

NEWSLETTER

Seminar “Justice Reform in Brazil: one decade of challenges and achievements from a Latin American perspective”

Rio de Janeiro, November 17, 18 and 19, 2015, at the Law School of Universidade do Estado do Rio de Janeiro (UERJ).



On day one, the academic community’s perspective on the Justice Reform’s 10th anniversary was on the spotlight.



On behalf of DHPJS, Professor Rodolfo Noronha participates in the opening of the seminar.

Organized by Fórum Justiça in collaboration with the Research Group on Human Rights, Judicial Branch and Society (DHPJS), from the Law School of Universidade do Estado do Rio de Janeiro (UERJ), the three-day event discussed the achievements and weaknesses of the Brazilian justice system from the perspective of social movements and organizations, the academic community and State agents from an Ibero-Latin American angle.

The initiative was based on the following questions: 10 years after the Constitutional Amendment 45/2004 and the Justice Reform, what has changed in Brazil? How have the channels of access to courts been widened to receive more participation from the society in the justice system? What else is needed to ensure that people — individuals and groups — in vulnerable situations have access to quality Justice? Along these lines, the experiences from Argentina, Peru and Portugal were cross-compared. The methodology adopted was based on the interaction of three segments. Each day featured a keynote talk: on day one, the academia; on day two, the social movements and organizations; and, on day three, the State players.

“10 years after the Constitutional Amendment 45/2004 and the Justice Reform, what has changed in Brazil? How have the channels of access to courts been widened to receive more participation from the society in the justice system?”



The opening session featured the chief public defender of the State of Rio de Janeiro André Castro, who commended the reform promoted by Amendment 45/2004, which, he said, ensured the strengthening foundations of the Public Defender's Offices across Brazil. "Only today, eleven years after the Proposed Constitutional Amendment, the whole country has Public Defender's Offices, except for the state of Amapá," he said.

"Only today, eleven years after the Proposed Constitutional Amendment, the whole country has Public Defender's Offices, except for the state of Amapá"

On that occasion, Rosane M. Reis Lavigne, organizer of Fórum Justiça, linked the democratic functionality of the justice system to the core objective of the seminar: discussing the challenges and achievements of the justice system Reform from an Ibero-Latin American perspective, highlighting the need to boost hybrid policies produced by the actors involved. She also noted the possibility of something new emerging, which would be very exciting. Finally, Mrs. Lavigne thanked the presence of everyone, especially ANADEP, the Ford Foundation, the Public Defender's Office of the State of Rio de Janeiro and the collaboration of the Research Group DHPJS.

The first panel discussion cross-compared discussions among scholars and State agents with social movements, to highlight the achievements and the gaps that the past 10 years have left to the court system. From most interventions made by the speakers, it was clear that it is necessary to widen the channels of access to Justice in order to better cement the achievements from a democratic point of view. One of the main academic references in studies on the court system and an active voice of the justice system Reform, Professor Maria Teresa Sadek, from Universidade de São Paulo (USP), talked about the establishment of the National Council of Justice (CNJ). Mrs. Sadek said that before the CNJ was established — an innovation introduced in the beginning of the Reform — the judicial branch lived "in a bubble, completely unaware of reality" and without any external control.



Professor Maria Teresa Sadek evaluates the CNJ's structure and behavior over the 10 years of its existence.

Despite some issues of concern, such as the fact that the Council's chairperson also chairs the Supreme Court and most Directors have some connection with the judicial branch, Mrs. Sadek





believes that, with the CNJ, some important achievements have been witnessed, such as the project “Justice in Figures,” the inspections of correctional facilities and the possibility of judges and ministers to be investigated and punished, breaking away with the corporatism often seen in local offices of internal affairs.



Chief public defender of Buenos Aires, Horacio Corti, discusses the relationship between public funds and human rights.

But the chief public defender of Buenos Aires Horácio Corti, pointed out the need to connect the State’s funds to human rights policies, a subject that is avoided in any discussions of financial law. USP Professor Conrado Hubner discussed the relationship between the judicial branch and Democracy and the behavior of the Supreme Court judges. He said that for the democratic principle to be instilled into the

court system’s structure, three complementary perspectives would be required: the formal and substantive quality of court decisions, accessibility of citizens to courts — according to which the democratic judicial branch would be porous and permeable — and the perspective of the judicial branch’s internal management, which should be thorough, transparent and well justified.

Élida Lauris, a researcher from the Center of Social Studies from Universidade de Coimbra, analyzed the Reform considering the judicial branch’s role as a machine, administrative structure and political actor, and as a social structure that sustains and exerts pressures amidst conflicts and before other stakeholders of society. Therefore, it wields power, which is why the ideological role of the reforms made to it should be rethought in order to deliver some counterpower within it.

