

**PROTECTION OF SOCIAL AND ECONOMIC RIGHTS
BY FEDERAL PUBLIC DEFENDER'S OFFICE:
REDUCING INEQUALITIES IN ACCESS TO JUSTICE
TO VULNERABLE GROUPS IN BRAZILIAN REGIONS?**

*PROTEÇÃO DOS DIREITOS SOCIAIS E ECONÔMICOS
PELA DEFENSORIA PÚBLICA DA UNIÃO: REDUZINDO
DESIGUALDADES NO ACESSO À JUSTIÇA
PARA GRUPOS VULNERÁVEIS NAS REGIÕES BRASILEIRAS?*

Lígia Mori Madeira

*(Doctor in Sociology. Associate Professor of the Dept. of Political Science of
Universidade Federal do Rio Grande do Sul. Coordinator
of NEDIPP/UFRGS - Center of Studies in Rights,
Judicial Institutions and Public Policies)*

Leonardo Geliski

*(Master in Public Policies. Doctorate Student in Public Policies at
Universidade Federal do Rio Grande do Sul. Researcher member
of NEDIPP/UFRGS - Center of Studies in Rights,
Judicial Institutions and Public Policies)*

Ana Paula Boessio

*(Master in Public Policies. Coordinator of the Technical Advisory
in Management and Innovation of the State Department of Innovation,
Science and Technology. Researcher member of NEDIPP/UFRGS -
Center of Studies in Rights, Judicial Institutions and Public Policies)*

ABSTRACT

The purpose of the paper is the judicialization of economic and social rights (SER) in the Federal Regional Courts (TRFs), seeking to investigate to what extent the institutionalization and dissemination of the DPU promoted changes in the profile of those who have access to these rights through the Judiciary. The study used a mixed methods approach to identify trends in lawsuits, identifying the role of institutions in the federal justice system, highlighting the DPU. The text discusses the role of courts and the justice system in guaranteeing rights and public policies, especially in Latin

America; the role of access to justice institutions in protecting human rights and vulnerable groups; and analyzes the protection of social and economic rights in the Federal Court, focusing on the Federal Public Defender's Office, concluding with the fundamental role played by the institution in accessing rights by vulnerable groups in Brazil.

Keywords: Access to Justice. Social and Economic Rights. DPU. Federal Justice.

RESUMO

O objeto do artigo é a judicialização dos direitos econômicos e sociais (SER) nos Tribunais Regionais Federais (TRFs), buscando investigar em que medida a institucionalização e a disseminação da DPU promoveu mudanças no perfil daqueles que têm acesso a esses direitos através do Judiciário. O estudo utiliza uma abordagem de métodos mistos para identificar tendências em ações judiciais, identificando o papel das instituições do sistema de justiça federal, destacando-se a DPU. O texto discute o papel dos tribunais e do sistema de justiça na garantia de direitos e políticas públicas, especialmente na América Latina; o papel das instituições de acesso à justiça na proteção dos direitos humanos e dos grupos vulneráveis; e analisa a proteção dos direitos sociais e econômicos na Justiça Federal, com foco na Defensoria Pública da União, concluindo pelo papel fundamental desempenhado pela instituição no acesso a direitos por grupos vulneráveis no Brasil.

Palavras-chave: Acesso à Justiça. Direitos Econômicos e Sociais. DPU. Justiça Federal.

SUMMARY

INTRODUCTION. 1. THEORETICAL REFERENCES. 2. THE PROTECTION OF SOCIAL AND ECONOMIC RIGHTS BY THE FEDERAL PUBLIC DEFENDER'S OFFICE. 3. DPU'S ROLE IN THE PROTECTION OF HUMAN RIGHTS AND VULNERABLE GROUPS. FINAL CONSIDERATIONS.

Data de submissão: 27/03/2024

Data de aceitação: 23/09/2024

INTRODUCTION

The theme of this chapter is the protection of social and economic rights by the Federal Public Defender's Office (DPU), seeking to understand to what extent its institutionalization and dissemination promote changes in the protection of vulnerable groups. We are interested in presenting a national study, which will allow a regionalized comparative glance, breaking the cycle of works that advocate a Brazilian model of judicialization but whose focus is concentrated on few contexts, despite its high number of decisions.

This work analyzes the role of the institutions of the federal justice system in the realization of economic and social rights (SER) focusing on the Public Defender's Office and its judicial and extrajudicial action in the country. The reason for this research lies in looking at an understudied institution inside the federal justice system that deals with the high complexity health care, besides investigating other sectors of social policies that begin their litigations through federal justice: social assistance and housing, as well as vulnerable groups.

This research integrates the field of comparative judicial studies, in a sub-area aimed at investigating the role of the Judiciary, especially the lower courts, concerning access¹ and compliance² with public policies³.

¹ GARRO, A. M. Acesso à Justiça para pobres na América Latina. *In*: MÉNDEZ, J.; O'DONNELL, G.; PINHEIRO, P. S. (ed.). **Democracia, violência e injustiça**: o não-estado de direito na América Latina, 1999, p. 307-335. SMULOVITZ, C. Legal inequality and federalism: Domestic violence laws in the Argentine Provinces. **Latin American Politics and Society**, 2015.

² KAPISZEWSKI, D.; TAYLOR, M. M. Compliance: conceptualizing, measuring, and explaining adherence to judicial rulings. **Law & Social Inquiry**, 2013.

³ TAYLOR, M. M. The judiciary and public policies in Brazil. **Dados**: Revista de Ciências Sociais, 2007, p. 229.

Discussions about the judicial protection of SER⁴ have been concerned with the possible gains from litigation⁵. While some authors point to the preservation of the social inequalities, which persist in the judicial system with their selective access to justice⁶; others point to symbolic effects and structural changes, which can benefit the general population, beyond the individuals duly represented in the courts⁷.

⁴ BRINKS, D. M.; GAURI, V. **Courting social justice: Judicial Enforcement of Social and Economic Rights in Developing World**, 2008. BRINKS, D. M.; GAURI, V. The Law's Majestic Equality? The Distributive Impact of Litigating Social and Economic Rights. **Policy Research Working Paper**, 2012. BRINKS, D. M.; FORBATH, W. Commentary: Social and Economic Rights in Latin America - Constitutional Courts and the Prospects for Pro-poor Interventions. **Texas Law Review**, 2011. BRINKS, D. M.; FORBATH, W. The Role of Courts and Constitutions in the New Politics of Welfare in Latin America. *In*: PEERENBOOM, R.; GINSBURG, Tom (ed.). **Law and Development of Middle-Income Countries**, 2013. GLOPPEN, S.; SIEDER, R. Courts and the marginalized: Comparative perspectives. **International Journal of Constitutional Law**, 2007. GLOPPEN, S.; GARGARELLA, R.; SKAAR, E. **Democratization and the Judiciary: The Accountability Function of Courts in New Democracies**, 2004.

⁵ BIEHL, J. *et al.* Between the court and the clinic: lawsuits for medicines and the right to health in Brazil. **Health and Human Rights Journal**, 2012, p. 36.

⁶ FERRAZ, O. L. M. Brazil: Health Inequalities, Rights and Courts: The Social Impact of the Judicialization of Health. *In*: YAMIN, A. E.; GLOPPEN, S. **Litigating health rights: can courts bring more justice to health**, 2011. FERRAZ, O. L. M. Between Usurpation and Abdication? The Right to Health in the Courts of Brazil and South Africa. **SSRN**, 21 ago. 2009. FERRAZ, O. L. M. Harming the poor through social rights litigation: lessons from Brazil. **Texas Law Review**, 2010. FERRAZ, O. L. M. Brazil: Are Collective Suits Harder to Enforce? *In*: LANGFORD, M.; RODRIGUEZ-GARAVITO, C.; ROSSI, J. (ed.). **Social Rights Judgments and the Politics of Compliance**, 2017, p. 177. FERRAZ, O. L. M. Moving the debate forward in right to health litigation. **Health and human rights**, 2016, p. 265. FERRAZ, O. L. M.; VIEIRA, F. S. Direito à saúde, recursos escassos e equidade: os riscos da interpretação judicial dominante. **Dados**, 2009.

⁷ BRINKS, D. M.; FORBATH, W. Commentary: Social and Economic Rights in Latin America - Constitutional Courts and the Prospects for Pro-poor Interventions. **Texas Law Review**, 2011.

In Brazil, studies on the judicial protection of social policies are well-recognized: health⁸, education⁹ and social assistance¹⁰. Under the federal system, these relationships between individuals and institutions are less known.

