

INTERSECTIONS BETWEEN DEMOCRACY, EFFICIENCY, PUBLIC POLICIES, AND SOCIAL JUSTICE IN STRUCTURAL LITIGATION: A LEGAL STUDY

INTERSECCIONES ENTRE DEMOCRACIA, EFICIENCIA, POLÍTICAS PÚBLICAS Y JUSTICIA SOCIAL EN LOS LITIGIOS ESTRUCTURALES: UN ESTUDIO JURÍDICO

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Abstract: The article explores the intersections between democracy, administrative efficiency, public policies, and social justice in the context of structural litigation. These judicial demands seek solutions for violations of fundamental rights that impact collectives, representing significant challenges for the judiciary and public administration. Therefore, by analyzing practical examples in Brazil, such as public civil actions aimed at restructuring health and education systems, the study discusses the role of judicial intervention in promoting social justice; it highlights how these interventions can correct structural inequalities and ensure fundamental rights while respecting the autonomy of public managers. The approach emphasizes the need to balance the effectiveness of judicial decisions with democratic sustainability, promoting inclusive public policies without compromising governance. In this context, the article underscores the importance of institutional dialogue between the powers and civil society, aiming to implement efficient solutions aligned with

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constitutional principles. Thus, it contributes to the strengthening of democracy and the realization of social justice in a scenario of complex collective demands.

Keywords: Administrative efficiency, Democracy, Public policies, Social justice structural litigation.

Resumen: El artículo explora las intersecciones entre democracia, eficiencia administrativa, políticas públicas y justicia social en el contexto de los litigios estructurales. Estas demandas judiciales buscan soluciones para violaciones de derechos fundamentales que impactan a colectivos, lo que representa desafíos significativos para el poder judicial y la administración pública. Al analizar ejemplos prácticos en Brasil, como acciones civiles públicas destinadas a la reestructuración de sistemas de salud y educación, el estudio discute el papel de la intervención judicial en la promoción de la justicia social, y destaca cómo estas intervenciones pueden corregir desigualdades estructurales y asegurar derechos fundamentales, mientras respeta la autonomía de los gestores públicos. El enfoque enfatiza la necesidad de equilibrar la efectividad de las decisiones judiciales con la sostenibilidad democrática, al promover políticas públicas inclusivas sin comprometer la gobernabilidad. En este contexto, el artículo subraya la importancia del diálogo institucional entre los poderes y la sociedad civil, con el objetivo de implementar soluciones eficientes alineadas con los principios constitucionales. Así, se contribuye al fortalecimiento de la democracia y la realización de la justicia social en un escenario de demandas colectivas complejas.

Palabras clave: Democracia, Eficiencia administrativa, Justicia social, Litigios estructurales, Políticas públicas.

Summary. I. Introduction. II. The concept of structural litigation and its relevance for the protection of fundamental rights in Brazil. III. Democracy and judicialization of public policies. IV. Administrative efficiency and public policies. IV.1. Efficiency of the judicial system and access to justice in structural litigation. V. Social justice as the ultimate goal. VI. Case studies of landmark structural litigation in the Brazilian legal scenario. VII. Conclusion. References.

I. INTRODUCTION

The judicialization of public policies in Brazil has long been analyzed in academic debates, usually framed by conventional narratives of state inefficiency and judicial activism as a corrective mechanism. Structural litigation is often praised for advancing collective rights, yet the debate has become stagnant, oscillating between uncritical endorsement of judicial intervention and superficial criticism of its risks. This article proposes moving beyond that binary by offering a more nuanced critique that examines not only the effectiveness of structural litigation but also its unintended institutional consequences. Instead of repeating the argument that courts must act when political branches fail, it considers how judicial overreach can distort policy-making, encourage legislative inaction, and generate symbolic rulings with limited practical impact.

A key limitation in existing scholarship lies in its reliance on ideologically charged assumptions, whether presenting structural litigation as inherently beneficial for social inclusion or dismissing it as judicial usurpation. To move past this pattern, the analysis incorporates perspectives often absent in Brazilian debates, such as public choice theory (examining how litigation may be strategically used by interest groups) and comparative institutionalism (assessing how courts in other jurisdictions balance activism and restraint). For example, cases like the Allegation of Violation of a Fundamental Precept (ADPF) No. 186 on racial quotas are frequently cited as milestones for social justice, but few studies critically assess whether these rulings produced substantive inclusion or merely procedural compliance. Likewise, drug policy

cases such as the Direct Action of Unconstitutionality (ADI) No. 3239 highlight the judiciary's difficulties in addressing technically complex issues without adequate expertise, often resulting in fragmented or unenforceable decisions.

