

THE NOVEL STATUTE OF THE BRAZILIAN INTER-AMERICAN JUDICIARY

Sidney Guerra¹

ABSTRACT

This article examines the novel Brazilian Inter-American Judiciary Statute, enacted by the National Council of Justice, in 2026, as an instrument for strengthening the incorporation of the standards of the Inter-American Human Rights System into Brazilian judicial activity. Employing the deductive method, the study begins with the general premises of the internationalization of law and the international protection of human rights to assess the extent to which the Statute consolidates guidelines aimed at fostering a judiciary committed to fulfilling the international obligations undertaken by the Brazilian State, particularly regarding compliance with international human rights treaties and the exercise of conventionality control. The study demonstrates that the Statute constitutes an important institutional milestone by promoting the consolidation of a judicial culture grounded in the dialogue between domestic and international legal orders and in the effective protection of human rights. It concludes, however, that despite this normative advancement, its full effectiveness depends on overcoming institutional and doctrinal barriers that remain deeply rooted in Brazilian legal culture, as well as on strengthening continuing judicial education focused on International Human Rights Law and the daily application of Inter-American human rights standards.

Keywords: Statute of the Inter-American Brazilian Judiciary; Control of Conventionality; Human Rights.

1. INTRODUCTION

In Brazil, for a long period, the legal imaginary was dominated by the traditional conception that judges should confine their activity strictly to the classical sources of domestic

¹Full Professor at the Federal University of Rio de Janeiro and at the Graduate Program in Law of the National Law School (FND/UFRJ) and at Cândido Mendes University (UCAM). Postdoctoral fellow, Centre for Social Studies, University of Coimbra; Postdoctoral fellow, Advanced Program in Contemporary Culture, Federal University of Rio de Janeiro (UFRJ). Postdoctoral degree in Law (Mackenzie University – SP). Ph.D. and Master's in Law (UGF). Ph.D. in Environmental Sciences (UERJ). Ph.D./Full Professor (Livre-Docente) in International Relations (IRI/USP). Attorney. Chair of the Human Rights and Legal Aid Commission of the OAB-RJ (Rio de Janeiro Bar Association) and Member of the Special Commission on International Law of the Federal Council. E-mail: sidneyguerra@terra.com.br.

law. From this positivist standpoint, judicial activity was exhausted in the application of the Constitution of the Republic and of infra-constitutional legislation, whose validity and systemic coherence were assessed solely in light of constitutionality review.

This perspective, however, has proven obsolete. In matters of human rights, social complexity, transnationalization and internationalization of law impose the verification of compatibility of domestic norms with the international treaties ratified by the Brazilian State. Consequently, there is a growing demand, on the part of those who interpret and apply the law, for the necessary and indispensable exercise of conventionality control.

Observance of this control is consistent with the Brazilian Constitution, particularly with the provisions enshrining the prevalence of human rights, as well as with the logic inherent to the Inter-American Human Rights System, of which Brazil is a party and whose Inter-American Court of Human Rights' jurisdiction it recognizes. It is therefore not a mere interpretive option or an optional argumentative resource, but a duty arising from the international commitments undertaken by the Brazilian State. Nevertheless, a significant portion of the Brazilian judiciary, including the Superior Courts, still displays a certain reticence in applying this institution.²

Withal, notwithstanding the existence of a robust international normative framework, everyday forensic practice still reveals a certain resistance, or even insufficiency, in the application of international human rights protection standards. In many cases, international law continues to be treated as a peripheral element, when not merely ornamental, in the basis of judgments and rulings. This posture of hermeneutic isolation, which may stem both from technical unfamiliarity and from a cultural resistance to opening up the domestic legal system, directly undermines the full effectiveness of the international commitments undertaken by the Brazilian State at the external level.

Fittingly, the Plenary of the Brazilian National Council of Justice (“CNJ”), at its 3rd Ordinary Session held on March 17th, 2026, deliberated on a significant amendment to Recommendation No. 123/2022, thereby expressly incorporating and structuring what has become known as the Statute of the Brazilian Inter-American Judiciary. This normative instrument breaks new ground in the institutional and functional landscape by expressly recommending that Brazilian judicial bodies observe international human rights treaties and

²GUERRA, Sidney. *O sistema interamericano de proteção dos Direitos Humanos e o controle de convencionalidade* [The Inter-American System for the Protection of Human Rights and Conventionality Control]. 5th ed. Rio de Janeiro: Grande Editora, 2025, pp. 371–412.

conventions, and by directing them to use the judicial precedents of the Inter-American Court of Human Rights as a binding hermeneutic and decisional benchmark.³

This article sets out to examine this novel Statute of the Brazilian Inter-American Judiciary, analyzing the judge's new role as the central agent for the fulfillment of human rights and as an operator of conventionality control. A deductive methodology was employed, through bibliographic review and documentary analysis, assessing international normative instruments of protection, Brazilian domestic legislation, the Organic Law of the National Judiciary, and the precedents of the Inter-American Court of Human Rights. Ultimately, it is shown that strengthening judicial independence and incorporating Inter-American standards constitute essential elements for the institutional improvement of the Brazilian judiciary and for the consolidation of a legal culture committed to the comprehensive protection of human rights.