The study used a mixed methods approach to identify trends in lawsuits and the role of the federal judicial system institutions like the DPU as methodology. The chapter presents the following sections: after this introduction, the theoretical framework discusses the role of courts and

⁸ FERRAZ, O. L. M. Brazil: Health Inequalities, Rights and Courts: The Social Impact of the Judicialization of Health. *In*: YAMIN, Alicia Ely; GLOPPEN, Siri. **Litigating health rights**: can courts bring more justice to health, 2011, p. 76-102. WANG, D.; FERRAZ, O. L. M. Reaching Out of the Needy? Access to Justice and Public Attorneys' Role in Right to Health Litigation in the City of São Paulo. **SUR - Revista Internacional de Direitos Humanos**, 2013, p. 159-179. WANG, D. *et al.* Os impactos da judicialização da saúde no município de São Paulo: gasto público e organização federativa. **Revista de Administração Pública**, 2014, p. 1191-1206. DINIZ, D.; MACHADO, T. R. de C.; PENALVA, J. A judicialização da saúde no Distrito Federal, Brasil. **Ciência & Saúde Coletiva**, 2014, p. 591-598. TRAVASSOS, D. V. *et al.* Judicialização da Saúde: um estudo de caso de três tribunais brasileiros. **Ciência & Saúde Coletiva**, 2013, p. 3419-3429. ANDRADE, E. I. G. *et al.* A judicialização da saúde e a política nacional de assistência farmacêutica no Brasil: gestão da clínica e medicalização da justiça. **Revista Médica de Minas Gerais**, 2008, p. S46-S50. BARCELLOS, A. Sanitation rights, public law litigation, and inequality: A case study from Brazil. **Health and Human Rights Journal**, 2014. HOFFMANN, F.; BENTES, F. Accountability for Social and Economic Rights in Brazil. *In*: BRINKS, D. M.; GAURI, V. (ed.). **Courting social justice**: Judicial Enforcement of Social and Economic Rights in Developing World, 2008, p. 100-145. OLIVEIRA, V. E.; NORONHA, L. Judiciary-Executive relations in policy making: the case of drug distribution in the State of São Paulo. **Brazilian Political Science Review**, 2011, p. 10-38. PEPE, V. L. E. *et al.* A judicialização da saúde e os novos desafios da gestão da assistência farmacêutica. **Ciência & Saúde Coletiva**, 2010, p. 2405-2414. WANG, D. *et al.* Os impactos da judicialização da saúde no município de São Paulo: gasto público e organização federativa. **Revista de Administração Pública**, 2014, p. 1191-1206.

⁹ SILVEIRA, A. A. D. A exigibilidade do direito à educação básica pelo Sistema de Justiça: uma análise da produção brasileira do conhecimento. **Revista Brasileira de Política e Administração da Educação**, 2008, p. 537-555. *Idem.* Judicialização da educação para a efetivação do direito à educação básica. **Jornal de Políticas Educacionais**, 2011, p. 30-40. CORRÊA, L. A. **Judicialização da política pública de educação infantil no Tribunal de Justiça de São Paulo**, 2014. RODRIGUES, R. V.; OLIVEIRA, V. E. de. Judicialização da política de educação: interações Judiciário-Executivo em São Bernardo do Campo (SP). **Revista Brasileira de Iniciação Científica**, 2017. BOESSIO, A. P. **Padrões de variação e determinantes da judicialização da educação infantil nos municípios do estado do Rio Grande do Sul (2011-2016)**, 2021. BRANDÃO, T. **Direito à Educação Infantil de 0-3 anos de idade: a judicialização na perspectiva do gestor da escola**, 2015. CURY, C. R. J.; AMARAL, C. T. O direito à educação básica: análise inicial dos julgamentos do Tribunal de Justiça de Minas Gerais. *In*: CONGRESSO IBERO-AMERICANO DE POLÍTICA E ADMINISTRAÇÃO DE EDUCAÇÃO, IV. **Anais [...]**, 2014. OLIVEIRA, V. E.; SILVA, M. P.; MARCHETTI, V. Judiciário e Políticas Públicas: a judicialização da educação infantil em São Paulo. **Educação & Sociedade**, 2018. OLIVEIRA, V. E.; MARCHETTI, V. Judiciário e o controle sobre as Políticas Públicas: a judicialização da educação no município de São Paulo. **Encontro Nacional da Anpocs**, 2013. FREITAS, L. B. As decisões judiciais e as políticas públicas sobre a educação no Estado de São Paulo. **Mediações - Revista de Ciências Sociais**, 2016, p. 145-166. IVO, A. B. L.; SILVA, A. B. de A. O hiato do direito dentro do direito: os excluídos do BPC. **Revista Katálysis**, 2011, p. 32-40.

¹⁰ BICCA, C. S. O ativismo judicial no controle das políticas públicas: o caso da assistência social no Brasil. **Publicações da Escola Superior da AGU**, 2012. SANTOS, W. R. dos. Deficiência e democracia: a interpretação do Poder Judiciário sobre o Benefício de Prestação Continuada, 2009.

the justice system in guaranteeing rights and public policies, especially in Latin America; second, the DPU's role in the protection of human rights and vulnerable groups; third, the analysis of the protection of social and economic rights in the federal courts, focusing on the Federal Public Defender's Office; lastly conclusions.

1. THEORETICAL REFERENCES

Discussions on the role of the courts and the justice system in guaranteeing rights, and consequently their involvement in social policies is a broad research agenda, the result of extensive debates on the Rule of law, constitutionalism and democracy, and access to justice in Latin America.

Despite a lack of prioritization, it increasingly encompasses themes and researchers, dividing opinions on the role that judiciaries should play in enforcing economic and social rights. The orthodox view of the positive orientation of these rights, keeping them as mere aspirations or as programmatic and non-enforceable goals, collides with a human rights orientation endorsed by multilateral agencies¹¹. For the provision of health and education in developing countries as well as social rights¹².

During the third wave of democratization, more and more substantive rights were enshrined in constitutions, with courts being the paradigm institutions for identifying and responding to violations of those rights, but the capacity of these institutions to act for marginalized groups - and more than that, to understand what kind of vulnerability is being addressed - has always been unknown.

Most of the time, courts limit themselves to applying the law, seldom engaging in the judicial reshaping of existing legal norms. As a result, it

¹¹ At the international level, the defense of the trajectory of economic and social rights and their capacity for justiciability have been debated, defending the argument that "a new international adjudicative mechanism is necessary to validate those rights proceeds from equally dubious contentions. Formalistic demands that economic, social and cultural rights must be treated the same as civil and political rights, and must, therefore, be 'justiciable' in the same sense, are equally flawed". DENNIS, M. J.; STEWARD, D. P. Justiciability of economic, social, and cultural rights: should there be an international complaints mechanism to adjudicate the rights to food, water, housing, and health? **American Journal of International Law**, 2004.

¹² GAURI, V. Social rights and economics: claims to health care and education in developing countries. **World Development**, 2004.

is reinforcing existing patterns of social exclusion. However, on occasion, courts – particularly constitutional courts – have sought actively to improve the conditions of marginalized groups that have, in one way or another, been left behind by the political system.

Is there a difference between moral and economic marginalization? Between groups that are vulnerable in society and not treated as full citizens and those that are politically weak who are stigmatized? And what is the significance of support structures and the availability of resources for litigation and advocacy?¹³

Despite the advances from the institutional point of view, access to justice has always been the Achilles' heel given the significant difference between the formal outlook and the social realities of Latin American countries, especially when the concern is about establishing justice for the lower strata of the population, traditionally excluded from any possibility of accessing the courts, for the lack of free legal aid services.

The institutionalization of public defenders throughout the continent was a process developed throughout the decade of 1990. Despite the differences between the institutions created, it can be said that efforts to establish legal aid services on the continent have resulted in improvements in the population's access to justice.

Access to justice as an agenda for Latin American judicial policy has been associated with matters of criminal law, with legal services aimed at the equal promotion of the right of defense in criminal justice¹⁴. From the 2000s onwards, free legal aid services underwent processes of institutional reform and empowerment, expanding coverage for the civil, labor, childhood and youth areas, among others¹⁵.

The strengthening movement of Latin American defenders is characterized as an instrument of democratization and promotion of equality¹⁶. The

¹³ GLOPPEN, S.; SIEDER, R. Courts and the marginalized: Comparative perspectives. **International Journal of Constitutional Law**, 2007, p. 183-186.

¹⁴ CHAUCA, N. P. **Avances y Desafíos de las Defensorías Públicas para garantizar el acceso a la justicia en las Reformas Procesales Penales en América Latina**, 2007.

¹⁵ GELISKI, L. **Rede de atores, ideias e agendas: o papel das associações de defensores e de defensorias em seu processo de fortalecimento institucional na América Latina**, 2018, p. 72-73.

¹⁶ HAMMERGREEN, L. **Envisioning reform: improving judicial performance in Latin America**, 2007.

improvement of the policies of access to justice is linked to policies to fight inequality, and its development should confront other social problems, such as poverty, democratic instability, social inequality.