The article also questions the prevailing optimism surrounding public civil actions and popular lawsuits as instruments of empowerment. Although these mechanisms rhetorically amplify marginalized voices, their practical outcomes are often undermined by implementation gaps, bureaucratic resistance, and the absence of systematic impact assessments. To address these shortcomings, the article advocates for a more disciplined approach to structural litigation; one that emphasizes judicial humility, inter-branch dialogue, and evidence-based remedies. Suggested measures include requiring courts to demand concrete feasibility studies before issuing broad policy orders, creating metrics to monitor compliance after rulings, and fostering institutional channels for executive and legislative participation in structural remedies.

Ultimately, the aim is not to reject structural litigation but to refine its role within Brazil's democratic framework. By shifting the debate from ideological advocacy to empirical and institutional analysis, the article seeks to provide a more critical and constructive perspective; one that acknowledges the potential of litigation while rigorously examining its limits. This approach is particularly relevant for scholars and policymakers who recognize that sustainable social change depends not only on judicial victories but also on functional governance.

II. THE CONCEPT OF STRUCTURAL LITIGATION AND ITS RELEVANCE FOR THE PROTECTION OF FUNDAMENTAL RIGHTS IN BRAZIL

Several legal scholars, particularly in the United States, have devoted themselves since the mid-20th century to studying and proposing frameworks for what is known as collective structural litigation or, more simply, structural litigation. In Brazil, a concrete example of this interest is Bill No. 8058/2014, still under review in the Chamber of Deputies. This bill seeks to regulate the "control and intervention in public policies by the judiciary" and establishes in article 2, sole paragraph, that the process in this context must have structural characteristics, with the aim of facilitating institutional dialogue among the branches of government. Structural demands, arising from structural disputes and processed through structural procedures, even if not precisely defined in the academic and legal fields, are new instruments of civil procedure and judicial administration that must be studied, developed, and improved (Bochenek, 2022).

Structural disputes are collective conflicts that originate from the functioning of a bureaucratic structure, often of a public nature. The very operation of this structure causes, allows, or perpetuates the violation that generates the collective dispute. If the violation is only superficially corrected, the problem may be temporarily solved without producing empirically significant or lasting results, and it risks recurring in the future.

According to Fiss (2021), when the judiciary resorts to structural judgment, the bureaucratic apparatus responsible for formulating and

implementing public policies often faces serious difficulties. In this context, the judiciary intervenes to promote a reorganization that compels the weakened structure to comply with constitutional requirements. Some nuances, however, should be noted. Structural litigation generally involves public structures, since they affect the lives of many people and cannot simply be dismantled, unlike private structures governed by market logic. Nevertheless, structural litigation can also aim to change the behavior of private entities that provide services of public interest, complementing or substituting state functions, as in the case of utilities and public service providers.

Structural litigation may also involve entirely private structures that are essential to the functioning of the market and society, and that cannot easily be replaced or eliminated under free market rules. Gloppen (2005) argues that the success of structural litigation depends on four key elements: the ability of affected groups to have a voice and access to the judicial system; the willingness of courts to respond to these demands; the capacity of judges to devise appropriate legal solutions to safeguard economic and social rights; and the commitment of political authorities to comply with the resulting decisions.

This is why the relationship between the concept of structural disputes and the tasks of protecting fundamental rights is unequivocal. This approach, developed mainly by critical legal theory, highlights the importance of going beyond the resolution of individual disputes and examining the underlying causes of systemic injustices. As Boaventura de dos Sousa (2003) observes, "structural disputes focus on the social and economic structures and processes that produce and reproduce social inequalities" (p. 227).

In other words, the objective is to challenge and transform the power structures and institutions that perpetuate violations of fundamental rights. It is important to note the significant progress made by procedural law scholars, reflected in the growing number of articles and, more recently, books addressing structural claims and disputes. This indicates a clear trend toward exploring new and more flexible approaches to procedures.

