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Maria Da Penha's Law and the Current State of Domestic Violence Prosecution

RQ: How has Maria da Penha's Law changes domestic violence prosecution and litigation after it passed? What are the tangible benefits of this law, and how has it addressed domestic violence in Brazil?

Maria Da Penha Maia Fernandes v. Brazil is a landmark case decided by the Inter-American Commission on Human Rights on April 1st (2001) concerning domestic violence, judicial negligence, and the role of state impunity in Brazil. The case was filed by Maria da Penha, alongside the Center for Justice and International Law (CEJIL) and Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) – non-governmental organizations dedicated to promoting and protecting human rights within the Americas. After the law was passed, many feminist advocacy groups banded together to push for legislative change and passed the Maria da Penha Law in 2006. This is recognized as one of the most progressive and holistic laws against domestic violence; this would force judiciaries and local authorities to prosecute domestic violence, have stricter prosecution penalties for domestic violence and created additional resources in order to address institutional barriers. However, domestic violence is still rampant in Brazil, with studies showing that there has been a gradual increase post-pandemic; this leads advocates, researchers, and policy makers to question the efficiency of the law, the structural problems within the law and places of potential improvement. Current literature observes international legal rhetoric around gender based violence litigation, structural biases within the implementation of the law, and the pervasive backlog of cases. This paper aims to connect the case law, the legislation, the current state of gender based violence in Brazil and summarize the holistic debate of policy changes for the Maria da Penha Law.

Methodology

The primary research method is a literature review, which aims to examine current literature within the field and synthesize the findings. Scholars have already examined the legislative history and legal battles that have come with the passing of MLP, areas of growth within the realm of international law, traced legislation and amendments on the MLP, kept a historical record of gender based violence (recorded through survey data) through the period of 2006 to 2025, and done specific case studies within individual states in Brazil. Gaps within the literature that remain to be filled are the voices and survey data from indigenous and rural women, and how the law has particularly impacted them. Studies have commented about the generalized difficulties of accessing specialized domestic violence resources in rural Brazil, but scholars have yet to provide thorough case studies of indigenous or rural voices within the research.

The other research method used is a legislative and legal analysis of the IACHR's ruling of *Maria Da Penha Maia Fernandes v. Brazil*, which was analyzed through an abridged FIRAC framework. FIRAC aims to look at the facts of the case, the legal issue being debated, the initial ruling of the judge, appellate analysis, and a finalized conclusion. This furthered the research through the case studies and information utilized by the petitioners within their case, and understanding the exact legal issues which were being discussed. The legislative analysis portion drew directly from the Maria da Penha Law (2006), and used the english translation which was provided within the records. The body of the text allowed the understanding of the specific measures implemented, and the analysis of gaps within the legislation.

Introduction to the Case

On May 29, 1983, Maria da Penha was shot while asleep by her husband, Marco Antonio Heredia Viveiros, resulting in irreversible paraplegia. Two weeks later, he attempted to electrocute her, marking a secondary murder attempt. Records indicated that Viveiros was described as an "aggressive and violent person," with documented instances of assaulting his wife and daughters (MARIA DA PENHA MAIA FERNANDES vs. BRAZIL, 2001). The petition asserts clear premeditation in these attempts, noting Viveiros' manipulation to make himself the sole beneficiary of Maria's life insurance and coercing her into signing a document for the sale of her car without providing purchaser identification. A judicial investigation was launched after the second assault on June 6, 1983, revealing further evidence of premeditation, leading the Office of the Public Prosecutor to file charges on September 28, 1984. Despite evidence from the initial investigation, including a rifle matching the murder weapon, the first trial did not occur until 1991, eight years after charges were filed. Viveiros was found guilty and initially sentenced to fifteen years, later reduced to ten. However, a time-barred appeal was improperly accepted, resulting in the conviction being overturned in 1994. A second jury convicted him on March 5, 1996, but by the time of the petition, that conviction was under appeal, with no final ruling yet issued.

The petitioners approached the Inter-American Commission on Human Rights claiming that the state of Brazil had "condoned ... domestic violence perpetrated in the city of Fortaleza" and as a result she had suffered from "irreversible paraplegia and other ailments since 1983" (MARIA DA PENHA MAIA FERNANDES vs. BRAZIL, 2001). The petitioners cited: Articles 8 and 25 of the American Convention for a fair trial and judicial protections, Article (1) for the general obligation to respect and guarantee rights, Article 24 for the violation of the equal protection before the law and Article 7 of the Convention of Belem di Para for the failure to carry out the duty to prevent, investigate and punish violence against women.