Brazilian public defenders are included in this context. The institutional reform movements resulting from Constitutional Amendment no. 45 of 2004, called Reform of Judiciary, and Complementary Law 132 of 2009, sought to grant autonomy and institutional independence and extend the competencies of these services in matters of human rights, diffuse and collective rights, with the possibility of DPs interposing Public Civil Actions.

Not only did Brazil reproduced, but to a certain extent, it was the leader behind the continent's agenda by disseminating the free public defender model as a constitutional guarantee of access to justice. This came with the 1988 Constitution and its establishment as an instrument for the enforcement of justice and promotion of social rights, incorporating the values of social equality, economic and cultural development, while consolidating the expansion of justice for the protection of collective rights, also for the expansion of access to justice, namely through innovations in the judicial structure.

Over the last four decades, the country has built an institutional model of guaranteeing access to justice through the dissemination of state public defenders that covers all Brazilian states, granting autonomy and independence, a significant increase in the number of defenders and institutional guarantees. This process was followed within the federal justice system, with the institutionalization of the Federal Public defender's Office (DPU).

Despite the advances, the concern of many studies on access to justice and economic and social rights through the courts, including the theme of the judicialization of social policies, remains the extension of rights to the lower classes of the population and their effects.

It is possible, on the one hand, to draw a new role for the courts and actors of the judicial system concerning the protection of growing social protection systems in Latin American countries, in a process named by the authors as courting social justice. On the other, it questions the role that law has played in social relations, becoming a source of rights and responsibilities,

although still reproducing the inequalities typically found in our Latin American societies¹⁷, for example.

This extensive agenda seeks to understand the role of the courts in establishing social justice, while elucidating the fact that unequal societies have considerable gaps in law practice, resulting in a rupture between formal legality and practical reality¹⁸ and sometimes pointing to possibilities for activism, to achieve social justice. The debate about the protection of social and economic rights (SER) has been concerned with the possible gains from litigation. While some more critical analyses point to the preservation of inequalities traditionally found in Latin American countries, which persist in the judicial system with their selective access to justice¹⁹, others point to symbolic effects and structural changes that may benefit the population in general, in addition to the actors duly represented in the courts²⁰ Brinks and Gauri²¹, for example, analyze the involvement of institutions of the justice system in the policy-making process by asking for the meaning of these interventions in terms of a revolution of rights, discussing the importance of litigation strategies and their channels of access, trying to understand why it is more frequent and prominent in some countries and areas than other countries.

Another interesting aspect concerns the capacity of intervention of the courts on economic and social rights to respond to extreme poverty and deprivation. Are these lawsuits favoring the high classes, with a judiciary representing the conservative interests of the elites?

Using the concept of legalization, the authors decompose the public policy litigation cycle into four stages: (a) legal mobilization; (b) judicial decision; (c) bureaucratic, political or private response; (of) litigation follow-up.

¹⁷ BRINKS, D.; BOTERO, S. Inequality and the rule of law: ineffective rights in Latin American democracies. *In*: BRINKS, D.; LEIRAS, M.; MAINWARING, S. (ed.). **Reflections on Uneven Democracies: The Legacy of Guillermo O'Donnell**, 2014, p. 214-239.

¹⁸ KAPISZEWSKI, D.; TAYLOR, M. M. Compliance: conceptualizing, measuring, and explaining adherence to judicial rulings. **Law & Social Inquiry**, 2013, p. 803-835.

¹⁹ FERRAZ, O.; MOTTA, L. Brazil: Health Inequalities, Rights and Courts: The Social Impact of the Judicialization of Health. *In*: YAMIN, A. E.; GLOPPEN, S. (ed.). **Litigating health rights: can courts bring more justice to health**, 2011, p. 76-102.

²⁰ BRINKS, D. M.; FORBATH, W. Commentary: Social and Economic Rights in Latin America - Constitutional Courts and the Prospects for Pro-poor Interventions. **Texas Law Review**, 2011.

²¹ BRINKS, D. M.; VARUN, G. The Law's Majestic Equality? The Distributive Impact of Litigating Social and Economic Rights. **Policy Research Working Paper**, 2012.

The product of this four-stage process is what we call the legalization of policy in a particular policy area. We understand policy legalization to be the extent to which courts and lawyers, including prosecutors, become relevant actors, and the language and categories of law and rights become relevant concepts, in the design and implementation of public policy. Legalization in this sense is self-evidently a continuous concept and quite often a difficult one to measure with any degree of precision, but this definition is broad enough to capture most of what is interesting about the role of law and courts in the policy arena and yet specific enough to guide our inquiry²².

The legalization, unlike the analysis of the isolated performance of the courts, is the participation of legal actors and the use of legal concepts in the process of policy making, including the process of decisions by the parties to the process²³.

For the authors, the type of legalization differs from the political channels of demand (access channels and the different relations to coerce and persuade power, tending to prioritize a different set of demands of the political process) and the types of resources needed to anchor them effectively. Some of these demands privileged the dispossessed and marginalized, while others may serve the interests of political and economic elites and the middle classes, who can clothe their private interests and claim for economic and social rights²⁴.

Brinks and Gauri argue that there are three types of actors involved in the production and distribution of economic and social rights and services: the state, providers, and clients (citizens or beneficiaries). They call this triangle relationship between economic and social rights, involving the three actors and three types of actions: regulation, provision or financing and private obligations.

The authors analyze four bottlenecks found in the process of legalization by the courts: the decision and the legal mobilization necessary to propose the action before the courts, the judicial decision, the response or compliance given by the defendant, and the responses of the new actors and the claim to

²² BRINKS, D. M.; VARUN, G. **Courting social justice**: Judicial Enforcement of Social and Economic Rights in Developing World, 2008.

²³ *Ibidem*, p. 4.

²⁴ *Ibidem*, p. 6.

the new policy environment itself. For the whole process to occur, the actors assume some conditions: there are sufficient levels of social mobilization to produce substantial amounts of litigation; there are minimally autonomous judiciaries that can serve as a pathway to demands before the state and non-state actors, which is usually related to democratic contexts; the levels, objectives, and form of legalization for economic and social rights are the results of calculations and strategic capabilities of the actors involved in the process (individual and collective litigants, judges, bureaucrats, politicians and corporate decision makers).

However, in the countries analyzed are the explicit constitutionalization and judicialization of SE rights that support different levels and types of legalization.

We would expect more judicial support and, hence, more legalization where there is a greater development of constitutional and legislative frameworks concerning social and economic rights. It is also possible to verify that judicial independence counts, especially about the litigation that directly involves the state. Judicial support is likely to be essential to the legalization of a particular policy area. If access is difficult and expensive, or if the judiciary is likely to be unsupportive, a rudimentary cost-benefit calculation will dissuade many actors from pursuing legal claims²⁵.

It is not enough to have only political support and favorable judging behavior. Legalization depends on professional legal assistance:

A “rights revolution” will only happen, in this view, if claimants can count on (a) litigation-oriented organizations that can support a lengthy and strategically planned litigation campaign; (b) extensive charitable or state funding and (c) public interest or rights-oriented lawyers who can do the legal work. [...] The presence of Epp-style public interest organizations, then, will likely be associated not with the number of claims or the scope of their impact, but with the presence of beneficiaries from marginalized classes and groups²⁶.

²⁵ BRINKS, D. M.; VARUN, G. **Courting social justice**: Judicial Enforcement of Social and Economic Rights in Developing World, 2008, p. 18.

²⁶ *Ibidem*, p. 15.

It also depends on the infrastructure of public policies, which varies per country and even per area of social policies. Courts will be more active in those policy areas, claims, and countries where there are pre-existing public policy structures.

[...] In summary, there will likely be more litigation for the provision of services against the state when there is underutilized state capacity and against providers when they are economically strong. [...] When there are limited state resources to provide services, litigants might still bring claims for greater or different state regulation, rather than direct state provision. When the state is weak, litigants might demand, and courts might impose, additional obligations on private providers or market competition to improve service quality and lower prices²⁷.

On this account, patterns of legalization will follow the path of least resistance, shifting according to the limits of state and bureaucratic capacity, provider feasibility, and political tolerance. In more concrete terms: in a weak state context, we would expect courts and litigants to emphasize regulation and private obligations; in stronger states, with more infrastructure already in place, we would expect more cases and decisions imposing direct duties on the state to provide services²⁸.

Finally, there remains the last phase of the legalization process, which concerns compliance²⁹:

Follow up litigation is essential for the level and impact of legalization, with or without voluntary compliance with the original judicial decision. In the absence of voluntary compliance on the part of the target of litigation, the importance of follow up is obvious – no compliance and

²⁷ BRINKS, D. M.; VARUN, G. **Courting social justice: Judicial Enforcement of Social and Economic Rights in Developing World**, 2008, p. 19.

²⁸ *Ibidem*, p. 19.