In the comments, representative of social movements Darci Frigo, an attorney representing the human rights organization Terra de Direitos, stated that the debate on the judicial branch must be linked to the current scenario in Brazil and that this branch incessantly seeks privileges. “People are having their rights threatened, while the judicial branch is seeking more privileges. Society wants a democratic justice system, but discussions are going on to discontinue Brazil’s main cash transfer program Bolsa Família and the National Congress wants to grab public funds to serve the most expensive judicial branch in the world. We need to figure out what kind of Justice we want,” he said. He also stressed the importance of ensuring greater participation in the strategic planning and budget of the justice system.

“People are having their rights threatened and the judicial branch seeking more privileges. Society wants a democratic justice system, but discussions are going on to discontinue Brazil’s main cash transfer program Bolsa Família and the National Congress wants to grab public funds to serve the most expensive judicial branch in





Deputy Federal Attorney General Luiza Frischeisen analyzes the relationship between justice system and the other branches in the Brazilian democracy.

Deputy Federal Attorney General Luiza Cristina Frischeisen, former director of CNJ, said that judicial review in Brazil is concurrently based on both the concentrated and the diffuse models and, in deepening democracy, it provides tools such as public hearings and *amici curae*, in which a number of entities can take part in a case as third-party stakeholders. She exemplified this by mentioning the public hearing on the quotas in public universities and pointed out that all cases alluding to judicial review are publicly available on the Supreme Court's website. Finally, she mentioned the mechanism of public-interest civil action as one of the main avenues to access

the justice system. "It is one of the main avenues for collective rights," she said.

In the afternoon, the seminar continued with the presentation of papers by researchers and research groups on public policies on judicial issues. In one group, appellate judge Cristina Tereza Gaulia described the project Mobile Justice, conducted by the Court of Appeals of Rio de Janeiro, which takes some of its legal structure (notaries, judges and public servants) to impoverished communities that find it really hard to have some access to justice. One goal is to change the justice's image. Rather than mediating conflicts, legal services must be provided before the conflict occurs. "Taking the judges out of their comfort zone is essential to prevent them from working with procedural discourses only. We give people advice and show the rights that everyone has. An example is the legal recognition of same-sex relationships. By doing this, we make sure they are not marginalized in society," she said.

"Taking the judges out of their comfort zone is essential to prevent them from working with procedural discourses only. We give people advice and show the rights that everyone has"

In the late afternoon of day one, the state-of-the-art of empirical legal studies in Brazil was discussed. Professor of Centro Universitário de Brasília (CEUB) Ivanilda Figueiredo said that although the number of research studies has increased, it is still insufficient due to meagre resources. On the other hand, law schools place very little emphasis on methodology. Mrs. Figueiredo drew attention to the three illusions of legal research: the legal rules, the strength and the certainty. She said that the courts work under the illusion that the rule will solve all problems. Court decisions are taken by force, without considering the effects. "From a letter of request, a judge decides that indigenous peoples should leave their land without any





Panel discussion on empirical legal studies was presented by Professor Ivanilda Oliveira and Professor José Roberto Xavier.

negotiation. Another judge ordered the eviction of a school. However, once he listened to the representatives of the school and concluded that the students were claiming public policies, he revised his position.” Finally, the

third illusion: there is too much certainty in Law. “In fact, we deal with conflicts, with very unequal parts, therefore the illusion of certainty is very harmful to the human rights. This created the illusion that the rights are well cemented in our lives, in the legal rules, just because they are written in legal treaties, because they are immutable clauses. However, society is disputing interpretations, hence the importance of empirical studies.”

Professor at Universidade Federal do Rio de Janeiro — UFRJ, José Roberto Xavier also notes that empirical legal studies are essential for law sciences. Mr. Xavier agrees with Professor Ivanilda about a significant growth in this type of research. Yet, it is still very little. He mentioned some figures in this area: “49% of those who conduct empirical legal studies do not have any background in law. If we do not do any legal research, other areas will do it. I am optimistic about the expansion of legal research.” He also noted that most studies are individual and based in São Paulo, Rio Grande do Sul and Rio de Janeiro. The number of journals and graduate programs in law that are based on an empirical approach is growing, but there is much to be achieved yet.

“49% of those who conduct empirical legal studies do not have any background in law. If we do not do any legal research, other areas will do it. I am optimistic about the expansion of legal research”

At the end of day one, Professors Alexandre Garrido and Rodolfo Noronha, from the Research Group on Human Rights, Judicial Branch and Society — DHPJS, addressed the research studies developed and released the book “Investigando Convicções Morais: o que pensa a população do Rio de Janeiro sobre os Direitos Humanos,” organized by Professor José Ricardo Cunha.



Release stand for the book “Investigando Convicções Morais: o que pensa a população do Rio de Janeiro sobre os Direitos Humanos”, organized by Professor José Ricardo Cunha.