2. THE JUDGE'S ROLE AS INTER-AMERICAN JUDGE AND THE EVOLUTION OF CONVENTIONALITY CONTROL

Understanding the Statute of the Brazilian Inter-American Judiciary requires an excursion into the historical evolution of conventionality control, whose theoretical grounding directly links the activity of the domestic judge to the case law of the San José Court. Although the duty to fulfill international obligations derives from the principles of good faith and *pacta sunt servanda*, enshrined in the 1969 Vienna Convention on the Law of Treaties, the creation of a mandatory, diffuse judicial control mechanism is of an eminently jurisprudential origin.

The initial systematization of this institution took place in 2006, on the occasion of the judgment in the *Almonacid Arellano v. Chile* case,⁴ in which the Inter-American Court of Human Rights settled that the judiciary of each State party must conduct a vertical compatibility review between domestic norms and the Inter-American *corpus iuris*. At that stage, it was established that domestic judges were bound to ensure that the effects of the provisions of the American Convention on Human Rights were not diminished by the application of laws contrary to its object and purpose. The role of the domestic judge therefore underwent a profound

³BRAZIL. National Council of Justice. *Recommendation No. 168, of 23 March 2026*. Amends CNJ Recommendation No. 123/2022, establishes the Statute of the Brazilian Inter-American Judiciary, and provides other measures. Resolved at the 3rd Ordinary Session of the Plenary, on 17 March 2026. Brasília: CNJ, 2026.

⁴I/A Court H.R. *Almonacid Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of 26 September 2006. Series C No. 154.

transformation, requiring that the validity screening of local law be subjected to a mandatory dual filter, composed of both constitutionality and conventionality review.⁵

The diachronic development of this doctrine has progressively expanded both its effects and its subjective scope. Subsequently, with the judgment in the *Gelman v. Uruguay* case,⁶ the San José Court consolidated the *erga omnes* effect of its authentic interpretations, extending the binding force of international precedents even to States that were not originally parties to the litigation. This vertical irradiation implies that the jurisprudence of the Inter-American Court of Human Rights becomes part of the conventionality block to be observed by Brazilian judges in the exercise of their jurisdiction, relativizing the hermeneutic monopoly historically attributed to constitutional courts and reinforcing the construction of a judicial dialogue between the domestic and international legal orders.

Indeed, with this paradigm shift, now institutionally endorsed by the Brazilian National Council of Justice, the judge is repositioned as the first guarantor of human rights. Thus, rather than serving as a mere spectator of international decisions, the judge operating within the framework of this newly established Statute assumes the responsibility, *ex officio* and within the scope of his or her jurisdiction, to ensure the compatibility of Brazil's domestic subconstitutional legal order with the international human rights obligations to which the Brazilian State is bound.

3. THE CONVERGENCE OF DOMESTIC AND INTERNATIONAL LAW AND THE FLOURISHING OF THE BRAZILIAN INTER-AMERICAN JUDICIARY

International law has undergone profound transformations over recent decades, especially since the post-World War II period, with the creation of the United Nations. A shift occurred from a legal paradigm centered on the absolute sovereignty of States, traditionally referred to as

⁵SALDANHA, Jânia Maria Lopes. *O dever do STF de controlar a convencionalidade* [The STF's Duty to Exercise Conventionality Control]. Available at: <http://justificando.cartacapital.com.br/2016/02/29/o-dever-do-stf-de-controlar-a-convencionalidade/>. Accessed 28 May 2018: "Despite such resistance, the IACtHR, since the *Loayza Tamayo v. Peru* case, decided in 1997, has been reaffirming the duty of States and their institutions to exercise conventionality control. It did so again on 26 September 2006, in the judgment of the *Almonacid Arellano v. Chile* case, when it held that it is the duty of every domestic judge to exercise conventionality control, including *ex officio*, and again on 24 November 2006, when in the *Dismissed Congressional Employees v. Peru* case the IACtHR elevated conventionality control to the status of a legal institution. There exists today, throughout Latin America, as is well known, a rich body of legal doctrine on conventionality control, because Latin American jurists recognized not only the need to respond to the common problems of human rights violations we experience, but also the need to give substance to human rights conventions, especially since these have profoundly altered the landscape of both domestic and international law. It would be extremely misleading to claim that 'case-law-ism' has merely shifted location." (Author's translation)

⁶I/A Court H.R. *Gelman v. Uruguay*. Merits and Reparations. Judgment of 24 February 2011. Series C No. 221.

the law of nations, to a model in which the human person emerges as the central core of the international legal order.⁷ It is no coincidence, then, that International Human Rights Law asserts itself as an autonomous branch endowed with its own specificity, marked by a new *ethos* in which protection is directed at safeguarding human beings rather than State interests.⁸

The creation of the United Nations system constituted the inaugural milestone in the construction of a new global legal order, characterized by a system of intergovernmental cooperation whose fundamental purpose lies in the protection of the rights inherent to the human person. This paradigm not only redefines the State's function at the international level but also underscores the collective obligation to safeguard fundamental rights.⁹

Beyond the international and global system, the protection of human rights has also come to be developed through mechanisms and institutions of a regional character.¹⁰ The effectiveness of these regional systems derives, to a great extent, from the geographic, historical, and cultural proximity among member States.¹¹ The establishment of regional systems responds to the aspiration of making protection more effective, framing it within a more homogeneous context than that of the international community as a whole. Such a configuration significantly increases the likelihood of overcoming obstacles typical of the global system, allowing protective norms and practices to consolidate in a more efficient and contextualized manner.