²⁹ Compliance effects can be felt by both direct litigants and non-litigants, as well as in the justice system itself. In terms of direct effects, the authors argue that the benefits will focus on everyone who has some sort of personal resource and access to state services. In this case, those who already have resources may benefit, using judicialization as a means of accessing public funds, while through charitable intervention and state funding it is possible for indigent litigants to mitigate the potentially regressive effect of individual litigation. About non-litigants, there is also no guarantee that these effects will go to the unprivileged, as there is a clear division in the use of public services in developing countries, with lawsuits focusing more on areas and sectors used by the middle and upper classes, such as health care (high-level services, hospitals) and higher education.

no enforcement activity mean judicial opinions remain parchment victories, suitable for framing and little else. [...] Even decisions that produce some measure of compliance gain in importance from follow-up decisions. [...] As a result, where initial favorable decisions meet with voluntary compliance, there might well be an exponential growth of legalization; where they meet with resistance, there will be either a much lower but steady volume of enforcement litigation³⁰.

The processes of legalization, as we have shown above, are based on several factors, such as the constitutionalization or legal guarantee of the rights, the structure, organization and financing of the litigants, the political, bureaucratic, civil society and legal culture support given to the judges, as well as on the social impact of decisions. “Courts are, for dozens of reasons, more effective when working within, rather than against, the dominant currents in the political and policy environments”³¹.

However, three obstacles may further require cuts in the legalization process of SE rights: when there are (a) political blockades that can prevent government responses to popular demands, creating room for the courts to generate more responsiveness and accountability between voters and governments; (b) monitoring deficits that lead to lack of information, effective incentives or sanctions, bureaucratic inability and implementation inertia; (c) incomplete commitments, clientelist or based on particularisms, which lead to failures in the provision or delivery of services in a universal manner. In this last case “social movements excluded from clientelist networks or policy distribution may arise and mobilize on the basis of the official rights discourse”³².

Substantial legalization is, therefore, more likely when the courts are (a) engaging in one of these three ideal types of accountabilities enhancing activities, (b) within a well-functioning democratic context, and (c) acting in response to the demands of relatively developed economies and societies³³.

³⁰ BRINKS, D.; VARUN, G. **Courting social justice**: Judicial Enforcement of Social and Economic Rights in Developing World, 2008, p. 20.

³¹ *Ibidem*, p. 26.

³² *Ibidem*, p. 27.

³³ *Ibidem*, p. 28.

According to Brinks and Gauri, public interest litigation thrives and produces real-world effects when there is a positive balance between litigants and state, social, and political conditions: (a) a well-developed policy infrastructure with latent capability; (b) an electorate with substantive legal capacity; and (c) substantial support from politically influential actors - governmental and social - for action.

Under these conditions, judicial intervention becomes not a substitute for, but a complement to, the democratic process of policy development and service delivery monitoring³⁴.

From the findings, the authors demonstrated how much simpler it has been to secure individual remedies than collective ones (particularizing the universal and not universalizing the individual). However, even in the granting of individual rights, there is scope for extending rights, modifying legislation, extending policy-making structures, changing practices and providers to benefit more individuals. “As a result, we do see courts occasionally acting as catalysts for change that affects populations far beyond direct judicial influence”³⁵.

They also show the considerable variation found between countries, between areas and even between different subnational levels. Thus, in the health area, there is much more litigation than in the field of education, just as wealthier states tend to have more litigation than weaker states (see Brazil’s example). Finally, the findings of who benefits from the process of legalization of economic and social rights point to two primary mechanisms by which legislation can have a regressive effect on the distribution of public services.

The first is the beneficiary inequality, in which courts determine who benefits from universal programs - if it is true that only the upper classes, the rich, have access to justice and the courts, they alone will benefit directly from judicial allocation, which means that in this scenario the courts will be acting to promote services that are formally/legally available to all, but in practice accessible only to those who can benefit from lawyers and litigation. The second mechanism is the policy area inequality, in which the wealthy

³⁴ BRINKS, D.; VARUN, G. **Courting social justice: Judicial Enforcement of Social and Economic Rights in Developing World**, 2008, p. 306.

³⁵ *Ibidem*, p. 305.

use the courts to focus on the issues that are important to them, and block government efforts to address the problems that are important to the poor majority.

However, when looking at the direct beneficiaries, we can see that these do not belong to the most disadvantaged or the upper classes, and the middle classes are promoting the process of legalization in the countries investigated.

2. THE PROTECTION OF SOCIAL AND ECONOMIC RIGHTS BY THE FEDERAL PUBLIC DEFENDER'S OFFICE

The role of the Federal Public Defender's Office (DPU) seems fundamental to the process of judicialization of SER, by its action through the proposition of individual actions and collective actions. In this chapter, we examine the role of the DPU in legal representation in cases of social policies in the five federal regional courts, as we present the institutional development scenario and its impact on the protection of rights, protection of vulnerable groups and social rights.

In judicial matters, referring to the claims that made up the database of social policies in the federal regional courts in the period from 2003 to 2014, we find the preponderance of lawsuits aimed at ensuring access to health reveals the reproduction in the literature when investigating the international and national scenarios of the state courts³⁶.

The search for the supply of medicines as a right and duty emerges in more than half of the cases, setting the federal government in the defendant's side, but also demanding the accountability of municipalities with a greater focus on the exchange of competencies with the state. In this sense, municipalities and states correspond respectively: recurring parties, municipalities (14.9%) and states (25.2%); as defendants, municipalities (17.5%) and states (20.18%). The analysis of the drugs and health treatments required for some diseases reveals patients at risk of death³⁷.

³⁶ MADEIRA, L. M.; GELISKI, L. Políticas sociais nos tribunais intermediários: Tribunais Regionais Federais em evidência. *In*: FUNDAÇÃO KONRAD ADENAUER. **Anuario de Derecho Constitucional Latinoamericano**, 2017, p. 305-326.

³⁷ The plaintiffs are carriers of malignant neoplasms (liver, stomach, mammary, prostate, stomach, pancreas, colon, gallbladder, carcinomas, leukemias, Rodkin), syndromes such as HIV AIDS, progressive muscular

In this sense, if the literature points to a typology that explains the judicialization in health in the state courts, we can illustrate this federal outlook of claims from a new classification, consisting of four major types of demands³⁸: (1) lawsuits that place citizens and State in opposing sides, when they request the supply of medicines, beds, and surgical procedures. There are cases of medicines registered by the National Health Surveillance Agency (ANVISA)³⁹ not provided by the State because they are not on the lists of free medications, generally accepted; and cases of medicines not registered by ANVISA, generally rejected; (2) collective actions by groups of patients who demand the same rights; (3) claims that oppose health care providers and the State, which requires reimbursement by health services provided by public or private agencies to ensure beneficiaries, generally deferred; and (4) lawsuits seeking indemnity liabilities to the patients who were poorly served in public hospitals⁴⁰.

Although to a lesser extent, other social policy claims encountered are those related to education through litigation for access to higher and primary education. Although these claims do not emerge in our database, interviews give an account of a process of judicialization in social assistance and housing. The case of BPC is better known, and the *Bolsa Família* and the *Minha Casa Minha Vida* programs are also subject to litigation.

We will see in the next section the judicial action by the DPU in other sectors of public policies, especially from public civil actions, and extrajudicial ones.

dystrophy, Phenylketonuria, Paget's disease, Caroll disease, traumatic diseases such as arthrosis, rheumatoid arthritis, ankylosing spondylitis, hepatitis B and C, renal and hepatic insufficiencies, autoimmune diseases such as lupus erythematosus and Fabry's disease). The surgical procedures required are focused on these diseases, as well as highly complex surgeries like bariatric ones.

³⁸ This classification was proposed in a paper previously mentioned, whose objective was "to know the patterns of performance and relationship between institutions and actors of the Justice System - Judiciary, Public Prosecutor's Office and Public Defender's Office", having as object social policies and their treatment in federal regional courts". MADEIRA, L. M.; GELISKI, L. Políticas sociais nos tribunais intermediários: Tribunais Regionais Federais em evidência. *In*: FUNDAÇÃO KONRAD ADENAUER. **Anuario de Derecho Constitucional Latinoamericano**, 2017, p. 307-308.

³⁹ The Brazilian FDA.

⁴⁰ MADEIRA, L. M.; GELISKI, L. Políticas sociais nos tribunais intermediários: Tribunais Regionais Federais em evidência. *In*: FUNDAÇÃO KONRAD ADENAUER. **Anuario de Derecho Constitucional Latinoamericano**, 2017, p. 305-326.

Based on the lawsuits investigated⁴¹, there is an indication of the increase of the DPU's performance in the representation of claimants in the TRFs over the last years. We find that for the five TRFs the DPU presents itself as the prosecutor of one of the parties (appellants or defendants) in 36.1% of the lawsuits⁴² however, the DPU does not have a general rule for meeting health demands⁴³. In some DPU state units, there are informal agreements between federal and state public defenders depending on the institutional relationship of the unit with local actors (DPE, MP, municipality and state executives, health committees, etc.).