In that sense, practical experiences have increasingly become the focus of research, generating theoretical insights that enrich the development of a practice-oriented theory of structural processes (Bochenek, 2022). In this context, characterized by a broad transformation of the tools used to address practical nonconformities with fundamental and constitutional rights – particularly through public policies, though not limited to them– new procedural instruments are emerging. These instruments, adaptable and changeable, are being constructed by legal operators as mechanisms to ensure rights are satisfied and effectively enforced through the provision of jurisdiction (Bochenek, 2022).

In Brazil, structural litigation has played a particularly important role in advancing social rights, such as health, education, and housing. For instance, the *Marcha dos Remédios* (Medicine March) in the state of São Paulo exposed the struggle for universal access to medicines through the Unified Health System (SUS), confronting pharmaceutical policies that prioritized profit over the right to health. Similarly, the actions of the *Movimento dos Trabalhadores Sem Teto* (MTST) sought to confront the housing deficit by challenging exclusionary urban policies and advocating for a fairer distribution of urban land.

Structural litigation has also been used to combat racial and gender discrimination within the Brazilian legal system. Affirmative action in universities, such as racial and social quota systems, has been both contested and defended through this type of litigation, with the aim of addressing historical inequalities in access to higher education. ADI No. 4277 and ADPF No. 132, ruled on by the Supreme Federal Court (STF) in 2011 and analyzed in this study, are paradigmatic examples. These cases sought the recognition of stable unions between same-sex couples and the extension of adoption rights to them, issues that went beyond the protection of individual rights and aimed to reconfigure deeply rooted social and institutional structures.

Nevertheless, structural litigation faces major challenges in Brazil. The slowness and bureaucracy of the judicial system, combined with resistance from conservative sectors, often hinder the enforcement of fundamental rights through these processes. In addition, the limited resources and technical capacity of civil society organizations can restrict their ability to address complex structural issues through legal channels. Although there are risks in implementation (Fonseca, 2021), structural litigation remains a powerful tool for defending fundamental rights, enabling marginalized groups and social movements to challenge power structures and promote systemic change.

For these processes to be effective, however, it is necessary to overcome institutional obstacles and strengthen the capacities of the civil society organizations involved. By doing so, structural litigation can contribute significantly to building a more just and egalitarian society in Brazil.

III. DEMOCRACY AND THE JUDICIALIZATION OF PUBLIC POLICIES

The increase in judicialization in contemporary democracies reflects both the inefficiency of public policies and society's reliance on the judiciary as a guarantor of rights. However, this role can generate tension within the separation of powers, since the judiciary often intervenes in the formulation and implementation of public policies, areas traditionally reserved for the executive and legislative branches. The democratic legitimacy of judicial decisions in structural litigation lies in their capacity to enforce fundamental rights enshrined in the Constitution, even when doing so places limits on administrative discretion.

The main challenge is to ensure that these decisions are sustainable and capable of promoting social inclusion without compromising governance. Structural litigation constitutes a form of democratic participation that seeks not only to guarantee justice for the individuals and groups directly involved but also to produce systemic changes that benefit society as a whole. Its effectiveness depends on reconciling the principles of democracy, efficiency, and social justice, concepts that are both complex and interconnected.

The importance of strategic litigation becomes evident when considering that, although many individuals assert their rights in the public sphere, these demands are often fragmented, lacking organization, structure, and, in many cases, judicialization or pending legislative reform. Strategic litigation channels such demands into the institutional sphere, reminding constitutional actors of their duties and responsibilities in fulfilling commitments established by the Constitution. Social problems require the

coordinated intervention of multiple actors. For this reason, strategic litigation plays a crucial role in combating the invisibility of certain social issues, contributing to democracy and to the realization of fundamental rights.

At the same time, given the complexity of the issues addressed, the impact of structural litigation decisions should not be measured solely by their ability to immediately resolve the specific case. As Fachin & Bueno (2018) emphasize, "decisions of such complexity result in equally complex effects that must be understood appropriately" (p. 25). These rulings involve significant risks: first, that the judiciary may lack the technical competence to intervene in public policy formulation; and second, that questions may arise regarding the legitimacy of judicial bodies to alter decisions taken by politically legitimate sectors.

Notably, Gloppen (2005) stresses that the participation of affected populations is essential to overcoming political inaction. Within a model of deliberative democracy, courts can and should serve as institutionalized spaces to amplify the voices of marginalized communities and bring their needs to public attention (Liebenberg, 2012). These contributions by Gloppen & Liebenberg underscore the importance not only of access to justice but also of the capacity of courts to respond effectively to social demands. In a context where democratic institutions frequently fail to represent marginalized voices, judicial bodies can play a decisive role in ensuring these voices are heard and the needs of vulnerable communities are addressed.