Indeed, contemporary international law reveals itself to be increasingly permeated by a logic of solidarity and shared responsibility, in which the protection of the human person constitutes the normative and axiological axis of the entire international legal order. In this context, the Inter-American Human Rights System has assumed a prominent position by establishing normative and jurisprudential parameters aimed at protecting human dignity, directly influencing the interpretation and application of domestic law in countries that have ratified the American Convention on Human Rights.

With respect to the Brazilian State, its acceptance of the contentious jurisdiction of the Inter-American Court of Human Rights, formalized in December 1998 through Legislative

⁷See GUERRA, Sidney. *Curso de direito internacional público* [Public International Law Course]. 17th ed. São Paulo: Saraiva, 2025.

⁸CANÇADO TRINDADE, Antônio Augusto. *Tratado de Direito Internacional de Direitos Humanos* [Treatise on International Human Rights Law]. Porto Alegre: Sergio Antonio Fabris Editor, 1997. v. 1, pp. 20–21.

⁹GUERRA, Sidney. *Direito internacional dos direitos humanos* [International Human Rights Law]. 4th ed. Rio de Janeiro: Grande Editora, 2026.

¹⁰GUERRA, Sidney. *Curso de direitos humanos* [Human Rights Course]. 9th ed. São Paulo: Saraiva, 2025.

¹¹FAVOREU, Louis et al. *Droit des libertés fondamentales* [Law of Fundamental Freedoms]. 4th ed. Paris: Dalloz, 2007, p. 44.

Decree No. 89, represented a significant milestone in the process of internationalizing human rights protection within the national legal order. This act not only consolidated Brazil's binding relationship with the regional system of human rights protection but also substantially expanded the State's sphere of international responsibility with respect to observing and fulfilling the commitments undertaken under the American Convention on Human Rights.¹²

From this recognition onward, the Brazilian State became subject not only to the scrutiny of international supervisory bodies but also to the decisions issued by the Inter-American Court of Human Rights in the exercise of its jurisdictional authority,¹³ culminating in a history of numerous judgments rendered against the Federative Republic of Brazil up to 2026.¹⁴ This circumstance imposed a profound reconfiguration of the relationship between domestic law and international human rights law, requiring State institutions to adopt a more active stance committed to giving effect to the conventional standards of human dignity protection.

In this scenario of international responsibility arising from judgments and conventional obligations, the Brazilian judiciary assumes a role of particular importance. Beyond the traditional constitutional powers conferred upon it by the 1988 Charter, the judge is charged with ensuring the substantive conformity of domestic norms and practices with the international

¹²BRAZIL. *Legislative Decree No. 89, of 3 December 1998*. Approves the declaration recognizing the mandatory jurisdiction of the Inter-American Court of Human Rights in all cases concerning the interpretation or application of the American Convention on Human Rights. Brasília: Secretariat-General of the Federal Senate Bureau, 1998. Available at: <https://legis.senado.leg.br/norma/537575>. Accessed 8 July 2026.

¹³Worth noting are the words of MOREIRA, Thiago Oliveira. *A promoção da devida relevância do direito interamericano dos direitos humanos pelo Conselho Nacional de Justiça* [The Promotion of Due Relevance of Inter-American Human Rights Law by the National Council of Justice]. Libro de Actas del I Congreso Peruano de Derecho Internacional, SPDI, 2024: "At the outset, it must be made clear that the decisions issued by the IACtHR are sources of international law for States that have ratified the ACHR and submitted to its jurisdiction, as is the case of Brazil. It must be understood that today it is no longer tenable to conceive of treaties and international custom as the sole primary sources of international law. The proliferation of international tribunals and the importance they have acquired make it necessary to regard case law as a source of international law. Other questions may be raised regarding the use of the case law of the Inter-American Court of Human Rights. Indeed, the first of these lies in the undeniable legal, binding, and mandatory character of the IACtHR's condemnatory judgments against Brazil, given that the Brazilian State, in the full exercise of its sovereignty, chose to incorporate the American Convention on Human Rights into its legal order and, moreover, to submit to the jurisdiction of the Inter-American Court of Human Rights. Accordingly, the recommendation to use the case law of the Inter-American Court cannot be construed as a mere option to give effect to the provisions of judgments condemning the Brazilian State. It bears remembering that the IACtHR's judgments condemning Brazil constitute enforceable judicial instruments and require no homologation procedure before domestic judicial bodies." (Author's translation)

¹⁴Inter-American Court of Human Rights. Available at: https://www.corteidh.or.cr/casos_sentencias.cfm?lang=pt. Accessed 20 June 2026: Ximenes Lopes; Escher et al.; Garibaldi; Guerrilha do Araguaia – Gomes Lund et al.; Fazenda Brasil Verde Rural Workers; Favela Nova Brasília; Xucuru Indigenous People; Herzog et al.; Santo Antônio de Jesus Fireworks Factory; Barbosa de Souza et al.; Sales Pimenta; Tavares Pereira et al.; Honorato et al.; Leite de Souza et al.; Dos Santos Nascimento and Ferreira Gomes; Muniz da Silva et al.; Alcântara Quilombola Communities; Da Silva et al.; Leite, Peres Crispim et al.; Hernández Norambuena; Cley Mendes et al. – Tapanã Massacre.

human rights treaties ratified by the Brazilian State. This means that it is not merely a matter of mechanically applying domestic law, but also of interpreting it in light of the international commitments undertaken by Brazil, promoting a hermeneutics compatible with the rules and principles enshrined in the Inter-American system.