The Commission found that, after 17 years with no final ruling, there was an unreasonable delay in justice, and throughout the period, Viveiros remained free. The Commission cited the Inter-American Court's standards that states must "prevent, investigate and punish any violation" and that Brazil had clearly failed to meet this obligation, of which they are a party too (MARIA DA PENHA MAIA FERNANDES vs. BRAZIL, 2001). The Commission traced this to a common theme within Brazil and the impunity for domestic violence-related complaints; in 1994, of 86815 complaints filed by women assaulted at home, only 24103 were investigated by police, and other reports show that 70% of criminal complaints related to domestic violence remained unresolved, with only 2% of reports leading to convictions against the aggressor (MARIA DA PENHA MAIA FERNANDES vs. BRAZIL, 2001).

The commission concluded that Brazil was responsible for the violation of the right to a fair trial and judicial protection, failure to fulfill obligations under Article 7 of the Convention of Belem do Para, and contributing to a broader pattern of state tolerance of domestic violence against women through ineffective police and judicial action (MARIA DA PENHA MAIA FERNANDES vs. BRAZIL, 2001).

The Legal History and Other Forms of Legal Requirements

The Maria da Penha Law (no. 11.340/2006) (MPL), named in honor of Maria da Penha Maia Fernandes, was passed after significant contributions from the IACHR rulings, and is now one of Latin America's most comprehensive domestic violence laws. Some of the main innovations of the law are that it "classifies and defines domestic and family violence against women", "pecuniary sentences are forbidden", includes guidance for police authorities in cases of domestic violence against women, and issues a 48-hour judicial notice for urgent messages to issue urgent protective measures (Lei Maria da Penha, 2006). They also created Courts of Domestic and Family Violence Against Women to hear cases of domestic and family-based

violence, which has a multidisciplinary team of professionals to advise on psychological, legal, and health areas within a victim's case (Lei Maria da Penha, 2006). Other gender-specialized provisions created within the law called for women's centers, emergency domestic violence protection shelters, integrating women's police stations, and created a unique policy framework to forward the global conversation of domestic violence litigation.

Brazil isn't limited to the MPL for gender violence-based litigation. Since the 1970s, Brazil's prominent feminist movement has pushed to create women-only police stations, has been a signatory to the 1979 United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belem do Para Convention) (de Avila, 2018). The National Secretary of Women's Policies was created in 2003 to integrate federal, state, and local governments to address gender-based violence and to cover the state holistically. MPL was later advocated for and added by the Brazilian Parliament in 2006 to address gender based violence as a whole, and covers "all affective intimate relations" including dating violence, regardless of the sexual orientation of the victim (de Avila, 2018). The 'National Pact to Face Domestic Violence', created in 2011, also created a network of different services available to those impacted, including specialized women's centers, shelter housing for women in crisis, women-only police station, specialized domestic violence department for those seeking legal-aid, and a National Gender Violence Hotline for domestic violence health services and immigration support services (de Avila, 2018).

Thiago Pierobon de Avila's research further examines innovations in Brazil's legal framework for confronting domestic violence against women, with a particular focus on those featured in the MPL. De Avila mentioned they created provisions of "urgent protective measures," which are similar to restraining or intervention orders, made "physical aggression a mandatory prosecution crime", "forbids all kinds of plea bargaining" which would make the

prosecution mandatory, and includes a provision of “interdisciplinary domestic violence experts to assist the specialized Magistrates Court to reach decisions” (de Avila, 2018). According to the Office of the General Attorney of Brasilia in 2016, there were 13100 reported domestic violence cases against women, and received 11556 applications for intervention orders, indicating that most women have applied for an intervention order; analyzing this trend, a reform was passed to broaden their reach to other crimes, including offenses outside a familial context (de Avila, 2018). De Avila also explains a measure of restorative justice implemented in Brazil, focusing on preventing perpetrators of crimes from reoffending; there was required attendance at rehabilitation programs after they were convicted, and programs typically ran between 3 and 6 months, with both individual and group therapy. They focused on working with victims on target recognition, empowerment, citizenship, understanding the MPL, gender relations, cycles of gender-based violence, the change of sexist values, and non-violent conflict resolution (de Avila, 2018). De Avila mentioned that one of the program's problems is the lack of thorough recidivism studies; the program's effects remain undetermined.