In the first panel discussion of day two, Professor Guilherme Leite Gonçalves and Researcher at the Center for Justice and International Law — CEJIL — Beatriz Afonso, discussed the potentials and the limits of the document “100 Brasília Regulations regarding Access to Justice for Vulnerable People.” Mr. Gonçalves criticized the concept of vulnerability and underscored the challenge of avoiding a paternalistic political culture of the elites before the underprivileged sectors of society. He also noted the World Bank’s role in initiating the justice reform to break through the so-called “barriers to investment flows” to deliver a governance style based on economic efficiency. Beatriz Affonso recognized in that document the strategic force oriented to the empowerment and the struggle of those who seek to terminate or redress violations to human rights, especially in international courts. She also pointed out that mobilization spaces should be encouraged, while being aware that the victims or the institutions are not always organized for resistance and for overcoming the obstacles to the effective delivery of rights.



Roundtable on the 100 Brasília Regulations included Professor Guilherme Leite Gonçalves, researcher Beatriz Afonso and public defender Patrícia Magno.

The second panel discussion of the day highlighted the viewpoint of movements and social organizations in the discussions of access to justice and justice reform. Joênia Wapichana, member and attorney of the Indigenous Council of Roraima (CIR), conducted her talk in a particularly delicate time for indigenous peoples, as the Brazilian Congress is now discussing a Constitutional Amendment — PEC 215, which may empower congressmen to decide on the ratification of indigenous territories. “The 1988 Constitution was important because it recognized the right to traditional lands, the specificity of indigenous culture and the need to protect the properties of these indigenous lands. Besides, original rights are determined to be imprescriptible, inwaivable and exclusive. Indigenous people also have legal standing. However, these rights are not guaranteed in practice.” Mrs. Wapichana noted that the shift in the Parliament’s competence would weaken the achievements of indigenous peoples. She also mentioned the issue of determination of land rights based on the timeframe as a perverse construction against indigenous peoples.

“The 1988 Constitution was important because it recognized the right to traditional lands, the specificity of indigenous culture and the need to protect the properties of these indigenous lands”





On behalf of MST, Claudinei dos Santos reports the non-realization of constitutional rights and guarantees.

Claudinei dos Santos, from the Movement of Landless Rural Workers (MST), argued that the State has operated in the defense of private capital and property and brought up the need to politicize the access to justice and public policies. “The State finds it very difficult to deal with collective issues,” he said. José Antonio Moroni, representative of the Institute for Socioeconomic Studies (INESC), said that ideas supporting the democratization and

access to justice are mentioned in the current institutional framework, that is, in the improvement of existing structures. He argued that the creation of innovative institutional frameworks must be planned.

Professor and feminist activist Fabiana Severi stressed the need to include, in legal education, a gender perspective involving racial and indigenous issues as well. Mrs. Severi also affirmed the importance of achievements in the consolidation of a gender perspective in trials. For this purpose, it would be important to disprove three false assumptions: that difference is something intrinsic to individuals and non-relational (the idea of essentiality as naturalization must be then ruled out), that the categories of Law are neutral and that the judge is impartial (the judge’s point of view must be then considered).



Professor Fabiana Severi talks, followed by philosopher and activist Márcia Tiburi.

Professor, writer and feminist activist Márcia Tiburi developed her talk from the perspective of biopolitics of bodies. She pointed out that power works by supporting living beings in the condition of subordinated and humiliated, which gets stronger when it comes to women, who are always measured as a body. Mrs. Tiburi said that the female body is considered intrusive, especially in positions of power, such as the courts. She criticized the lack of female representation in the parliament, which led to the creation of “Movimento Partida” [The Female Party Movement]. In this context, women are subordinate and I imagine that in the judicial branch, the same thing happens,” she said.



Judge Rubens Casara, a member of the Association of Judges for Democracy (AJD) identified, within the objective of democratizing the justice system, three major demands: protection against abuses of power, protection against harmful acts committed by other individuals and the certainty of the rules of the game.



Conversation circle “Indigenous peoples and traditional communities” featured indigenous women and representatives of the Federal Attorney’s Office (DPU), the Federal Prosecution Office (MPF), the National Council of the Federal Prosecution Office and public defenders of several states of Brazil.

In the afternoon session, the conversation circle “Indigenous Peoples and Traditional Communities” came on. With a sign recalling the five years since the death of indigenous leader and preacher Nísio Gomes, who got killed and had his body hidden in the countryside of Mato Grosso do Sul, Federal Attorney General Julio Araujo and attorney Joênia

Wapichana mediated the discussion.

Public defender and chairperson of the State Council for Human Rights of Mato Grosso do Sul Neyla Ferreira Mendes said she comes from an extremely racist state where indigenous people are highly visible, mainly on the border with Paraná. She reported the theft of indigenous lands and the overcrowding of indigenous villages. Mrs. Mendes said that the city of Amambá witnessed fifteen suicides, including that of a child.