4. THE STATUTE OF THE BRAZILIAN INTER-AMERICAN JUDICIARY: GUIDELINES, DIALOGUE, AND HARMONIZATION OF SOURCES

The debate concerning the dialogue between the domestic and international legal orders reached definitive normative density with the enactment of the Brazilian National Council of Justice's Recommendation No. 168 of 23 March 2026, which formally established the Statute of the Brazilian Inter-American Judiciary. The preamble of this new normative act of the National Council of Justice, grounded in the regimental powers set out in Articles 6 and 102 and derived from Normative Act No. 0008886-41.2025.2.00.0000 – 3rd Ordinary Session, introduces profound structural changes to the operation of the judiciary. Article 1 significantly amends the wording of Brazilian National Council of Justice's Recommendation No. 123 of 2022¹⁵ by establishing guidelines for the protection of fundamental rights at the domestic level. Through item I of that article, it enshrines the mandatory observance of the international treaties in force in Brazil and the exercise of conventionality control in strict conformity with the case law of the San José Court. Furthermore, item II mandates the prioritization of pending proceedings involving the material and non-material reparation of victims of human rights violations when so ordered by the Inter-American Court and the Inter-American Commission in cases still awaiting full compliance by the Brazilian State.¹⁶

¹⁵In a study on this matter, prior to the amendment addressed in the present study (2026), MOREIRA, Thiago Oliveira. *A promoção da devida relevância do direito interamericano dos direitos humanos pelo Conselho Nacional de Justiça* [The Promotion of Due Relevance of Inter-American Human Rights Law by the National Council of Justice]. Libro de Actas del I Congreso Peruano de Derecho Internacional, SPDI, 2024, observed: "Perhaps one of the reasons for the enactment of CNJ Recommendation No. 123/2022 lies in the delay of the Brazilian judiciary in processing lawsuits involving human rights set out in duly ratified international treaties, as well as the considerable difficulty in complying with the decisions rendered by the Inter-American Court. As an example, it is worth citing the Favela Nova Brasília case, which remains a judgment pending compliance. Although the IACtHR rendered its decision on 16 February 2017, the Brazilian State has, to date, still not complied with all provisions of the Inter-American decision. Indeed, it is quite plausible that this context contributed to the enactment of the aforementioned normative act." (Author's translation)

¹⁶National Council of Justice (Brazil). *Recommendation No. 168, of 23 March 2026*. Amends CNJ Recommendation No. 123/2022, establishes the Statute of the Brazilian Inter-American Judiciary, and provides other measures. Brasília: CNJ, 2026. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

The practical integration of this new hermeneutic paradigm is enabled by item III of Article 1, which establishes the adoption of the Statute of the Brazilian Inter-American Judiciary as the normative annex responsible for guiding judges in applying international commitments. To ensure that these guidelines achieve broad reach and effectiveness within the country's administrative structures, the new Article 1-A directs express recommendations to the national courts. Item I of this article requires the adoption of measures for the widespread dissemination of the Statute to both internal and external audiences by making it available in accessible locations on the websites and social media of judicial bodies. In addition, items II and III of the same provision require the holding of initial and continuing training courses aimed at public officials, in direct collaboration with the Judicial Training Schools, addressing the Inter-American System, the Court's case law, the Commission's standards, and conventionality control.¹⁷

The consolidation of an open and cooperative legal culture gains cutting-edge technological and operational tools through the final items introduced into the regulatory text. Item IV of Article 1-A compels the courts to create and implement innovative initiatives for disseminating decisions rendered against the Brazilian State, employing means ranging from academic publications and online search tools to periodic newsletters and artificial intelligence systems. Finally, item V of Article 1-A ensures protection and logistical support by establishing the duty to adopt supportive measures for the court before which proceedings directly related to a pending case in the Inter-American System are heard, relying on the direct assistance of the local Monitoring and Oversight Units to guarantee compliance with the international decision, pursuant to Article 1-B of the instrument.¹⁸

The preamble of the Statute establishes the premise that every domestic judge also acts as an Inter-American judge in the protection of rights. Although it is not presented as binding, but rather as a document of an orientational nature, the instrument sets out the objective of guiding

¹⁷The Statute of the Brazilian Inter-American Judiciary was formally incorporated as the Sole Annex to CNJ Recommendation No. 168, of 23 March 2026. Under the terms of this regulatory instrument, the training and dissemination guidelines (Art. 1-A) presuppose the coordinated action of the National Council of Justice together with the National and Local Judicial Training Schools (ENFAM, ENAMAT, and similar institutions). Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

¹⁸The Monitoring and Oversight Units (UMFs) form part of the strategy for complying with decisions of the Inter-American System at the tactical level of the courts, acting in coordination with the Unit for Monitoring and Overseeing IACtHR Decisions (UMF/CNJ). The use of artificial intelligence and online indexing tools, provided for in Article 1-A, item IV, aligns with the judiciary's guidelines on digital transformation and institutional transparency. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

judicial activity by encouraging the use of the Inter-American Court's contentious and advisory case law, fostering dialogue between the domestic legal order and the obligations undertaken by the Brazilian State, and stimulating diffuse conventionality control in the resolution of disputes.¹⁹ Item I.1 opens the conceptual section by delimiting judicial autonomy and judicial independence as institutional and functional guarantees indispensable to the rule of law. As for the former, judicial autonomy encompasses the organization and free exercise of jurisdiction, ensuring the balance among State powers and the effectiveness of democracy as a safeguard for society. As for judicial independence, it is defined through professional prerogatives that ensure the stability and irremovability of judges, protecting the judiciary against internal or external pressures. This protection prohibits arbitrary interference in decision-making activity and requires that any removal from office strictly comply, as a matter of legality, with the grounds and procedures previously set out in the domestic legal order.²⁰