It is therefore essential that courts not only adjudicate individual cases but also recognize the potential of structural litigation to promote systemic change and address deeply rooted social inequalities. In doing so, courts

contribute to strengthening democracy and advancing social justice, ensuring that all members of society have equal access to the protection of their fundamental rights.

Democracy plays a central role in both the conception and resolution of structural litigation. As Dos Santos (2021) observes, "structural litigation involves social disputes in which the major political choices of society are at stake and are open to democratic debate" (p. 142). Structural litigation thus represents a form of political participation, enabling marginalized groups to exercise voice and agency in shaping public policies and transforming unjust social structures. Efficiency is also a key concern, as these cases aim not only to secure justice for the parties involved but also to achieve systemic changes that benefit society as a whole.

Moreover, as Owen Fiss notes, "structural litigation involves cases in which courts commit to making significant changes to a social system" (Fiss, 1984, p. 128). The efficiency of structural litigation is therefore measured by its capacity to produce tangible and lasting outcomes that promote equality and social justice. Procedural efficiency is not merely a practical value but a substantive legal principle that guides the behaviors necessary to achieve an effective process, establishing an ideal standard of conduct. Internally, it has an integrative function, creating mechanisms to fulfill its purpose even when not explicitly provided for by law; externally, it defines and interprets broader principles, such as democracy and due process, while excluding rules incompatible with its realization. Directed at legislators, judges, and other procedural actors, the principle of procedural efficiency differs from related

concepts, such as effectiveness, administrative efficiency, reasonable duration of proceedings, and procedural economy (Campos, 2018).

Article 8 of the Brazilian Code of Civil Procedure (CPC) requires judges to observe the principle of efficiency in their judicial activities. This entails striving for optimal outcomes in case management, conserving time and resources, and ensuring respect for adversarial proceedings and due process. Efficiency also involves promoting legal certainty and avoiding contradictory or conflicting decisions. In structural litigation, the judiciary must respond effectively to complex, systemic demands that affect different segments of society in varied ways. It is therefore crucial that those impacted have opportunities to participate in the process and that the *amicus curiae* contributes not only technical knowledge but also the perceptions and experiences of the community involved, helping to clarify the issues under discussion.

However, it is important to stress that efficiency should not come at the expense of social justice. Structural litigation should aim not only for pragmatic solutions but also for remedies that address structural inequalities and foster social inclusion. As Minow (1990) asserts, "justice requires institutions to adapt to the needs of disadvantaged citizens and ensure that everyone is treated with dignity and respect" (p. 189).

Structural litigation must therefore be guided by a commitment to social justice, seeking to correct both the symptoms and the underlying causes of social inequities. Minow (1990) critically examines the United States' legal system's treatment of individuals based on race, gender, age, ethnicity, religion, and disability, offering insights relevant to other contexts. She identifies dilemmas arising from contradictory legal strategies that inconsistently

recognize differences. By analyzing the historical origins of ideas about difference, Minow (1990) advocates for approaches that challenge conventional notions of “difference”, promoting a jurisprudence capable of recognizing and addressing visible inequalities to ensure effective judicial outcomes.

Another important perspective comes from Sturm (1991), known for her research on civil rights, workplace discrimination, and social justice, issues closely linked to structural litigation. In *A normative theory of public law remedies*, she outlines five key principles for designing dialogic and effective structural remedies: participation, respect for the separation of powers, impartiality, reasoned decisions, and redress. Public participation is essential to resolving disagreements in judicial decisions and ensuring that effective and legitimate choices are made. However, both institutional dialogue and the involvement of affected groups must be carefully structured. Those impacted by a structural remedy, as well as those responsible for its implementation, must have meaningful opportunities to influence the development of the measures adopted (Sturm, 1991).

In that sense, mere participation does not guarantee positive outcomes, as it can be carried out superficially, creating only the appearance of engagement with affected communities (Williams, 2006). Participation becomes meaningful only when the needs of the people are genuinely heard and effectively shape the implementation of public policies. Therefore, institutional dialogue and the involvement of affected groups must be meticulously organized. In this way, participation can support diverse stakeholders in promoting democratic governance, administrative efficiency, public policies, and social justice within the context of structural litigation.