The MPL did produce a quantifiable cultural shift against domestic violence: 94% of surveyed Brazilians had heard about the law, and 34% of surveyed men reported reducing or ceasing a sexist behavior that perpetrated harms against women. This movement was backed by a social media campaign against harassment and sexual violence in 2015, known as the “Spring of Women”, and continued to bring awareness to sensitive topics such as domestic violence (de Avila, 2018). In 2015, Brazil also passed a progressive Femicide Law, which established that femicide, the act of killing a woman for the sole reason that she is a woman, would be an independent crime of murder and would have different sentencing structures. A law was also passed in 2021 to criminalize stalking (de Avila, 2018).

When the law was passed in 2006, a segment of the Brazilian judiciary challenges its legitimacy under the Brazilian Constitution; they had cited Article 5, claiming that the law

primarily favored protecting women which would violate the equal opportunities law, that there would be state intervention within the private sphere, and that this would be a disproportionate ruling for a minor crime (Machado, 2012). The legal argument was held by three categories of judges: judges who actively declared the law was unconstitutional to avoid applying it, judges who applied the law but the interpretations were too narrow (e.g., requiring a high burden of proof for gender-based motivations), and judges who argued that there was a fundamental issue of material inequality under the constitution (Machado, 2012). The Supreme Federal Court ruled in 2012 that the law was indeed constitutional because it was intended to protect a vulnerable group and therefore would promote true equality (Machado, 2012).

Research into Brazil's and the IACHR's application of the MPL and the country's favorability toward the independent body, suggesting legislative changes within a sovereign nation (Da Silva, 2025). Through three separate independent reports done by the IACHR after the Convention on Belem do Para was passed, Brazil was condemned for the failure to eradicate continued impunity for domestic violence, or guaranteeing punishment for aggressors (Da Silva, 2025). The first action they took was in 2006 to pass the MLP with suggestions from the IACHR, the second being in 2015 to update article 121 of the Brazilian Penal Code to make femicide a crime of homicide and add it to the list of qualifying heinous crimes, and finally created the Red Signal Program in 2021 as a mechanism to combat family violence. Overall, Brazil has been open to external suggestions for improving gender-based violence policies within the state (Da Silva, 2025).

Current analysis of Gender Based Violence in Brazil

The epidemic of gender based violence continues to impact Brazil, with black female homicides increasing from 2003 to 2013, increasing by 54.2% (de Avila, 2018). In 2013, 4762 women were killed, which is a shocking rate of 4.8 per 100,000 people, leading to Brazil being

fifth in the international ranking of female homicides (de Avila, 2018). Of these deaths, 50.3% occurred within the context of family violence and 33.2% within the context of intimate partner violence, measuring around four IPV deaths per day (Americas Quarterly, 2025).

According to Figure A, based on FBSO's biannual surveys, violence against women in Brazil has continued to rise since 2017 (Americas Quarterly, 2025). In the most recent survey in 2025, 40.7% of Brazilian women aged over 16 reported they have suffered physical, sexual, or psychological violence within their lifetime from a current intimate partner or an ex-partner; in addition to this, 60% of these cases have been reported within the victim's home (Americas Quarterly, 2025). FSBO points to several factors that have led to the ongoing crisis of gender-based violence against women, including President Jair Bolsonaro's appointments of governors and mayors who have defunded public policies and programs that were aimed at reducing violence (Americas Quarterly, 2025).

Continued research shows that the "overall average rate of DV almost tripled from 2009-2010 to 2013-2013" with the rate of domestic violence between the latter period being 3.52 times higher (Pinheiro Rodrigues, 2018). The ongoing violence occurring within family environments contributes to significant morbidity and psychological distress (Pinheiro Rodrigues, 2018).

Problems Identified within the Current Legislation and Potential Solutions

In the first decade, MLP produced several meaningful outcomes, including specialized services, increased awareness of domestic violence, and training for public professionals. Despite these gains, several problems remained in place to holistically address the domestic violence epidemic within Brazil; some obstacles stated by researchers were institutional resistance to cultural and gender-sensitive changes the law required, insufficient specialized services in rural areas, and low levels of professional training (Pasinato, 2016). Bill 07, proposed in the Brazilian

Senate in 2016, aimed to rectify the shortcomings of incisional law and proposed an amendment to the MPL's police assistance to victims, allowing police officers to apply urgent protective measures immediately upon identifying a risk, rather than waiting for a judiciary (Pasinato, 2016). Legal scholars and feminist critics of this amendment pointed out that although this would provide faster protection to some women in danger, it would have failed to address the institutional shortcomings (I.e., courts, police units, support services). Pasinato further critiques the bill and argues that it would simply reallocate the service bottleneck and would not come to fruition (2016). The bill itself was suspended and sent to a public hearing, where it did not continue in the legislative chamber.