Public defender of Pará Johny Giffoni, from Fórum Justiça Belém-Pará, pointed out three aspects: the invisibility of indigenous people to the State Public Defenders’ Offices (which are little familiar with multiculturalism), the recognition of the state Public Defenders’ Office to handle indigenous cases (as noted by the Brazilian Foundation for Indigenous People — FUNAI) and the challenge of promoting a paradigm shift in the assimilation or acculturation in handling conflicts involving indigenous peoples.

Ivana Farina, appellate prosecutor in Goiás and deputy chairperson of the National Council for Human Rights (CNDH), advocated the need for a closer dialogue between the National Council of Human Rights with all communities. She reported changes in the composition of the Council, which has been expanded and now has 22 members — eleven from the civil society and eleven from the government, who meet on a weekly basis to discuss many issues, in order to promote an open dialogue between civil society and the State.



Appellate prosecutor of Pernambuco Maria Bernadete Figueroa said that the National Council of the Federal Prosecution Office (CNMP) has been promoting annual meetings with descendants of African-Brazilian slaves, indigenous people and gypsies. “We take the cases to the Prosecution Office. The justice system is unaware of the traditional communities of gypsies, indigenous people and descendants of African-Brazilian slaves. It is difficult to handle something you are not familiar with,” Mrs. Figueroa said. She suggested liaising with judiciary schools in order to add multidisciplinary knowledge to face these complex issues. She also suggested enforcing Law 10639, which requires schools to teach about the African and Indigenous cultures.



Prosecutor Maria Bernadete Figueiroa reports the CNMP's initiatives to combat racism.

"We take their cases to the prosecution office. The justice system is unaware of the traditional communities of gypsies, indigenous people and descendants of African-Brazilian slaves. It is difficult to handle something you are not familiar with"

Professor at Universidade Estadual do Norte Fluminense (UENF) Márcia Leitão argued that public stakeholders and other attendees at the seminar should consider the State accountable for violations instead of solely thinking about what the State defends. Javier Lifschitz, a Professor at UERJ, said that he studies communities of descendants of African-Brazilian slaves and promotes interactions between these movements and the academia so they can devise ways to share these studies and knowledge about these traditional communities. Simone Eloy, a member of the Association of Indigenous Peoples of Brazil (APIB), championed the demarcation of indigenous lands, which should have happened in 1993, and stressed the importance of indigenous females getting involved in these initiatives. “Today, we have more than 20 indigenous attorneys in Brazil and we want them to get more involved in discussions and put forward indigenous proposals,” she said.

Sandra Benites is an indigenous woman from the Guarani ethnicity and is attending a master's program at the National Museum. She underscored the importance of her people, which is based in 10 Brazilian states. She explained that, despite the presence and diversity, the invisibility of indigenous peoples



Sandra Benites and female representatives of the Association of Indigenous Peoples of Brazil engage in conversation circle.





SEMINÁRIO
REFORMA DA JUSTIÇA
NO BRASIL
UMA DÉCADA DE DESAFIOS E
CONQUISTAS EM UMA PERSPECTIVA
LATINO-AMERICANA



is latent. “Brazilians have no clue about the indigenous population. More than 200 languages are spoken by more than 300 peoples. Language is our identity. I see that denial and violation of identity rights begin at school,” Mrs. Benites said. Benites mentioned a law that requires indigenous schools to be different, bilingual and independent, because traditional indigenous education is entirely related to nature. Hence, the teaching approach should support this way of thinking and being. “This is related to our environment. We need land and nature to have our rights truly enforced by law. Then, PEC 215 comes and overrules it all. For me, it means the extermination of indigenous peoples,” she said.

“We need land and nature to have our rights truly enforced by law. Then PEC 215 comes and overrules it all”

Ana Cláudia Tavares, an attorney at the Pro Bono Legal Counsel Bureau Mariana Crioula, said there is a strong similarity between the attacks on the communities of descendants of African-Brazilian slaves and indigenous communities, which are seen as obstacles to large projects. Despite the many challenges to be faced, she described a recent achievement: the ownership of lands given to the community of descendants of African-Brazilian slaves of Marambaia, which had the support of the prosecution office. Elydia Monteiro, a public defender in the state of Tocantins, talked about the creation of the “Defenders’ Office for Descendants of African-Brazilian Slaves”, by the State Public Defenders’ Office, who is now fully licensed to operate and handles not only land ownership issues, but other individual and collective cases. She acknowledged that the Defenders’ Office knows very little about the communities and indigenous peoples and described another activity: the legal education policy, which aims not only to teach Law, but to enable the communities to take part in the planning of projects.



Alessandra Quines, public defender of Rio Grande do Sul, and federal public defender Francisco de Assis.