As a rule, the main demands addressed by the DPU are cases involving the treatment of patients with HIV AIDS, the supply of drugs to fight cancer along with medication and treatment of high cost and complexity. The demands of the DPU can also be induced by street-level bureaucrats (doctors and health professionals) and, in a subsidiary way, by the state's public defenders when the unit is overcrowded. This fact is interesting because it shows, once again, how the federal setting of the judicialization is different from the state and even other countries whereby the provision assumes a more liberal model causing a demand for broader consumer rights than the one found in TRFs, where the search for SER and services from the State directly prevails.

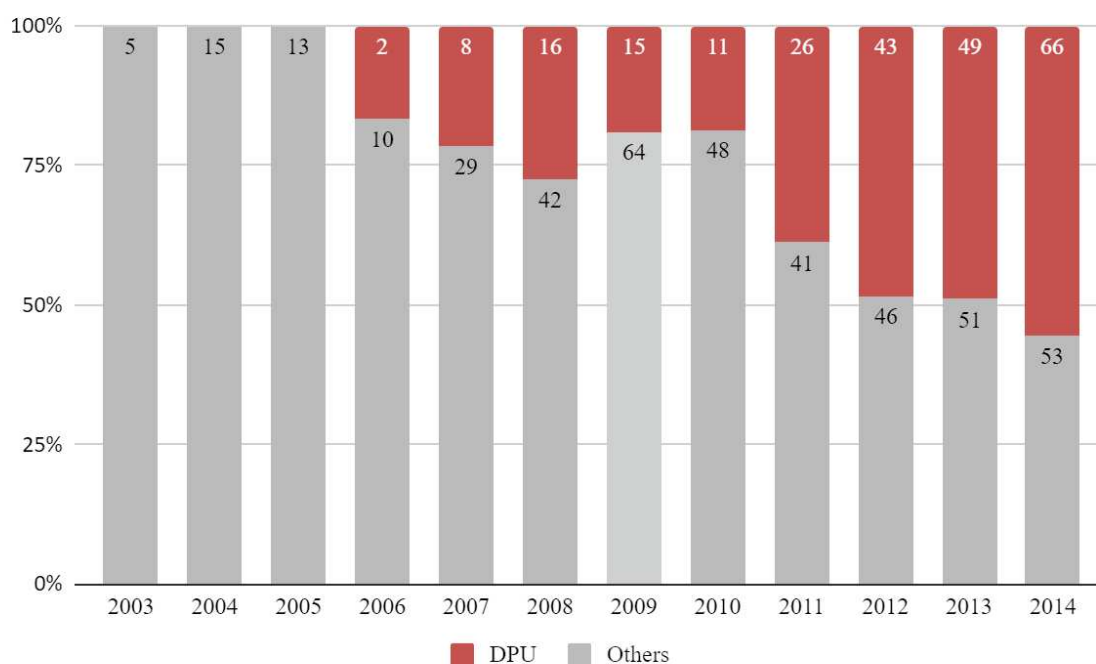
An analysis of the performance trajectory of the DPU in the Federal Courts demonstrates a scenario of growth. By 2003, we did not find any DPU claims. The participation started timidly with two cases in 2006 and progressively reached 66 cases in 2014. Between 2012 and 2013, the number of lawsuits with and without DPU participation is almost the same, and from 2014 on the DPU becomes responsible for more than 50% of the lawsuits.

⁴¹ Our database relies on six hundred and ninety-six (696) judicial decisions on social policies of the five Federal Regional Courts between 2003-2014: 90 decisions of TRF1, 153 of TRF2, 46 of TRF3, 234 of TRF4 and 173 of TRF5. The search was done through the keyword social policies in the menu of the judgments.

⁴² MADEIRA, L. M.; GELISKI, L. Políticas sociais nos tribunais intermediários: Tribunais Regionais Federais em evidência. *In*: FUNDAÇÃO KONRAD ADENAUER. **Anuario de Derecho Constitucional Latinoamericano**, 2017, p. 305-326.

⁴³ As a rule, the DPU provides full and free legal assistance to persons with a gross family income that does not exceed the total amount of R\$ 2,000.00, according to the Resolution CSDPU No. 134/2017.

Graph 1 – Participation of the DPU in the representation of the assisted in the Second Degree of Jurisdiction per year⁴⁴



An analysis by TRFs and regions⁴⁵ related to the DPU's performance reveals the role of the institution in TRF2 with 59% of lawsuits, likely due to the level of organization and coordination among the defenders, being the state's earliest defendant. However, it draws attention to the scenario in TRF5, which brings together states with the lowest levels of income, higher Gini coefficient, lower levels of longevity and participation of the institution in 53% of the lawsuits. TRF1 is the second in defense, but with very different performances in each of the 14 states. TRF4, whose states have quite high levels of development, stands out due to the low performance of the DPU, and finally the TRF3, practically with no action by the institution. This is interesting because the literature is used to know about the two contexts

⁴⁴ Adapted from the graph used in: MADEIRA, L. M.; GELISKI, L. Políticas sociais nos tribunais intermediários: Tribunais Regionais Federais em evidência. In: FUNDAÇÃO KONRAD ADENAUER. **Anuario de Derecho Constitucional Latinoamericano**, 2017, p. 321.

⁴⁵ This same analysis by states shows that Acre, Goiás, Pará and Piauí had all actions filed by the DPU, Rio Grande do Norte 85% of the cases, Bahia, Rio de Janeiro and Pernambuco about 60% of the cases, Espírito Santo and Tocantins half of 40% of cases, Rio Grande do Sul about 30% of the cases, Ceará with 20%, Santa Catarina with 11%, Paraná with 8%, São Paulo with 5%, Paraíba with 2% and the remaining without DPU performance.

with less participation of DPU: the states of São Paulo (TRF3) and Rio Grande do Sul (TRF4)⁴⁶.

The growth of DPU's participation came in response to the institution's expansion of its competencies with LC 132/2009 and the increase in human resources. The DPU budget data shows a rise over the years in the period of 2009-2014, from R\$158,582,572.00 (R\$134,616,663.00 executed) to R\$364,699,742.00 (R\$364,446,877,00 executed)⁴⁷. In relation to the performance, there was an upward movement in terms of lawsuits (from 243,014 in 2009 to 643,644 in 2015), and attendance (808,469 in 2009 to 1,611,252 in 2016), while since 2016 we have a decrease in the number of lawsuits filed, probably because of the investment in extrajudicial resolutions.

Once in this chapter, we are especially interested in the protection of vulnerable populations who are targeted by the DPU, such as the elderly, people with disabilities, the people in poverty, the black, the indigenous, the women, the children, the LGBT, the prisoners and ex-offenders, the homeless and the migrants. Despite the target, our analysis in the judicial actions found only references to aged plaintiffs (64 lawsuits), children and adolescents (25 lawsuits), women (7 lawsuits), only one lawsuit dealing with the LGBT, and no references were found to the black, the indigenous, the graduates, the homeless nor the migrants. What is its significance? Therefore, we need to investigate the significance of this finding: if such vulnerabilities are protected, but are not exploited in legal documents, or whether the criterion of income definitively turns out to be a marker that only privileges the economic vulnerability. Research on the socio-sanitary profile of the plaintiffs, straight from the database of the DPU will allow elucidating this question better.

If individual actions are already well known, the next section will give attention to collective and public civil actions promoted seeking the implementation of rights and public policies to benefit large population plots.

⁴⁶ Attached is a chart with the demands met by the DPU in the TRFs in each Brazilian state, including social indicators.

⁴⁷ GONÇALVES, G. V. O.; BRITO, L. C. S.; FILGUEIRA, Y. von G. S. **IV diagnóstico da Defensoria Pública no Brasil**, 2015, p. 94.

3. DPU's role in the protection of human rights and vulnerable groups

Brazilian literature is critical of the role of the judiciary in guaranteeing rights, especially to the most vulnerable groups. Much of the literature questions the use of the judicialization concept, the inability to account for a complex phenomenon that encompasses different forms of justice institutions.

Brinks, when conceptualizing legalization as a process that encompasses the trajectory of the realization of rights having as intermediary the judiciary and other actors in the justice system, seeks to broaden and overcome this view on the judicialization of public policies: “The legalization, different from the analysis of the isolated performance of the courts, is the participation of legal actors and the use of legal concepts in the process of policy making, including the process of decisions by the parties to the process”⁴⁸. We understand that when looking at the role of the DPU in collective human rights issues, we can perceive this expanded performance, following the concept of legalization and its importance for this type of study.

Looking to the institutional development of Public Defender's Office in the field of social and economic claims and human rights issues we know that since the issuance of Law 11488/2007, the DPU has been entrusted with the task of protecting collective rights, by including it in the list of persons entitled to file public civil actions⁴⁹.