At the core of procedure, the Statute enshrines victim centrality and judicial due diligence as structuring axes of jurisdictional activity in human rights matters. Victim centrality requires that the needs of injured persons occupy the core of decisions, recognizing the primary vocation of international human rights law. In harmony with this vector, judicial due diligence is characterized as an obligation of means requiring that proceedings be conducted independently, expeditiously, and impartially. This duty obliges the judge to assess all evidence produced with reasoned grounds, while simultaneously ensuring adversarial proceedings, the right to a full defense, and the active participation of family members throughout the course of the proceedings.²¹

¹⁹The premise that the domestic judge is the first Inter-American judge derives from the subsidiary and complementary character of international jurisdiction. Grounded in Article 5, paragraphs 2 and 3, of the Federal Constitution, it consolidates the so-called "constitutionality block" and the principle of the maximum effectiveness of human rights. For purposes of substantiating the Statute's preamble, the full text of the normative instrument and its institutional grounds may be consulted at: National Council of Justice (Brazil). Recommendation No. 168/2026. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

²⁰According to the IACtHR's consolidated case law, judicial independence has both an institutional dimension (relating to the judiciary vis-à-vis the other branches of government) and a functional or individual dimension (relating to guarantees afforded to judges, such as stability and irremovability). On these parameters, as adopted in item I.1 of the Statute, see: I/A Court H.R., *Cordero Bernal v. Peru*, Judgment of 16 February 2021, paras. 71–72; and *Constitutional Court v. Peru*, Judgment of 31 January 2001, para. 75. The full text of the national instrument is available at: National Council of Justice (Brazil). Recommendation No. 168/2026. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

²¹Victim centrality and the duty of due diligence constitute mandatory obligations of means under the Inter-American System. Under the international standards incorporated by the Statute, the conduct of proceedings must be guided by the effective protection of injured parties and by the reasoned assessment of evidence, mitigating the risk of revictimization. See: I/A Court H.R. *González et al. ("Cotton Field") v. Mexico*, Judgment of 16 November 2009, paras. 349 and 410; and I/A Court H.R. *Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*.

The temporal duration of proceedings is given objective contours through the definitions of a reasonable trial period and of an adequate and effective judicial remedy. The Statute specifies that assessing temporal reasonableness requires the concurrent examination of four elements: the complexity of the matter, the diligence of the interested party, judicial conduct, and the impact generated on the legal situation involved. The right to an effective remedy binds the judge to the obligation of processing and deciding cases without undue delay, ensuring enforcement of the judicial decisions rendered. Once any human rights violation is established, the adjudicator must order full reparation of the harm through pecuniary measures, rehabilitation, satisfaction, and guarantees of non-repetition.²²

The fundamental hermeneutic techniques are consolidated on the basis of the *pro persona* principle and the methodologies for reconciling domestic norms with international treaties. The *pro persona* principle mandates the application or interpretation of whichever norm affords the broadest protection to individual rights, in line with Article 29 of the American Convention. From this standpoint, conforming interpretation emerges as the initial step aimed at preserving domestic law through its hermeneutic harmonization with conventional standards. Where such harmonization proves unfeasible, judicial conventionality control authorizes the disapplication of incompatible domestic norms, operating diffusely over both acts and omissions within the limits of institutional competence.²³

Finally, this section deepens the scope of the protective framework by defining the *corpus iuris*, the interdependence of rights, and the intersectionality approach. The Inter-American *corpus iuris* comes to encompass a plural set of treaties, conventions, judgments, and advisory

Judgment of 24 November 2010, para. 176. The full text of the national instrument is available at: National Council of Justice (Brazil). Recommendation No. 168/2026. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

²²The four elements for assessing reasonable time (complexity of the case, the procedural activity of the interested party, the conduct of the judicial authorities, and the impact generated on the legal situation of the person involved) were consolidated in Inter-American case law beginning with the precedent I/A Court H.R. *Suárez Rosero v. Ecuador*. Judgment of 12 November 1997, para. 70. On the dimensions of full reparation (rehabilitation, satisfaction, and guarantees of non-repetition), see: I/A Court H.R. *Cantoral Benavides v. Peru*. Reparations and Costs. Judgment of 3 December 2001, paras. 79–81. The full text of the regulatory instrument is available at: National Council of Justice (Brazil). Recommendation No. 168/2026. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

²³The *pro persona* principle finds express normative grounding in Article 29 of the American Convention on Human Rights (Pact of San José, Costa Rica). The domestic judge's duty to exercise diffuse conventionality control, including disapplying domestic norms incompatible with treaties where conforming interpretation proves unfeasible, was established in the celebrated precedent: I/A Court H.R. *Almonacid Arellano et al. v. Chile*. Judgment of 26 September 2006, para. 124. The full text of the national instrument is available at: National Council of Justice (Brazil). Recommendation No. 168/2026. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

opinions that must guide the grounds of domestic decisions. The text espouses the indivisibility of civil, political, economic, social, cultural, and environmental rights, enforceable jointly and without hierarchy among them. This protection acquires practical contours through the duty to afford special protection to persons in situations of heightened vulnerability, recognizing the compound and intersectional character of multiple forms of discrimination that intensify the harm suffered.²⁴