The MPL has contributed to important record-keeping of domestic violence, especially within the context of health services. However, there are still several factors that need improvement to combat the underrepresentation and underestimation of domestic violence. Scholars suggest that reporting of domestic violence be compulsory for male adults (as it is for female adults, children, adolescents, and the elderly) to validate the indicators of DV for men (Pinheiro Rodrigues, 2018). They also suggest that surveillance workers, who are instituted to look for signs of DV within healthcare facilities and report them to authorities, "disregard the need to notify" and that patients "do not recognize violence as a responsibility of the health care system, so they do not feel that it is necessary to report cases of aggression to public health facilities" (Pinheiro Rodrigues, 2018). This is an important aspect of the MLP law; without self-reporting of DV from patients, clear communication from healthcare providers about the holistic care provided by MLP, as well as DV surveillance staff who don't notify doctors, this is an underutilized section of the overall law.

Susana Coelho Da Silva's research into the international legal interpretation further pressures Brazil into closing the gaps between the law and the reality of gender based violence on the ground (2025). An important aspect of Maria Da Penha's case, which was brought up for

consideration, was that she was targeted for femicide as well as premeditated homicide. Due to the current ongoing crisis in Brazil, Da Silva argues that Brazil should investigate femicide as a potential crime against humanity and prosecute gender-based killings listed under Article 7(1) of the Rome Statute instead of just a murder (2025). She points to three different elements from Article 7 of the Rome Statute that can be directly used to classify femicide within Brazil: “(1) widespread or systematic; (2) directed against a civilian population; (3) with knowledge of the attack” (Da Silva, 2025). This implementation of the Rome Statute for the prosecution of femicide would make sentences stricter and, hopefully, serve as a deterrent. Given Brazil’s favorable record of upholding commitments to international law in courts and legislation, this stricter interpretation may lead to fruitful outcomes (Da Silva, 2025).

The Inter-American system of human rights has maintained a legacy of judicial review based on four distinct categories for women’s rights: (1) violence against women; (2) discrimination; (3) due diligence; and (4) access to justice (rights of women) (Celorio, 2011). Local courts, state and municipal, also need to adopt these fundamental categories for judicial review in cases involving women’s rights to ensure a holistic commitment to human rights. According to public police records filed, in 2017, there were 236641 protective measures issued; however, Brazil has only 130 exclusive courts for domestic violence, while 69% of cases were processed in non-exclusive courts (Campos, 2021). The high number of protective measures issues within the procedural capacity of non-exclusive courts suggests that official judicial courts do “not give due attention to domestic violence” because Brazil did not create enough courts to address the systemic problem (Campos, 2021).

Policy analysts have also considered the merits of a restorative justice approach to domestic violence rulings in Brazil, drawing from restorative justice policies implemented in New Zealand, Austria, and Canada. Restorative justice fundamentally shifts the definition of retribution of a crime within a legal system to a model that focuses on the crime being a violation

of people and relationships; they focus on creating opportunities for victims and offenders to meet and discuss the crime, repair relationships, and strengthen the community as a whole. These methods are particularly important in addressing court backlogs and internalized biases within the system. Campos and Oliveira analyzed the push for restorative justice regarding the MLP by the National Justice Council and through empirical studies within the Rio Grande do Sul courts (2021). The researchers analyzed the process of restorative justice, primarily through victim-offender conferencing and peacemaking circles. They found that the application of restorative justice within domestic violence cases were “residual”, meaning that they did not meaningfully replace or disrupt the tradition penal model and exists within the periphery of the judicial system, they were “misaligned”, the practices were not perceived as restorative for the women involved, and “structurally flawed.” (Campos, 2021). They highlighted several systematic issues in the current restorative justice approach in Brazil, citing a clear power imbalance between the parties involved, a perception of impunity, a history of impunity, and that restorative justice initiatives have ignored the structural roots to repair specific relationships (Campos, 2021). There was a lack of neutrality within the facilitators, who were often court staff, which subtly encourages women to forget the crime and keep the family unit intact, and they often pressured victims to agree to settlements, which had led to an institutional secondary victimization for women (Campos, 2021). There were several institutional problems related to the bureaucratization of the process and the push for familialism and settlement, which had undermined the fundamental purposes of the MLP — leading, in its current model, to restorative justice being an insufficient model for justice (Campos, 2021).