Through 2009, the institution has created several working groups to expand their role in the protection of the vulnerable⁵⁰.

⁴⁸ BRINKS, D. M.; VARUN, G. **Courting social justice: Judicial Enforcement of Social and Economic Rights in Developing World**, 2008.

⁴⁹ “In addition to sparse and pioneering incursions by several colleagues in previous years, the Court of Auditors' ruling 725/2005 already recommended the establishment of “groups of human rights defenders in their Nuclei” and the Ministry of Justice proposal forwarding “amendment in Complementary Law 80/94, in order to confer on the DPU the attributions of proposing public civil actions in the defense of diffuse interests and collective actions.” DEFENSORIA PÚBLICA DA UNIÃO. **Anuário de Atuação Coletiva de Atuação da Defensoria Pública da União**, 2017-2018, p. 9 (our translation).

⁵⁰ Specialization in several themes as a focus of action, from the eradication of slave labor to serving foreign citizens.

In 2014 the Ordinance⁵¹ instituted eight groups specialized in attendance to: prisoners; combating human trafficking; eradication of slave labor; foreign citizens; indigenous communities; homelessness; ensuring food security; and closure of activities in the dumps. In subsequent years, other WGs were created to serve migration and refugees; LGBTI population; home; people with disabilities etc.

With Resolution 127/2016, all DPU members have common competence to solve demands under the collective bias. “In order to organize and qualify this multiplicity of new legitimates in the DPU throughout the national territory, the same Resolution created new figures within the administrative organization of the institution: the Regional Human Rights Defenders (DRDHs) and the National Human Rights Defender⁵² (DNDH)⁵³” (DPU, 2018, 10, our translation).

In this paper, we analyze the outlook of collective action presented in the Collective Performance of the Federal Public Defender’s Office in 2018, after a year of beginning the activities of the national human rights defender (DNDH). We built a database with 107 actions that represent the main cases conducted by the DNDH, according to DPU’s report⁵⁴.

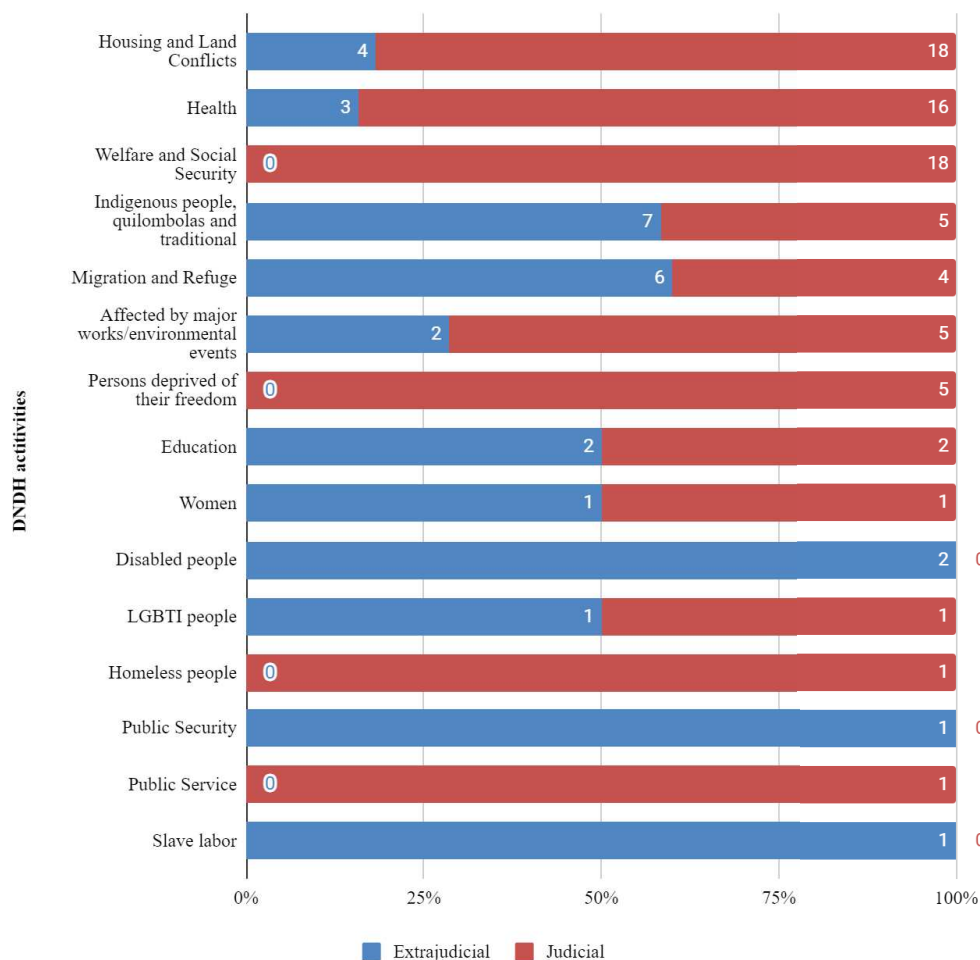
⁵¹ GABDPGF n.º 291, of July 27, 2014.

⁵² The nomenclature of the National Human Rights Defender follows the design proposed by Brazil for the Inter- American Human Rights Defender.

⁵³ DEFENSORIA PÚBLICA DA UNIÃO. **Anuário de Atuação Coletiva da Defensoria Pública da União, 2017-2018.**

⁵⁴ *Ibidem.*

Graph 2 – DNDH activities⁵⁵



The analysis of the collective performance of the DPU per activity and region⁵⁶ of the country reveals that the Southeast and Northeast regions, respectively, correspond to 33.33% and 29.63% of the demands, while the others are Central-West (15.74 %), North (12.96%) and South (8.33%).

⁵⁵ Data extracted from: DEFENSORIA PÚBLICA DA UNIÃO. **Anuário de Atuação Coletiva de Atuação da Defensoria Pública da União**, 2017-2018, p. 17-68.

⁵⁶ In the five regions the following axes stand out: Southeast - housing and land conflicts (9 cases), health (5) and migration and refugee (5); Northeast - indigenous, quilombola and traditional peoples (8) and housing and land conflicts (6); Central West - Assistance and Social Security (5) and health (4); North - housing and land conflicts, health and migration and refugee, each with 3 cases each; and South - Assistance and Social Security and housing and land conflicts, both with two cases each. Looking at Brazilian states, three stand out: São Paulo (12 cases); Federal District (12) and Rio de Janeiro (12).

The data reveal the predominance of the judicial action, as a rule by the Public Civil Action filing, with 71.98% (77 cases). The demands in “welfare and social security” are characterized by judicial activity, so the cases of “housing and land conflicts”. On the other hand, the demands of “migration and refugee” and “indigenous, quilombola and traditional peoples” stand out from extrajudicial action, with the performance of meetings, lifting of demands and partnerships with other governmental institutions and civil society.

In 2018, the area of housing and land conflicts had 23 twenty-three actions, distributed in ten states, reaching a high number of beneficiaries (ranging from 80 to 12,000 people). These actions deal with issues such as the guarantee of the right to housing, resettlement, the suspension of reintegration of possessions and the destination and repair of property damage. In these cases, the policies under discussion are the Minha Casa Minha Vida (PMCMV), Regularização Fundiária Urbana, National Land Credit Program and the National Reform Program. These demands are aimed at extremely vulnerable groups such as victims of landslides, resettled areas for road works, small traders and small farmers, families with children with microcephaly, rural workers camped out, families evicted from PMCMV properties for organized crime. Actions found aimed at the quality of the works of this program. The actors involved were the state defenders, the state and Federal ministries, state governments and municipalities, public banks, universities and other federal agencies, as well as construction companies and civil society associations of residents.

The health area counted on twenty actions (distributed in twelve states), reaching in general indeterminate beneficiaries (users of the National Health System (SUS), and groups of patients with specific diseases). All actions are focused on the SUS or in specific policies, such as the national cancer protection policy, the national policy to provide medicines, procedures and transfer of funds to complete works. Among the actions are public civil actions, procedural succession in actions proposed by the MPF and entry as co-plaintiff. The extrajudicial actions aimed at the resolution involved a meeting with representatives of patients, health secretariats and articulation with state defenders. The actors involved were the National Cancer Institute, the Government, patient associations, state and municipal health secretariats, medical councils, state attorneys and public hospitals.

The area of assistance and social security counted on eighteen actions distributed in nine states, reaching specific social groups such as women of childbearing age, retirees, pensioners, unemployment benefit recipients, children of invalid insured persons, applicants for sickness benefits. All actions involved the National Institute of Social Security (INSS), and most of the action was the filing of public civil actions to compel the INSS to pay or to avoid the suspension of benefits. The actors involved were the DPU and the state defenders, the Accounting Federal Court (TCU), the Ministry of Labor and the INSS.