Alessandra Quines, public defender in the state of Rio Grande do Sul and representative of the National Board of Chief Public Defenders (CONDEGE) addressed the lack of knowledge about the Public Defenders’ Offices, especially concerning their duties. Mrs. Quines argues it is important to invest in the education of practitioners in the justice system and in the dialogue between the institutions and indigenous peoples, especially because, in Brazil, the rule of Consultation is not enforced. Federal public defender Francisco de Assis reported that, in 2014, twelve thematic groups were created in the Federal Public Defenders’ Office and he coordinates the group that deals





with indigenous issues. He complained of inadequate resources, recognizing that there are few public defenders, which makes it indispensable to establish interinstitutional relations. Mr. Assis also said that Amendment 215 (PEC 215) is not being properly discussed; special attention must be given to the needs of indigenous women and the combat to discrimination against indigenous people must be enhanced. Mr. Assis said that the region of Altamira has been witnessing many violations to the human rights of indigenous peoples and traditional communities. He saw the whole process of removing households to build the power plant of Belo Monte, causing a massive environmental impact, whose operating license includes many restrictions (none of which deal with indigenous issues, which were completely neglected). In the end, he said that he watched the government's insensitivity with respect to the indigenous interests, which led to the idea of planning a course to educate and raise the awareness of legal practitioners.

Coordinator of the Land and Housing Bureau (NUTH) from the Public Defenders' Office of Rio de Janeiro, João Helvécio talked about the democratic deficit and the little participation of society in Brazil. "A case in point is the demolition of the Indigenous Museum in the vicinities of the Maracanã stadium for construction works to be done around the stadium. The justice system, especially when it comes to hearing the opinion of external audiences, should seek a broader participation of leaders of indigenous communities, descendants of African-Brazilian slaves, fishing communities and rural settlers, enabling them to connect with the Defenders' Offices, which should in turn establish a closer dialogue with these communities," he said. Federal Attorney General Júlio Araújo mentioned the conservatism of these institutions, not only of the judicial branch. He argues that indigenous rights and livelihoods are not recognized. "The centrality of land rights is a matter of great importance, since the demarcation of lands is essential for the implementation of health and education policies," he said.

"The centrality of land rights is a matter of great importance, since the demarcation of lands is essential for the implementation of health and education policies"



João Akira Omoto said that few prosecutors handle human rights cases.

Appellate Prosecutor João Akira Omoto said that most of the cases handled by the Federal Prosecution Office are also handled by the State Prosecution Offices. He talked about the impact of major development projects on the lives of indigenous and traditional peoples and complained about the Brazilian State, which did not respect the basic right of demarcation of indigenous lands, while constantly denying other rights as well. He also argued that the justice system must recognize the indigenous identity and their lands, mainly because the





processes involving such recognition are lawsuits. He also stated that prosecutors handling human rights cases and minorities and eventually suffer retaliation, such as smaller allocation of resources. Mr. Omoto informed that in the last public examination for the Federal Prosecution Office, the topic of indigenous rights was introduced and seminars and meetings dealing with indigenous issues have been conducted. Mr. Omoto said it is necessary to make sure that the Federal Prosecution Office requests the higher courts to reverse decisions by filing injunctions. He announced an agreement signed with the Judiciary School for the organization of training courses and warned of Brazil's delay in implementing Convention 169, as not even the regulations have been established. He addressed FUNAI's general run-down and the Palmares Foundation's poor set of resources and reported that only as late as in October 2015, the Federal Prosecution Office recognized the appropriateness of indigenous presence in protected areas. The group's talks and proposals resulted in suggestions targeted at opening channels of participation, the inclusion of indigenous culture in the education of professionals and raising their awareness about the International Labour Organization's Convention 169.



On the last day, government officials declared that the ten years since the judicial reform produced substantial progress, but there is still lots of work to be done. The discussion revolved around what has changed since the enactment of Constitutional Amendment 45/2004. The roundtable was mediated by the Judge of the Regional Labor Court (TRT — 1st Regional Court), Mário Sérgio Pinheiro.

The justice reform as viewed by the justice system agents.

Eduardo Petersen, a Professor at Universidade Nova Lisboa and member of the Labor Court of Justice in Portugal, analyzed the impact of the neoliberal platform in the Portuguese Labor Courts. He addressed how the justice or the judicial branch reform responds to the crisis of justice, so it can be trusted by the people through the constitutional right to dispute settling within a reasonable period of time. He pointed out that when the reasonable duration of a case is represented by the quantitative assessment of a judge's work, in which case such assessment is a criterion of professional development, the response that is given to the crisis tends to annihilate the concrete justice in favor of the idea of justice. He then raised the following question: how to avoid the divorce between justice and the idea of justice?