Chapter II of the Statute details, in its guidelines, the practical duties of interpreting and applying the law through the exercise of conventionality control by the domestic judiciary. Item II.1.1 sets out ten mandatory provisions ranging from the application of treaties in force to the active promotion of judicial dialogue and the pursuit of normative harmonization. Items V and VI require that such control be exercised in light of Inter-American case law and the rules of the Vienna Convention on the Law of Treaties, such as good faith and the *pacta sunt servanda* principle. In addition, items VII and VIII require that decisions rendered by the Inter-American Court be taken into account even in cases involving other States in the region, using these standards and the *pro persona* principle as living sources for the interpretation of Brazilian law.²⁵

The substantive dimension of human protection is structured in items II.2 and II.3, establishing the safeguarding of dignity and the centrality of victims of violations as guiding axes of jurisdictional activity. Item II.2.1 espouses the duty to apply Inter-American case law from the standpoint of the universality and indivisibility of human rights in their fullest protective scope. With respect to victim centrality, item II.3.1 guarantees broad procedural participation, while items II.3.2 and II.3.3 regulate measures of physical and emotional protection to preserve victims' integrity. The norm requires that hearings be conducted so as to avoid the unnecessary

²⁴The broadened definition of *corpus iuris* encompasses not only treaties but also the Inter-American Court's contentious and advisory case law as integrated sources of law. The indivisibility and direct justiciability of economic, social, cultural, and environmental rights (ESCER) were consolidated within the Inter-American System beginning with the precedent I/A Court H.R. *Lagos del Campo v. Peru*. Judgment of 31 August 2017. On the intersectionality approach to multiple forms of discrimination and heightened vulnerabilities, see: I/A Court H.R. *Gonzales Lluy et al. v. Ecuador*. Judgment of 1 September 2015. The full text of the national instrument is available at: National Council of Justice (Brazil). Recommendation No. 168/2026. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

²⁵The duty to observe IACtHR decisions, even those in which the domestic State was not a party (*erga omnes* interpretive effect), is grounded in the principles of good faith and *pacta sunt servanda*, set out in Articles 26 and 27 of the Vienna Convention on the Law of Treaties (1969). This international obligation of conventionality control was established in the landmark judgment: I/A Court H.R. *Gelman v. Uruguay*. Monitoring Compliance with Judgment. Order of 20 March 2013, paras. 65–69. The full text of the national regulatory instrument is available at: National Council of Justice (Brazil). Recommendation No. 168/2026. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

repetition of accounts, prohibiting revictimizing practices by guaranteeing safe and welcoming environments.²⁶

The judicial response to rights violations is regulated in items II.4 and II.5, requiring measures aimed at full reparation and special protection in situations of heightened vulnerability. Item II.4.1 compels the judge to adopt appropriate jurisdictional measures encompassing restitution, rehabilitation, compensation, satisfaction, and guarantees of non-repetition. Item II.5.1 breaks new ground by positivizing the intersectional approach, expressly listing vulnerable groups such as children, women in situations of violence, the elderly, Indigenous peoples, Quilombola communities, the LGBTQIAP+ population, and persons deprived of liberty. This guideline requires that concrete circumstances and overlapping multiple oppressions guide the adjudicator so that judicial action effectively neutralizes structural inequalities.²⁷

Compliance with international judgments and the criteria for judicial accessibility are regulated in items II.7 and II.8, setting operational benchmarks for the effectiveness of the system. Item II.7.1 reaffirms the binding nature of the Inter-American Court's decisions with respect to the Brazilian State, in strict observance of Article 68 of the American Convention. Items II.7.2 and II.7.3 mandate the involvement of Monitoring Units and material support from the courts in the face of complex demands characterized as structural litigation, pursuant to CNJ Recommendation No. 163 of 2025. This effort is reinforced by item II.7.4, which dictates chronological prioritization in adjudicating victim-reparation proceedings, and by item II.8.1, which establishes plain, comprehensible language as a guarantee of transparency.²⁸

²⁶The prohibition of practices that generate additional psychological suffering or the unnecessary repetition of testimony is in line with international standards for protecting persons in situations of vulnerability, notably the Brasília Regulations Regarding Access to Justice for Vulnerable People. On the State's obligation to ensure safe environments and avoid institutional revictimization, see: I/A Court H.R. *V.R.P. and V.P.C. v. Nicaragua*. Judgment of 8 March 2018, paras. 147–150. The full text of the national instrument is available at: National Council of Justice (Brazil). Recommendation No. 168/2026. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

²⁷The concept of full reparation in the Inter-American System assumes a transformative dimension when applied to vulnerable groups, seeking not merely a return to the prior state of affairs (*status quo ante*), but the modification of situations of structural inequality. On the intersectional approach and the overlap of factors of oppression affecting minorities and the groups listed in item II.5.1, see: I/A Court H.R. *González et al. ("Cotton Field") v. Mexico*. Judgment of 16 November 2009, paras. 450–451; and I/A Court H.R. *Workers of the Fazenda Brasil Verde v. Brazil*. Judgment of 20 October 2016, paras. 244–246. The full text of the national instrument is available at: National Council of Justice (Brazil). Recommendation No. 168/2026. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