Indigenous, quilombola and traditional peoples were the subject of twelve actions in seven states, ranging from 67 to 20,000 families, claiming of lands, permanence in communities, territorial identification and titling, land rights, food security and Social Security. The policy in question was the National Policy for the Promotion and Protection of Indigenous Peoples. Among the lawsuits found were public civil actions and defenses in repossession proceedings. The extrajudicial actions involved the INCRA and Palmares Cultural Foundation to survey quilombola communities, articulation with the Indian Missionary Council, visits, meetings and preparation of reports. In addition to these actors, Funai, MPF, state and municipal secretariats, as well as state legislative powers were involved in the actions.

The Migration and Refugee Area filed ten actions in six states, with the National Immigration Policy as its object, with the purpose of regularization of immigration, varied records, exemption from fees and fines, and the provision of social and legal assistance. Venezuelans, Haitians and Africans were targeted. In this area, extrajudicial action is the key, with DPU participating from awareness workshops, work plans, recognition expeditions, meetings with migrant associations, and joint efforts to provide documentation. The actions involved UNHCR, state human rights councils, federal policy, Foreign Relations Ministry, Justice Ministry and state governments and municipalities.

Affected by major works and environmental events, they had the proposition of seven actions, involving different numbers of families and communities. The policy in question is the National Environmental Policy, which is the subject of public civil actions, terms of adjustment of conduct, formalization of judicial agreements, as well as extrajudicial action in partnership with state attorneys and foundations, representatives of those affected, to defend

fishermen, to ensure service to coastal communities, guarantee rights to those affected by dams, maintain reserves, as well as compensate those affected by disasters. The actors involved state defenders, MPF and states and municipalities.

The area of people deprived of their liberty had five actions filed in five different states to protect transsexuals, prisoners holding Severance Indemnity Fund for Employees (FGTS) and specific groups of people. Prison management was the subject of these public civil actions, requesting early protection, meetings with federal agencies, all aimed at securing rights, such as providing hormonal treatment for transsexuals in prison, offering therapeutic residences to persons who are not members of the criminal justice system asylum, ensure FGTS service, quality of food and the right to an intimate visit in federal penitentiaries. Actors involved are: the states, the Ministry of Justice, the Brazilian Office of the Federal Controller General (CGU) and the National Penitentiary Department (DEPEN).

The area of education has proposed only four actions, in four different states, with the National Education Plan as the object. These lawsuits deal with public civil actions to guarantee access to education for hearing impaired people, PROUNI guarantees who are impaired by the closure of colleges and extrajudicial actions in order to regularize the performance of higher education institutions and guarantee of student assistance and housing policies. The actors involved are the Education Ministry, state defenders, higher education institutions and states were the actors involved.

The other vulnerable groups were the object of a much smaller number of collective actions. Although it covers seven areas (women, people with disabilities, LGBTI people, homeless, slave labor, public security and public services), these areas present only ten proposed actions. Regarding the women's area, two actions were proposed. The first one sued for compensation for damages caused to 1,400,000 women from Paraíba/PB for disclosure of an offensive photo. The second action sought to annul the requirement of a Pap smear for the approval of the 2015 competition for INSS analyst and technical positions as a condition for investiture. The actors involved were the INSS, the DPU, the State of São Paulo, the Federal University of Campina Grande and the Federal Government.

The area for LGBTI people presented two actions, both proposals in the State of Rio de Janeiro. The first action aimed at ensuring the right of transsexuals to stay in the Armed Forces. The second action aimed at including, in the 2020 census, statistics on the transgender population throughout the country. The actors involved in both actions were the National Association of Transgender People; IBGE; Working Group on Gender Identity and LGBTI Citizenship of DPU, Federal government, Federal Public Prosecutor's Office and the Brazilian Armed Forces.

The area of people with disabilities presented two actions, one in the State of Maranhão and another in the State of Rondônia. Both actions dealt with issues related to mobility and locomotion based on the National Policy for the Integration of Persons with Disabilities. In the first action were all users of air transportation that present some disability or difficulty to locomotion and in the second, 30,000 people that live in the municipality of Porto Velho/RO. The actors involved were the Brazilian Association of Ergonomics (ABERGO), National Civil Aviation Agency (ANAC), the Public Ministry, the Federal Government and the Municipal Secretariat of Transit, Mobility and Transportation of Porto Velho / RO.

Homeless people and people in slave labor situations were subject to only one action, each. The area of homeless people aimed at the inclusion, in the 2020 census, of statistics on the street population in the country. The actors involved were the Intersectoral Committee for Monitoring and Monitoring the National Policy for Population in Situation (CIAMP-Rua), the Secretariat of Human Rights of the Presidency of the Republic (SDH/PR) and IBGE. However, the action involving the subject of slave labor was proposed in the State of São Paulo and benefited three people and still investigates 180 other denunciations. The action sought to provide full legal assistance to victims of domestic slave labor, including regularization of migration and legal assistance in the individual labor sphere and, in partnership with the Ministry of Labor, found that several domestic workers of Filipino origin were kept in conditions that constitute exploitation of slave labor.

The actors involved were the Ministry of Labor, the National Immigration Council (CNIg), the Federal Government and the State of São Paulo. The area of public security has only one action that was proposed in the State of Rio de Janeiro and aimed at monitoring the actions of the Law-and-Order Guarantee and federal intervention in the State. In its work, the defendant

was supported by the Public Defender's Office of Rio de Janeiro in the request for the establishment of security policy based on human rights respect. The actors involved, besides the DPU and DPE / RJ, were the Federal Government and the State of Rio de Janeiro.

The last area with proposed actions was public services. This issue had only one action aimed at increasing the tariff of orders from the Post Office for the City of Rio de Janeiro, based on the allegation of urban violence, due to the high rate of burglaries. The actors involved were the Brazilian Post and Telegraph Company (ECT), Rio de Janeiro Municipality; the National Consumer Price Index (INPC) and DPU.

FINAL CONSIDERATIONS

The theme of this chapter was the protection of social and economic rights by the Federal Public Defender's Office (DPU), seeking to understand to what extent its institutionalization and dissemination promote changes in the protection of vulnerable groups. We know that, despite the advances, the concern of many studies on access to justice and economic and social rights through the courts, including the theme of the judicialization of social policies, remains the extension of rights to the lower classes of the population and their effects.

In this paper, we were interested in presenting a national study, with a regionalized comparative glance at federal courts and states, because what is best known about litigation in social policies and rights is confined to the few wealthier states of the country.

We also find relevant that, following other studies that have oriented this expansion of the analysis to break with an empirical field exclusively of lawsuits, also looking for the extrajudicial action of the institutions.

For this, we consider that the concept of policy legalization (Brinks and Gauri, 2012) which comprehends a process to be the extent to which courts and lawyers, including public defenders, become relevant actors, and the language and categories of law and rights become relevant concepts, in the design and implementation of public policy, a concept that capture most of what is exciting about the role of law and courts in the policy arena.

For this research, this concept is central because legalization depends on professional legal assistance, it also depends on the infrastructure of public policies, which varies by state and even by area of social policies.

We also found it essential to demonstrate that the performance of the DPU concerning SER protection appears to break the cycle of works that advocate a Brazilian model of judicialization based exclusively on individual actions.

The difference between public policy sectors when we look at legalization processes is evident. The health and education areas continue to operate in the traditional model of individual actions (although greater coordination between Executives and institutions of the justice system is under development, also except for the significant state differences), while other policies, explicitly geared to vulnerable groups, counted almost exclusively with collective remedies and extrajudicial action.

As our research did not allow a comparison of data in time, remaining analyses of lawsuit between 2003 and 2014 and analysis of the collective action from the institutionalization of the national human rights defender from 2017 and 2018, we cannot prove the existence a diversification in the social policy sectors covered by the DPU's actions in legal actions.

However, institutional development, the creation of specialized structures (working groups) and the apparent diversification of issues, rights and policies covered by public civil actions, monitoring evaluation of public policies, extrajudicial action and cooperation with other actors and institutions lead us to believe that the DPU makes a difference. However, where?

If the lawsuit scenario shows us that its performance was preponderant precisely in the states of greater inequality, lower income, longevity and education, that is, it was acting more where it was needed, the human rights work and collective demands in comparison to the socio-economic scenario of these states and regions shows us that the collective performance of the DPU preponderates in the Southeast region, although the Northeast comes in second place, which meets the above findings. When we look at the specific performance of vulnerable groups, we can verify that the action is consistent with regional realities and may reveal gains in the protection of the rights of these social groups. Of course, this scenario is not a panacea, budgetary implications, interferences of judicial bodies in the process of

policy making, as well shown in the literature, can have deleterious effects on policy making.