SEMINÁRIO
REFORMA DA JUSTIÇA
NO BRASIL
UMA DÉCADA DE DESAFIOS E
CONQUISTAS EM UMA PERSPECTIVA
LATINO-AMERICANA

fórum justiça

In conservative times, the talk of Federal Attorney General Fábio George Cruz da Nóbrega, a member of the National Council of the Federal Prosecution Office (CNMP), championed the defense of human rights and democracy. He mentioned the lack of popular participation in the drafting of Constitutional Amendment 45, known as the Judiciary Reform. He listed the achievements delivered by the Amendment, such as the CNMP itself and the National Council of Justice, and said that the Federal Prosecution Office has been hearing representatives of social movements. “Our justice system is slow-paced and it is difficult to face it. The councils need to get lots done, always in dialogue with civil society,” he said. He defended the end of the “resistance” classification to record killings by military police officers and the need for investing in education to combat corruption. “The Prosecution Office must face racism, domestic violence and corruption. That will not be possible without the coordinated participation of social movements,” he said.



Council member Fábio George, from the National Council of the Federal Prosecution Office, discusses the relationship between social movements and the Federal Prosecution Office.

"Our justice system is slow-paced and it is difficult to face it. The councils need to get lots done, always in dialogue with civil society"

Secretary for Judicial Reform of the Ministry of Justice Marcelo Veiga took part in the panel discussion on the last day of the seminar. He stated that one of the tasks of the department is to create mechanisms to expand community-mediated justice in Brazil. With regards to mediation, he pointed out that many people do not understand the dispute and the case in which they are involved, therefore, mediation empowers them to seek the solution and, if necessary, go to court. “We must create conditions to implement community-mediate justice in Brazil,” he said. Mr. Veiga also described the changes made to the department itself, originally designed to bring different stakeholders together, but which eventually supported the formulation of public policies.

Adriana Britto, a public defender in Rio de Janeiro, addressed the need to implement mechanisms for popular participation in the justice system such as channels to hear the opinions of external audiences. She said that maintaining the autonomy of the Public Defenders’ Offices is a permanent challenge for the offices to remain active in all states and circuit courts, tackling human rights violations committed by the State itself. It takes a lot of social mobilization to guarantee such autonomy. She said that the very legitimacy of the



defenders' offices stems from close cooperation with civil society as an instrument of democracy.



Professor Roberto Fragale highlights the importance of listening to one another.

After her talk, Professor and Labor Court Judge Roberto Fragale levelled some criticism. “With regard to access to justice, the ‘other’ must be treated as an interlocutor, not as a problem,” he said. He explained that the reform was born in the Constitutional Amendment of 1992, whose purpose is very different from Constitutional Amendment 45 of 2004. Putting this into context, he said that in 1992 there was a strong connection between democracy and access. However, in 2004, the approach was on time and security.

Ombudsperson of the Public Defenders’ Office of Rio Grande do Sul Denise Dora discussed the interest of state officials in investing in access to justice. “We have a very misinformed population, because the institutions are not very concerned about distributing information about access to justice.” She also announced that the National Board of Ombudsperson’s Offices plans to establish a seat with a voice in a National Council of Public Defenders’ Offices, yet to be set up.

“We have a very misinformed population, because the institutions are not very concerned about sharing information of access to justice.”

In the afternoon, some requests were made to the institutional representatives attending the seminar, including the federal public defender Haman Tabosa. The proposals deal with the democratization of Brazil’s justice. One of them was about planning advanced courses to raise the federal public defenders’ level of awareness about indigenous issues, with the support of the Public Defender’s Office in collaboration with other entities and representatives of indigenous peoples.



Federal Public Defender Haman Tabosa and deputy secretary for Human Rights Andrea Sepúlveda discuss the proposals listed in the Seminar, addressed to the Federal Public Defender’s Office.

Another item proposed was organizing venues to promote education and experiences associated with the culture of the peoples that make up the Brazilian society. The speakers believe that there is a widespread lack of awareness, especially about indigenous peoples. The proposal consists in running a campaign to advise



the Public Defender's Offices of the States to attend seminars dealing with this issue.

Master's student Vinícius Alves proposed a special focus on apprenticeship. "I believe it is important to establish, in the Public Defender's Offices and in other agencies of the justice system, an apprenticeship experience in the target-communities of each institution, offering the opportunity of self-evaluation and participation of leaders of social movements and related organizations in the evaluation procedures. It is important to move forward in this debate to make sure that the apprenticeship be a true learning experience," he said. He further pointed out: "We need more public servants resonating with these needs, as well as a bigger pool of anthropological and sociological knowledge, among others. Not only legal knowledge. Graduates work in line with the guidelines of the bar examination and public examinations. There should be a change in the very culture of the law schools."

"I believe it is important to establish, in the Public Defender's Offices and in other agencies of the justice system, an apprenticeship experience in the target-communities of each institution, offering the opportunity of self-evaluation and participation of leaders of social movements and related organizations in the evaluation procedures. It is important to move forward in this debate to make sure

In response, the federal public defender stated that indigenous issues will take the Public



Discussion of the proposals put forward in the seminar.