Additionally, police and judicial perceptions and opinions of the MLP are significant factors in assessing and issuing protective measures for women, with research showing that actors are heavily influenced by their own perceptions of victims rather than by the plain language of the law (Rodrigues, 2015). Many prosecutors in interviews continue citing the

unconstitutionality of the law and are reluctant to follow it, and often have given out lower penalties in crimes of physical injury; police officers have continued dismissing cases, tried to appease the offender of the crime, or referred cases to misdemeanor courts (Rodrigues, 2015). In a case study examining the implementation of MLP in Espirito Santa, they mentioned how nobody wanted to work in the women's police stations and indicated that police officers had mistreated victims, avoided filing paperwork, or attempted to conciliate victims with their abusers (Rodrigues, 2015).

Conclusion

Although *Maria Da Penha Maia Fernandes v. Brazil* serves as a pivotal moment in the fight against domestic violence within Brazil, the subsequent law was able to make an important difference, highlighting the need for judicial accountability within domestic violence cases. MLP serves as a pivotal piece of legislation that works on holding institutions accountable for impunity against gender-based violence, and has created many important resources in order to address domestic violence and gender based violence. Research continues to uncover flaws within the legislative approach of curbing gender based violence; many researchers and scholars point to the central issue of a culture of misogyny leading to the ongoing issues of gender based violence, and therefore, without addressing the root causes of societal problems, much of the ongoing battle will continue. Areas where significant legislative reform remain is addressing biases within the judicial (prosecutorial) and investigative institutions, and curbing the institutionalized misogyny in order to strengthen the MLP. Nonetheless, MLP serves as an important starting point in addressing systematic gender-based violence and serves as an important legislative and legal framework to prosecute offenders of violence.

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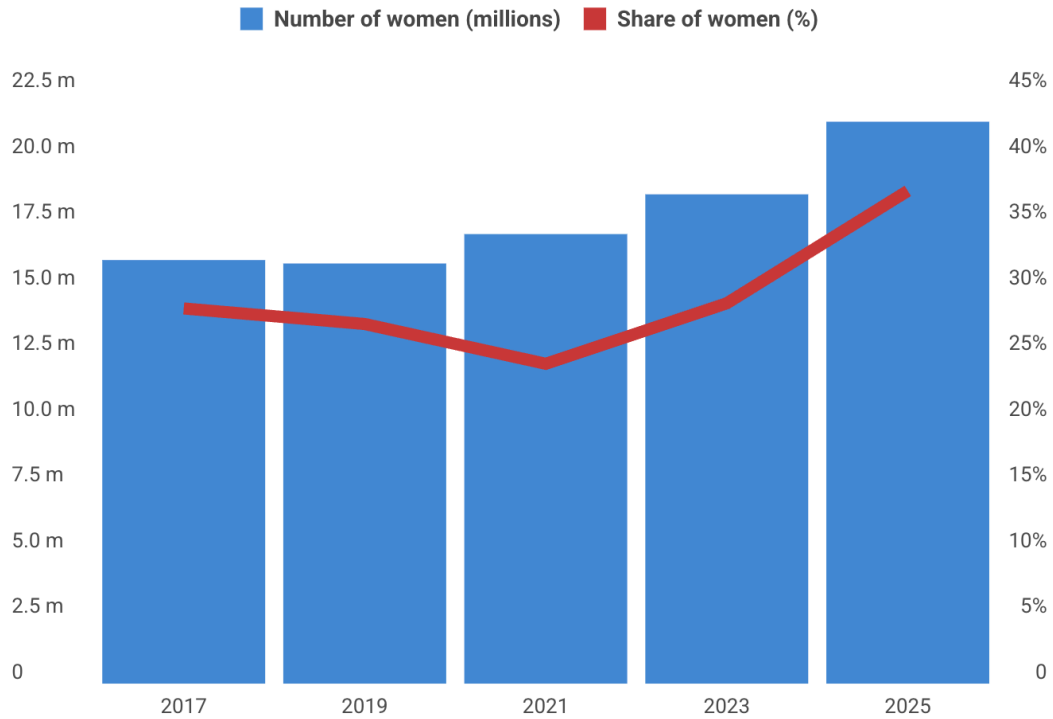
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Appendix

Figure One

Violence against women in Brazil is rising

Brazilian women aged 16 and over who have experienced some form of violence in the past 12 months



Source: "Visível e invisível: a vitimização de mulheres no Brasil," Fórum Brasileiro de Segurança Pública (2025)



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