On the other hand, structural litigation addresses violations of fundamental rights affecting collectives, presenting significant challenges for both the judiciary and public administration. Practical examples in Brazil, such as public civil actions aimed at restructuring health and education systems, illustrate how judicial intervention can promote social justice. These interventions can correct structural inequalities and ensure fundamental rights while respecting the autonomy of public managers.

This approach emphasizes the need to balance judicial effectiveness with democratic sustainability, promoting inclusive public policies without undermining governance. Therefore, the article highlights the importance of institutional dialogue between branches of government and civil society to implement efficient solutions aligned with constitutional principles. By doing so, structural litigation contributes to strengthening democracy and advancing social justice in the face of complex collective demands.

IV. ADMINISTRATIVE EFFICIENCY AND PUBLIC POLICIES

Administrative efficiency is a constitutional principle that guides public management. In structural litigation, the execution of judicial decisions often exposes weaknesses in public machinery, such as lack of resources, inadequate planning, or bureaucratic resistance. For example, in cases related to healthcare, the implementation of judicial measures may involve the reorganization of hospital systems, the allocation of resources, and the training of professionals, requiring efficient coordination between the judiciary and public administration. In this context, administrative efficiency is essential to ensure

that public policies implemented effectively and sustainably address social demands.

IV.1. Efficiency of the judicial system and access to justice in structural litigation

The efficiency of the judicial system is deeply related to access to justice, and both are considered central issues in structural litigation, which involves complex demands and directly impacts various segments of society. To understand this dynamic, it is essential to consider the perspectives of both Brazilian and foreign authors.

The importance of the judicial system's efficiency in guaranteeing access to justice is highlighted, as efficiency is a crucial element for overcoming barriers that hinder the effectiveness of the process, especially in cases of structural litigation, where issues of significant social relevance are at stake.

Similarly, Dos Santos (2010), in his book *Efetividade do processo e técnica processual* (2010), emphasizes that the slowness and inefficiency of the judicial system represent significant obstacles to access to justice. Dos Santos (2010) points out that, in structural litigation, where there is a large volume of demands and interests involved, procedural efficiency becomes even more critical to ensure an adequate and timely response from the state.

Other authors also contribute to the debate on the efficiency of the judicial system and access to justice in structural litigation. Martha Minow, in her work *Equality vs. equity* (2021), addresses how the legal system deals with issues of inequality and injustice, particularly in cases involving structural

disparities. In that sense, Minow (2021) highlights the importance of efficient judicial strategies to address these issues and ensure equitable access to justice for all.

Another relevant author is Tushnet (2000), who in his book *Taking the Constitution away from the courts*, discusses the role of courts in promoting equality and social justice. Tushnet (2000) argues that courts play an important role in protecting fundamental rights, especially in cases of structural litigation, where judicial intervention may be necessary to correct systemic inequalities.

Given these analyses, it becomes evident that the efficiency of the judicial system plays a crucial role in access to justice in structural litigation. Delays and inefficiency can prevent vulnerable groups from having their demands adequately addressed, thereby perpetuating social inequalities. Therefore, it is essential to adopt measures to make the judicial system more efficient and accessible, ensuring that everyone has equal opportunities to seek the protection of their fundamental rights.

V. SOCIAL JUSTICE AS THE ULTIMATE GOAL

The pursuit of social justice through structural litigation has become a central theme in Brazil's legal discourse, especially in cases involving marginalized groups. Although this approach has advanced the recognition of rights, its limitations require a more critical examination beyond celebratory narratives. Judicial victories often fail to produce tangible improvements for affected communities, revealing a gap between legal pronouncements and material outcomes. This gap arises from three interconnected factors: the courts' limited ability to address intersectional inequalities, the mismatch between

judicial orders and administrative realities, and the over-reliance on litigation as a sole solution to systemic issues.

Intersectionality remains a persistent blind spot in structural litigation. Cases frequently treat marginalized groups as uniform categories, overlooking how overlapping identities intensify exclusion. For instance, rulings on gender inequality may neglect how racial and economic disparities uniquely affect Black women's access to healthcare or education. Similarly, indigenous land rights decisions often fail to account for bureaucratic and environmental obstacles that continue after favorable judgments. This reductionist perspective diminishes litigation's potential, highlighting the need for courts to implement intersectional impact assessments that consider how rulings interact with preexisting structural vulnerabilities.

