Available at: http://pepsic.bvsalud.org/scielo.php?script=sci_arttext&pid=S1519-549X2019000300007&lng=pt&nrm=iso.

São Paulo (State). Public Ministry. *X-ray of femicide: In São Paulo: Is it possible to prevent death?* [Raio X do feminicídio: em São Paulo: é possível evitar a morte]. São Paulo: MPSP. Available at: http://www.mpsp.mp.br/portal/page/portal/Nucleo_de_Genero/Feminicidio/RaioXFeminicidioC.PDF.

Severi, F. C. (2016). *Justice from a gender perspective: Theoretical, normative, and methodological elements* [Justiça em uma perspectiva de gênero: elementos teóricos, normativos e metodológicos]. *Revista de Direito Administrativo*, 3(3), 574–601.

Severi, F. C. (2016). *Justice from a gender perspective: Theoretical, normative, and methodological elements* [Justiça em uma perspectiva de gênero: elementos teóricos, normativos e metodológicos]. *Revista Digital de Direito Administrativo*, 3(3), 574–601. Available at: www.revistas.usp.br/rdda. Accessed on: May 5, 2021.

Teles, M. A. de A. (2018). *A brief history of feminism in Brazil and other essays* [Breve história do feminismo no Brasil e outros ensaios]. São Paulo: Alameda.

United Nations. Office on Drugs and Crime. (2019). *Handbook for the judiciary on effective criminal justice responses to gender-based violence against women and girls*. Vienna: UN. Available at: https://www.unodc.org/pdf/criminal_justice/HB_for_the_Judiciary_on_Effective_Criminal_Justice_Women_and_Girls_E_ebook.pdf.

Valdés, I. (2018, June 14). *Largest report ever on sexual harassment in US science reveals systemic abuse* [Maior relatório já feito sobre assédio sexual na ciência dos EUA revela um abuso sistemático]. *El País*. Available at: https://brasil.elpais.com/brasil/2018/06/13/ciencia/1528899877_715296.html.

Valente, M. G., Neris, N., Ruiz, J. P., & Bulgarelli, L. (2016). *The body is the code: Legal strategies to combat revenge porn in Brazil* [O corpo é o código: estratégias jurídicas de enfrentamento ao revenge porn no Brasil]. São Paulo: InternetLab.

Vieira, R. S. C. (2019). *Law and gender in women's health and safety at work* [Direito e gênero na saúde e segurança das mulheres no trabalho]. Belo Horizonte: Casa do Direito.

Wurster, T. M., & Alves, C. M. S. P. (Coords.). (2020). *Adjudicating under a gender perspective: A guide for social security law* [Julgamento com perspectiva de gênero: um guia para o direito previdenciário]. Ribeirão Preto: Migalhas; Ajufe. Available at: http://ajufe.org.br/images/pdf/CARTILHA_-_JULGAMENTO_COM_PERSPECTIVA_DE_G%C3%8ANERO_2020.pdf.

Wurster, T. (2019). *The other incarcerated: Does being a woman matter for the justice system?* [O outro encarcerado: ser mulher importa para o Sistema de Justiça] (Master's thesis, Federal University of Paraná). Curitiba.

Young, I. M. (2012). *The ideal of impartiality and the civic public* [O ideal da imparcialidade e o público cívico]. *Revista Brasileira de Ciência Política*, (9).

Zanello, V. (2018). *Mental health, gender, and devices: Culture and processes of subjectivation* [Saúde mental, gênero e dispositivos: cultura e processos de subjetivação] (Vol. 1, 1st ed.). Curitiba: Appris.