²⁸The binding obligation to comply with IACtHR's decisions (Article 68.1 of the American Convention) binds all organs and branches of the Brazilian State, with immediate domestic effect. The guidelines for addressing structural litigation and the use of plain language align, respectively, with CNJ Recommendation No. 163/2025 and with the National Judiciary Pact for Plain Language (CNJ, 2023). The full text of Recommendation No. 163/2025 is available

Finally, items II.9 and II.10 close out the Statute by governing the institutional support owed to the judiciary and the conditions indispensable to judicial autonomy and independence. Item II.9.1 imposes on Brazilian courts the obligation to provide continuing education and access to official Inter-American databases, so as to enable the practical application of this ecosystem. In a fitting conclusion, items II.10.1 and II.10.2 safeguard the judge's functional and institutional standing, guaranteeing stability, irremovability, and protection against internal or external interference. Item II.10.4 crowns the instrument by consolidating the notion that independence is essential to the force of the Democratic Rule of Law, ensuring judges the freedom to decide on the basis of their own understanding of domestic and international law.²⁹

Nevertheless, although the progress achieved in this area is undeniable, the effective transition from the normative model instituted by the Statute to its everyday application in courts and tribunals requires confronting institutional and doctrinal barriers historically rooted in Brazilian legal culture.

That said, for the document signed by Justice Edson Fachin to cease being a mere declaration of intent and become a living tool, it is necessary to examine how the judiciary will address operational bottlenecks and internal resistance to internalizing foreign precedents. This passage from theory to practice calls for a critical analysis of the mechanisms safeguarding judicial functioning and of the ways to overcome the judiciary's historical hermeneutic isolation, as discussed below.

5. PROSPECTS FOR THE STATUTE'S EFFECTIVENESS: PRACTICAL CHALLENGES, JUDICIAL INDEPENDENCE, AND OVERCOMING JURISPRUDENTIAL RETICENCE

at: <https://atos.cnj.jus.br/atos/detalhar/6034>. The text of Recommendation No. 168/2026 may be consulted at: National Council of Justice (Brazil). Recommendation No. 168/2026. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

²⁹The guarantees of stability, irremovability, and reasoned free conviction constitute prerequisites of the Democratic Rule of Law itself, aligning with the Basic Principles on the Independence of the Judiciary adopted by the United Nations (UN, 1985). The IACtHR has consolidated the view that protecting judges against pressure and external interference is a State obligation aimed at ensuring citizens' right to a fair and impartial trial. See: I/A Court H.R. *Reverón Trujillo v. Venezuela*. Judgment of 30 June 2009, paras. 67–68. The full text of the national instrument is available at: National Council of Justice (Brazil). Recommendation No. 168/2026. Available at: <https://atos.cnj.jus.br/atos/detalhar/6817>. Accessed 10 July 2026.

The transition envisioned following the publication of the new Statute of the Brazilian Inter-American Judiciary demands profound reflection on the practical conditions necessary for its guidelines to achieve full effectiveness in everyday forensic practice.

Overcoming the historical reticence in applying conventionality control demands more than the mere issuance of recommendatory acts; it presupposes a restructuring of judges' technical training and doctrinal culture.³⁰ It presupposes confronting the structural deficiencies of our model of jurisdictional service in order to convert them into opportunities for technical and doctrinal advancement. For the domestic judge to act with legal certainty as the first guarantor of the regional system, it becomes imperative to develop specific hermeneutic competencies capable of integrating the Inter-American *corpus iuris* into everyday decision-making, transforming the international commitment into an ordinary criterion for assessing the validity of everyday conduct.

In this process of institutional maturation, the conscious incorporation of conventional standards bears a relationship of mutual causality with the strengthening of judicial independence itself. By availing themselves of the protective benchmarks set by the Inter-American Court of Human Rights, Brazilian judges gain a normative framework that shields their activity from transient political pressures and attempts at social backsliding. Far from representing a weakening of sovereignty or a theoretical burden, virtuous submission to Inter-American standards qualifies domestic jurisdiction. It provides the adjudicator with robust tools to shield decisions in scenarios of democratic erosion, lending legitimacy to their role as a genuine guardian of rights.

The first practical challenge to be faced under the new reality of the Statute lies in the collision between the culture of quantitative productivity targets and the analytical complexity required by conventionality control. The managerial model adopted by the Brazilian National Council of Justice assesses judges' efficiency primarily by the speed of case disposition, a dynamic that encourages automated, batch-processed adjudication. This productivist ecosystem, however, can no longer serve as a safe conduct for conventional omission. The transition to the Inter-American model requires a revision of this "assembly-line justice": meeting statistical targets must be harmonized with the deepening of human rights protection, requiring

³⁰GUERRA, Sidney. *O sistema interamericano de proteção dos Direitos Humanos e o controle de convencionalidade* [The Inter-American System for the Protection of Human Rights and Conventionality Control]. 5th ed. Rio de Janeiro: Grande Editora, 2025.

management systems to recognize and value the time devoted to the careful, tailored analysis of conventional sources.³¹

Furthermore, the challenge of source opacity and the technological asymmetry of legal research persists — barriers the Statute directly seeks to combat. While national platforms (such as PJe and e-Proc) automate the search for Federal Supreme Court (*Supremo Tribunal Federal* – STF) and Superior Court of Justice (*Superior Tribunal de Justiça* – STJ) precedents, San José's case law remains segregated in external environments. This digital isolation squanders the time of judges and their staff, but it underscores the urgency of immediately implementing the support guidelines set out in the Statute itself. Overcoming this obstacle requires the courts to fulfill their institutional role by developing artificial intelligence, indexing, and legal translation tools that bring international standards into the judiciary's daily workspace, universalizing access to these sources.