Institutional constraints on implementing judicial decisions constitute another key challenge. When courts order expansive social policies without accounting for fiscal and administrative limits, they risk creating rights that cannot be enforced. Brazil's health system rulings illustrate this paradox: despite numerous court orders affirming the right to healthcare, systemic underfunding and regional disparities remain. Addressing this implementation gap requires a more disciplined judicial approach, including feasibility analyses that demand defendants provide detailed implementation plans with cost projections and capacity assessments before orders are issued. Such measures would help narrow the divide between rights recognition and their practical realization.

Moreover, the prevailing model of collective litigation often falls short of genuinely empowering the communities it aims to serve. While public civil

actions and popular lawsuits are celebrated as instruments for social change, they frequently concentrate power in the hands of non-governmental organizations (NGOs) and public prosecutors, distancing remedies from affected populations. A more innovative approach would involve participatory litigation models in which marginalized communities co-design legal strategies and monitor compliance through community-led oversight mechanisms. This shift would address the current democratic deficit in structural litigation and foster more sustainable avenues for social transformation.

In that sense, moving forward requires reimagining the judiciary's role from moral arbiter to institutional catalyst. Rather than issuing broad declarations, courts should focus on creating frameworks for iterative, evidence-based policy reform. This includes establishing clear outcome metrics for compliance monitoring, promoting interbranch dialogue to develop feasible implementation plans, and incorporating sunset clauses to prevent perpetual non-compliance. By implementing these concrete mechanisms, structural litigation could move from producing symbolic victories to driving measurable social change.

Ultimately, the effectiveness of structural litigation as a tool for social justice depends on its capacity to address not only the recognition of rights but also the complex institutional and political realities that shape their realization. The aforementioned demands moving beyond the current paradigm that romanticizes litigation's transformative potential and developing a more critical, implementation-focused approach. Only through such rigor can social justice move beyond judicial rhetoric and become a lived reality for Brazil's most vulnerable populations.

VI. CASE STUDIES OF LANDMARK STRUCTURAL LITIGATION IN THE BRAZILIAN LEGAL SCENARIO

ADI No. 4277 and ADPF No. 132, ruled on by the STF in 2011, are emblematic examples of structural litigation that had a significant impact on Brazilian society. These cases sought the recognition of stable unions between same-sex couples and the extension of adoption rights to same-sex couples, issues that involve not only the protection of individual rights but also the transformation of deeply rooted social and institutional structures.

The recognition of stable unions and the right to adoption for same-sex couples represents fundamental demands to ensure equality and dignity for LGBTQIA+ individuals. These issues, however, challenge deeply rooted cultural and institutional norms, confronting prejudices and stereotypes entrenched in Brazilian society.

By ruling in favor of ADI No. 4277 and ADPF No. 132, the STF not only guaranteed fundamental rights for same-sex couples but also contributed to transforming the country's social and legal structures. These decisions promoted equality before the law and helped build a more inclusive society that respects sexual and gender diversity.

Furthermore, by recognizing stable unions and adoption rights for same-sex couples, the STF influenced other areas of public power and civil society, encouraging the development of inclusive and non-discriminatory public policies and institutional practices. ADI No. 4277 and ADPF No. 132 exemplify structural litigation with transformative effects on the protection of fundamental rights in Brazil, securing rights for same-sex couples while advancing equality

and combating structural discrimination, thereby reinforcing the STF's role as a defender of human rights and social justice.

Moreover, ADPF No. 186 and ADI No. 3239, decided in 2012 and 2018 respectively, addressed ethnic-racial equality. The ethnic-racial debate within these structural litigation cases challenged the long-standing narrative of Brazil's racial democracy. Recognizing the fundamental rights of the Afro-Brazilian population through ADPF No. 186 and ADI No. 3239 contributed to structural changes in public policies, affecting the educational system and access to land and property rights for traditional communities.

Likewise, ADPF No. 186, filed by the Liberal Front Party (PFL, now Democrats [DEM]) in 2009, contested the constitutionality of an administrative act by the University of Brasília reserving 20 % of admissions slots for black candidates. The case was assigned to Justice Ricardo Lewandowski. Around the same time, Extraordinary Appeal (RE) No. 597.285 challenged racial quotas in the admissions process of the Federal University of Rio Grande do Sul in 2008, also reviewed by Justice Lewandowski, resulting in a joint ruling.

The joint ruling on ADPF No. 186 and RE No. 597.285 followed a three-day public hearing, which debated arguments for and against racial quotas in Brazil. Extensive participation from the Black Movement during the hearing and trial session was pivotal in framing racism as a state responsibility and establishing the basis for public policies promoting ethnic-racial inclusion.