Defender's Offices by storm. "Our challenge is to establish our footprint in all judicial sessions within eight years' time so we can assist indigenous people as well," he said. As for public examinations, he added: "Our examinations already cover human rights and they will soon be covering more indigenous issues. Regarding the apprenticeship, we would have to figure out a way to identify the level of knowledge about the areas. To this end, we can seek support from the

Internal Affairs Division, which does the analysis." Other innovative proposals were put forward, such as putting together an advisory board composed of academic representatives, along the lines of the National Council of Justice, working in close cooperation with the Federal and State Public Defender's Offices.



The seminar was topped off with the talk of deputy secretary for Human Rights of the State of Rio de Janeiro Andrea Sepúlveda, and Pedro Strozemberg, ombudsperson at the Public Defender's Office of the State of Rio de Janeiro, who commented the proceeds and plans resulting from the three days of activities, by linking them to the Applicability Compact of the 100 Brasília Regulations and to the Regional Convention Campaign on Access to Justice.

Delegations from the Public Defender's Office of Peru and Buenos Aires attend seminar on Justice Reform in Rio de Janeiro



Roundtable with Peruvian public defenders and cooperation with Fórum Justiça.

The seminar "Justice Reform in Brazil: a decade of challenges and achievements from a Latin American perspective" was attended by representatives from the Public Defender's Offices of Peru and Buenos Aires. The strategy established a closer cooperation between Fórum Justiça and Latin American institutions, and gave a regional touch to the analyses produced by social movements and organizations, academic sectors and stakeholders from the national justice system.

The preparations for the visit of these delegations were kicked off by the Ibero-Latin-American Work Group of Fórum Justiça, which, since its establishment in May 2013, has been discussing the democratization of the justice system and championing a wider access to Justice by populations in vulnerable situations in the regional scenario,



Delegation of 10 Peruvian public defenders attended the seminar.

drawing on the debates raised by the 100 Brasília Regulations. The dialogue with the Peruvian Public Defender's Offices gained momentum in 2014, when Fórum Justiça visited the office of Mr. Ernesto Lechuga Pino, former Director General of Public Defense and Access to Justice, from the Peruvian Ministry of Justice and Human Rights and current Vice Minister of Human Rights and Access to Justice in Peru. At a second meeting, Lechuga expressed his interest in promoting cooperation with the Brazilian Public Defender's Office so that they could exchange experiences on a frequent, systematic and continuous basis.



Mediated by Fórum Justiça in mid-2015, cooperation was established between the Peruvian Public Defender's Office and the Public Defender's Office of Rio de Janeiro. After that, 10 public defenders from different regions of Peru came to the seminar to share their experience in borderlands. Delegation members shared their experiences throughout the seminar, with special attention to the Conversation Circle "Indigenous Peoples and Traditional Communities," on November 18th, in which they shared their views and information on field work experiences with emphasis on conflicts between indigenous people and settlers.



Public defender Denis Machuca, from Tacna/Peru, participates in the Workshop "Indigenous Peoples and Traditional Communities."

They talked about the autonomy of indigenous communities for settling internal disputes and enforcing their own laws and norms, which is not always well accepted by the agents of the official justice system, leading to an interesting intercultural clash. In this respect, anthropological expertise can attest to the legitimacy of a customary practice of indigenous peoples, thus preventing that a domestic positive law may be enforced to the detriment of the autonomy of communities. Most of these communities have a closed organization, including armed self-defense against the invasion of paramilitary groups and drug traffickers in their territories. It was also pointed out that logging is the main source of greed among economic groups threatening indigenous communities. Considering this autonomy, the issues that are brought to the attention of the justice system would be mostly those involving conflicts with non-indigenous settlers.

Victoria Rodriguez, public defender of Lima, talked about the education of judges, detached from the reality of indigenous and country peoples, which is why they would often fail to comply with laws and judge as if they were settlers. She also reported the lack of structure in the Public Defender's Office of Peru, with just a few defenders and many cases to be handled, and no financial assistance to visit the native peoples, who live in very distant towns.

Marlene Quiroga Aquino, public defender of Junin, said that she works with indigenous communities and settlers, but she considers herself a settler. She explained some aspects of intercultural Justice, arguing that the president of Peru's Supreme Court approved, by means of administrative resolution 4992012, the establishment of a closer relationship between the State and indigenous and rural communities. The importance of sharing intercultural experiences has been recognized. She also informed that Bill 313/2011-PJ, pending approval, proposes the law of intercultural combination of justice, as well as Bill of Law 2751/2013-CR, which proposes intercultural justice for country, native and rural communities. Mrs. Aquino





reported different complicated cases involving settlers and natives, because customary rules are conflicting and often enforced in different ways, for example, when a sexual offense involves a settler and a female native or a male native and a female native.

Mrs. Aquino described a community that is assisted by the Public Defender's Office of Peru and was attacked by a group of terrorists. Most of its natives have been killed. On that occasion, the natives were given weapons by the Peruvian government, which triggered arrests for illegal possession of weapons, and documents issued by the native communities — who mistype names and charge a small fee — which are

being prosecuted for forgery. She mentioned the use and occupation of land, since Peru is rich in biodiversity, such as water and minerals, and how that fact unleashed brutal and indiscriminate clearing of forests, which creates a lot of conflict with the natives, who have a strong connection with the environment.