Likewise, the structural federative asymmetry and the functional isolation of first-instance courts cannot condemn the country to a two-speed conventionality control. It is a fact that the judge of a single-court district in the interior operates under severe staff shortages and an accumulation of urgent duties, while the higher courts have specialized advisory staff at their disposal. Yet it is precisely at the first-instance level, where human rights violations knock most immediately at the door, that the Statute is most needed. For these guidelines to achieve broad, capillary effectiveness, court administrations must decentralize their intelligence centers and technical support units, ensuring that front-line judges receive the operational support indispensable for deciding boldly and with well-grounded conventionality analysis.³²

Finally, overcoming the "parochial blindness" entrenched in the national legal culture requires a profound overhaul of continuing doctrinal training. Brazilian legal education has traditionally confined professionals within domestic legalistic positivism, relegating international law to a secondary plane. The Statute of the Inter-American Judiciary emerges to break with this curricular confinement. Overcoming the practical fear of erring or of generating legal instability requires the Judicial Training Schools to assume a new educational responsibility. It is necessary

³¹VALLE, V. C. L. L.; FUENTES I GASÓ, J. R.; AJUS, A. M. Decisão judicial assistida por inteligência artificial e o Sistema Victor do Supremo Tribunal Federal [AI-Assisted Judicial Decision-Making and the Federal Supreme Court's Victor System]. *Revista de Investigações Constitucionais*, Curitiba, v. 10, n. 2, e252, 2023. Available at: <https://doi.org/10.5380/rinc.v10i2.92598>. Accessed 10 July 2026.

³²BRAZIL. National Council of Justice. *Recommendation No. 123, of 7 January 2022*. Brasília: CNJ, 2022. Available at: <https://atos.cnj.jus.br/files/original1519352022011161dda007f35ef.pdf>. Accessed 10 July 2026.

to demystify the Inter-American system, training judges and clerks to handle conforming interpretation and the *pro persona* principle not as exotic concepts, but as familiar, routine tools of social pacification.³³

Against this backdrop of transition, the practical application of the Statute safeguards judicial autonomy by pointing to paths that avoid the risk of a mechanical, uncritical reproduction of foreign precedents — a phenomenon that the literature identifies as an obstacle to genuine trans-judicial dialogue. The text structured by the Brazilian National Council of Justice, by calling for the harmonization of sources, precisely encourages a posture of co-authorship in the construction of law, in which the Brazilian judge operates within a cooperative, horizontal model. The judiciary is invited to abandon the role of mere spectator or passive recipient of San José's decisions and to take on a leading role in consolidating an open constitutionalism, in which overcoming practical challenges becomes the necessary step toward the definitive affirmation of human dignity.

6. CONCLUSION

The advent of the Statute of the Brazilian Inter-American Judiciary marks a turning point in the reconfiguration of the functional identity of the national judiciary. The dismantling of the traditional isolationist conception, which confined jurisdictional activity to the strict examination of domestic legislative sources, was normatively consolidated through the guidelines set out by the Brazilian National Council of Justice in March 2026. By regulating the mandatory and diffuse application of conventionality control, this top administrative body not only conferred domestic enforceability upon the obligations sovereignly undertaken by the Federative Republic of Brazil at the international level, but also established operational benchmarks for overcoming the hermeneutic reticence that has historically characterized domestic jurisprudence.

The systematic and methodological incorporation of the Inter-American *corpus iuris*, understood in its evolving dimension through the judgments and advisory opinions of the Inter-American Court of Human Rights, dispenses with any bias toward hierarchical subordination or the hollowing-out of State sovereignty. Under the *aegis* of an open, cooperative, and substantially democratic constitutionalism, the harmonization of sources afforded by this

³³BRAZIL. National School for the Training and Continuing Education of Judges. *Enfam Resolution No. 2, of 4 September 2017*. Provides for the minimum programs for the official training of judges. Brasília: Enfam, 2017. Available at: <https://www.enfam.jus.br>. Accessed 10 July 2026.

regulatory instrument strengthens judicial independence against transient pressures. Imbued with the function of first guarantor of the regional system, the judge comes to wield the *pro persona* principle and the *pacta sunt servanda* rule as dynamic vectors, capable of conferring maximum effectiveness on fundamental rights within the sphere of ordinary jurisdiction.

Nevertheless, the transition to this new legal reality demands rigorously confronting the operational obstacles that color Brazilian forensic practice. Realizing the Statute's objectives presupposes that the structural constraints — such as the productivist culture of managerial targets, the technological opacity of international sources, federative asymmetry, and gaps in initial doctrinal training — be understood not as insurmountable impassés, but as vectors for immediate institutional reform. The effectiveness of the new guidelines ultimately stems from decentralizing technical support to first-instance courts and from fostering an academic culture oriented toward trans-judicial dialogue. By assuming the office of co-responsible agents in the co-production of international standards, Brazilian judges transcend the role of passive recipients of foreign doctrine, consolidating human dignity as the definitive and non-negotiable axiological axis of the national legal experience.

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