In 2012, the Supreme Court rejected the claim of unconstitutionality regarding the reservation of slots for black candidates. In that sense, the ruling on RE No. 597.285 affirmed the constitutionality of racial quotas and established a legal precedent (Theme 203), stating that “the use of affirmative

actions, such as the reservation of slots (quotas) based on ethnic-racial criteria for admission to public higher education, is constitutional”.

Therefore, the democratization of the decision-making process in racial structural litigation (ADPF No. 186 and RE No. 597.285) contributed to civilizational progress and advanced the debate on racism as a state responsibility. These rulings also enabled significant structural reforms, including: a) the improvement and expansion of quota policies, such as reserving slots in public examinations; b) the creation of hetero-identification committees in public universities; c) the training and qualification of members of these committees; and d) the implementation of public policies promoting racial equity in public administration.

The ruling on ADI No. 3239 was crucial for the social protection and realization of the fundamental rights of Brazil’s remaining quilombo communities. Filed by the PFL on June 25, 2004, the action challenged the constitutionality of Decree 4887/2003, which guarantees recognition and titling of quilombo territories. Justice Cezar Peluso served as rapporteur for this constitutional action.

The trial began in 2012 and concluded in February 2018. Civil society and social movements played a central role in enriching the judicial debate on quilombola rights, particularly in redefining the concept of quilombo. Before ADI No. 3239, quilombo was primarily understood as a historical category. After the ruling, quilombo was recognized as a collective subject of rights and a traditional community whose livelihood derives from the land—an

ontological element of quilombola identity. Property, in this context, is collective and must be attributed to the community.

This way, ADI No. 3239 was dismissed by majority vote, ensuring the recognition and titling of quilombo territories in Brazil. This structural litigation led to important reforms, including: a) the training and qualification of professionals at the Palmares Foundation; b) the restructuring of legal institutions handling quilombola-related litigation; c) the reorganization of the National Institute for Colonization and Agrarian Reform (INCRA) to facilitate property titling for quilombola communities; and d) the specialization of anthropologists to produce reports identifying quilombola communities.

The constitutional actions discussed above brought substantial structural changes to advance the fundamental rights of the LGBTQIA+ community and the Afro-Brazilian population. In all cases, coordination between the legal process, democratic participation, public policies, and social justice was essential, highlighting the inclusive dimension and social impact promoted by structural litigation within the framework of constitutional jurisdiction.

VII. CONCLUSIONS

Structural litigation has become a powerful yet contested tool for social transformation in Brazil's unequal democracy. While proponents emphasize landmark cases advancing LGBTQIA+ rights, racial equality, and social policies, closer analysis reveals persistent tensions between legal recognition and substantive change. Judicial victories are often celebrated as symbolic breakthroughs while failing to improve material conditions for marginalized communities. This gap arises from three structural limitations: first,

participatory processes often privilege established civil society organizations over grassroots voices; second, implementation falters when confronted with bureaucratic inertia and limited resources; third, an overreliance on courts diverts attention from necessary political and economic reforms.

Advancing structural litigation requires reimagining its role through three transformative approaches. Courts should move beyond declaratory judgments and establish specific implementation benchmarks with measurable outcomes; for example, not only recognizing housing rights but requiring concrete plans for constructing affordable units. Therefore, the judiciary must evolve from rights declarer to institutional innovator, introducing accountability mechanisms such as independent monitoring bodies with community representation. Most importantly, litigation strategies should link to broader political mobilization, ensuring judicial victories translate into legislative and budgetary action. The 2021 health system ruling, which incorporated civil society monitoring into its implementation framework, provides a promising example of this integrative approach.

These reforms need to confront the limitations of litigation as a tool for social justice. Courts can disrupt oppressive systems and amplify marginalized voices, but they cannot replace political organization and policy innovation. The most impactful structural cases in Brazil—from healthcare access to educational equity—succeeded when judicial intervention prompted executive action and legislative reform. Future efforts must therefore balance legal strategy with movement building, recognizing that sustainable change requires both courtroom victories and street-level mobilization. This nuanced perspective moves beyond simplistic narratives of judicial salvation, offering a more

sophisticated, empirically grounded understanding of how law can contribute to –but never single-handedly achieve– social transformation in unequal democracies.

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