The public defender of Junin said she takes pride in Peru's multiculturalism and proposed an integration of the ordinary justice system with that of the native and country communities, at least in cases involving, in the same dispute, settlers and native and country peoples, as conflicts among natives are solved by themselves, based on their customary laws. The non-integration in these cases has been sparking a battle for power in lieu of good Justice for all, whereas there must be a concerted effort in the battle for ensuring human rights.



Peruvian public defenders participate in the Conversation Circle "Indigenous peoples and traditional communities" on the second day of the seminar.



Horacio Corti and the chief public defender of Rio de Janeiro sign a collaboration agreement between Rio's Public Defender's Office and the City of Buenos Aires.

In early 2015, Fórum Justiça also visited the chief public defender of Buenos Aires and invited local public defenders to attend the seminar "Latin American Judicial Policy from a Perspective of the Public Defender's Offices," held in Rio de Janeiro in May of that year. At the time, the officials had planned to sign a collaboration agreement between the Public Defender's Office of Buenos Aires and the State of Rio de Janeiro, which actually occurred in



November 2015, for the purposes of leveraging some joint political and institutional efforts.

The Buenos Aires delegation had chief public defender Horacio Corti as a member. He was a speaker on day one and delivered a talk about human rights and funds, which is rarely found in the legal literature. He provided an overview of how the issue of budgetary constraints and exercise of human rights has been handled in Europe, the United States and Latin America. He also pointed out that we have some Latin American judicial experience to ponder human rights and budget problems, in which the different Western traditions are combined and reworked, creating a much deeper reflection.

Mr. Corti mentioned three experiences that he considers very significant in Brazil, Colombia and Argentina. He criticized the inequities provoked by the proviso of the possible in Brazil. He acknowledged that, only now, this is under discussion among jurists. However, this issue has been widely discussed in the judicial branch, but only because the social movements have brought this discussion to the courts. He recalled that the guiding principle of all judicial reforms has been budgetary matters; none of them was concerned about fundamental rights. Their main purpose was the incorporation of stabilization pacts into domestic law, while, in contrast, strict rules should be created in national constitutions, defining essential expenses such as health, that is, the effectiveness of human rights, as a top priority in their budgets.

He also asserted that democracy must be democratized with something more than procedures, such as popular participation, providing a broader discussion on the justice system among other stakeholders, besides the jurists. He advocates that it is a source of mounting concern that the World Bank's arbitration authority may rule on the Argentine economic policy, for example.

Julieta Parellada, also representing the Public Defender's Office of Buenos Aires, addressed the situation regarding access to public positions in Argentina, which she considers problematic, because only judges are required to take public examinations. She claimed a redesign in the access to public positions in the justice system and pointed out that there is no national or local control on the agents of this system. The data collected are insufficient and often fake. She also reported that the judgments are not final and many of them are not enforced. Besides that, the ministries are not on the same page, lacking an institutionalized judicial policy.



Julieta Parellada criticized the justice system in Argentina.





Foreign defenders visit community assisted by Rio's Public Defender's Office Land Bureau.

Public defender of Buenos Aires María Fernanda Ruiz Conti, along with other foreign defenders, went on a guided tour in the community Vila Autódromo, invited by João Helvécio, coordinator of the Land Bureau of the Public Defender's Office of Rio de Janeiro.

Fórum Justiça wall is painted by the participants of the seminar "Justice Reform in Brazil"



Wall painting presented a humanist aesthetic proposal to the justice system, inspired by the concept of otherness.

Professors Élica Lauris, Guilherme Leite Gonçalves and Roberto Fragale, as well as Buenos Aires' public defender Horacio Corti, addressed the concept of alterity/otherness, which was present on all panel discussions. Alterity/otherness is a key topic for Professor José Ricardo Cunha, head of the Research Group on Human Rights, Judicial Branch and Society — DHPJS, a partner in the organization of the seminar.

Drawing inspiration from alterity/otherness, Fórum Justiça offered canvas and paints for the joint expression of perceptions and desires. Fórum Justiça's Wall Painting stands for the need to express aesthetic sensitivity in the construction of judicial policy as an element of encouragement to affection and the recognition of each other's unique features. This initiative, which is intended to be reproduced in similar environments, aims to express humanized representations of the justice system, combining sensitivity and power. The proposal will be shared with partner groups so that similar works can be produced, leading to the creation of an art collection related to the justice system.





SEMINÁRIO
REFORMA DA JUSTIÇA
NO BRASIL
UMA DÉCADA DE DESAFIOS E
CONQUISTAS EM UMA PERSPECTIVA
LATINO-AMERICANA

fórum justiça



Participants standing by the Fórum Justiça Wall.