If literature is peaceful in demonstrating that collective actions are much more effective in terms of compliance and indirect effects, and institutionalizing the DPU as a central actor in guaranteeing rights to the lower strata of the population by expanding access to justice to vulnerable groups in states with low socio-economic indicators reveals the need for this institution. However, the preponderance of collective actions in the Southeast region continue to demonstrate the well-known reproduction of inequality of access to justice.

Otherwise, in a country where extremely vulnerable groups are so vilified, the existence of institutional structures that work to guarantee a minimum of rights is of paramount importance.

REFERENCES

ANDRADE, Eli Iola Gurge *et al.* A judicialização da saúde e a política nacional de assistência farmacêutica no Brasil: gestão da clínica e medicalização da justiça. **Revista Médica de Minas Gerais**, v. 18, Supl. 4, p. S46-S50, 2008.

BARCELLOS, Ana. Sanitation rights, public law litigation, and inequality: A case study from Brazil. **Health and Human Rights Journal**, v. 16, n. 2, 2014.

BICCA, Carolina Scherer. O ativismo judicial no controle das políticas públicas: o caso da assistência social no Brasil. **Publicações da Escola da AGU**, n. 23, 2012.

BIEHL, João *et al.* Between the court and the clinic: lawsuits for medicines and the right to health in Brazil. **Health & Human Rights**, v. 14, 2012.

BOESSIO, Ana Paula. **Padrões de variação e determinantes da judicialização da educação infantil nos municípios do estado do Rio Grande do Sul (2011-2016)**. Dissertação (Mestrado em Políticas Públicas) - Universidade Federal do Rio Grande do Sul, Porto Alegre, 2021.

BRANDÃO, Thaís. **Direito à Educação Infantil de 0-3 anos de idade: a judicialização na perspectiva do gestor da escola**. Trabalho de Conclusão de Curso (Graduação em Pedagogia) - Faculdade de Educação da Universidade Estadual de Campinas - Unicamp, Campinas, 2015.

BRINKS, Daniel M.; GAURI, Varun. **Courting social justice: Judicial Enforcement of Social and Economic Rights in Developing World**. Cambridge: Cambridge University Press, 2008.

BRINKS, Daniel M.; FORBATH, William. Commentary: Social and Economic Rights in Latin America - Constitutional Courts and the Prospects for Pro-poor Interventions. **Texas Law Review**, n. 89, p. 1943-1955, 2011.

BRINKS, Daniel M.; GAURI, Varun. **The Law's Majestic Equality?** The Distributive Impact of Litigating Social and Economic Rights. Policy Research Working Paper, v. 5999. Washington DC: The World Bank, Development Research Group, Human Development and Public Services Team, 2012.

BRINKS, Daniel M.; FORBATH, William. The Role of Courts and Constitutions in the New Politics of Welfare in Latin America. *In*: PEERENBOOM, Randall; GINSBURG, Tom (ed.). **Law and Development of Middle Income Countries**. Cambridge: Cambridge University Press, 2013.

BRINKS, Daniel; BOTERO, Sandra. Inequality and the rule of law: ineffective rights in Latin American democracies. *In*: BRINKS, D.; LEIRAS, M.; MAINWARING, S. (ed.). **Reflections on Uneven Democracies: The Legacy of Guillermo O'Donnell**. Baltimore: Johns Hopkins University Press, 2014, p. 214-239.

CHAUCA, Nataly Ponce. **Avances y Desafíos de las Defensorías Públicas para garantizar el acceso a la justicia en las Reformas Procesales Penales en América Latina**. Santiago de Chile: Centro de Estudios de Justicia de las Américas; Subsecretaría de Asuntos Políticos de la Organización de Estados Americanos, 2007.

CORRÊA, Luiza Andrade. **Judicialização da política pública de educação infantil no Tribunal de Justiça de São Paulo**. Dissertação (Mestrado em Direito) - Universidade de São Paulo, São Paulo, 2014.

CURY, Carlos Roberto J.; AMARAL, Cláudia Tavares. O direito à educação básica: análise inicial dos julgamentos do Tribunal de Justiça de Minas Gerais. *In*: CONGRESSO IBERO-AMERICANO DE POLÍTICA E ADMINISTRAÇÃO DE EDUCAÇÃO, IV. **Anais [...]**. Porto, 2014.

DEFENSORIA PÚBLICA DA UNIÃO. **Anuário de Atuação Coletiva de Atuação da Defensoria Pública da União - 2017-2018**. Brasília, 2017-2018.

DENNIS, Michael J.; STEWARD, David P. Justiciability of economic, social, and cultural rights: should there be an international complaints mechanism to adjudicate the rights to food, water, housing, and health? **American Journal of International Law**, v. 98, n. 3, p. 462-515, 2004.

DINIZ, Debora; MACHADO, Teresa R. de Carvalho; PENALVA, Janaina. A judicialização da saúde no Distrito Federal, Brasil. **Ciência & Saúde Coletiva**, v. 19, p. 591-598, 2014.

FERRAZ, Octavio Luiz Motta. Between Usurpation and Abdication? The Right to Health in the Courts of Brazil and South Africa. **SSRN**, 21 ago. 2009.

FERRAZ, Octávio Luiz Motta; VIEIRA, Fabiola Sulpino. Direito à saúde, recursos escassos e equidade: os riscos da interpretação judicial dominante. **Dados**, v. 52, n. 1, p. 223-251, 2009.

FERRAZ, Octavio Luiz Motta. Harming the poor through social rights litigation: lessons from Brazil. **Texas Law Review**, v. 89, p. 1643, 2010.

FERRAZ, Octavio Luiz Motta. Brazil - Health Inequalities, Rights and Courts: The Social Impact of the Judicialization of Health. *In*: YAMIN, Alicia Ely; GLOPPEN, Siri (ed.). **Litigating health rights: can courts bring more justice to health**. Cambridge: Harvard University Press, 2011, p. 76-102.

FERRAZ, Octavio Luiz Motta. Moving the debate forward in right to health litigation. **Health and Human Rights**, v. 18, n. 2, 2016.

FERRAZ, Octavio Luiz Motta. Brazil: Are Collective Suits Harder to Enforce? *In*: LANGFORD, M.; RODRIGUEZ-GARAVITO, C.; ROSSI, J. (ed.). **Social Rights Judgments and the Politics of Compliance**. Vol. 8. Cambridge: Cambridge University Press, 2017.

FREITAS, Lígia B. As decisões judiciais e as políticas públicas sobre a educação no Estado de São Paulo. **Mediações - Revista de Ciências Sociais**, v. 21, n. 1, p. 145-166, 2016.

GARRO, Alejandro M. Acesso à Justiça para pobres na América Latina. *In*: MÉNDEZ, Juan; O'DONNELL, Guillermo; PINHEIRO, Paulo S. (ed.). **Democracia, violência e injustiça: o não-estado de direito na América Latina**. São Paulo: Paz e Terra, 1999, p. 307-335.

GAURI, Varun. Social rights and economics: claims to health care and education in developing countries. **World Development**, v. 32, n. 3, 2004.

GELISKI, Leonardo. **Rede de atores, ideias e agendas: o papel das associações de defensores e de defensorias em seu processo de fortalecimento institucional na América Latina**. Dissertação (Mestrado em Políticas Públicas) - Universidade Federal do Rio Grande do Sul, Porto Alegre, 2018.

GLOPPEN, Siri; GARGARELLA, Roberto; SKAAR, Elin. **Democratization and the Judiciary: The Accountability Function of Courts in New Democracies**. London-Portland: Frank Cass Publishers, 2004.

GLOPPEN, Siri; SIEDER, Rachel. Courts and the marginalized: Comparative perspectives. **International Journal of Constitutional Law**, v. 5, n. 2, p. 183-186, 2007.

GONÇALVES, Gabriella Vieira Oliveira; BRITO, Lany Cristina Silva; FILGUEIRA, Yasmin von Glehn Santos. **IV Diagnóstico da Defensoria Pública no Brasil**. Brasília: Ministério da Justiça, Secretaria de Reforma do Judiciário, 2015.

HAMMERGREEN, Linn. **Envisioning reform: improving judicial performance in Latin America**. Pennsylvania: The Pennsylvania State University Press, 2007.

HOFFMANN, Florian; BENTES, Fernando. Accountability for Social and Economic Rights in Brazil. *In*: BRINKS, Daniel M.; GAURI, Varun (ed.). **Courting social justice: Judicial Enforcement of Social and Economic Rights in Developing World**. New York: Cambridge University Press, 2008, p. 100-145.

IVO, Anete Brito Leal; SILVA, Alessandra Buarque de A. O hiato do direito dentro do direito: os excluídos do BPC. **Revista Katálisis**, v. 14, n. 1, 2011, p. 32-40.

KAPISZEWSKI, Diana; TAYLOR, Matthew M. Compliance: conceptualizing, measuring, and explaining adherence to judicial rulings. **Law & Social Inquiry**, v. 38, n. 4, p. 803-835, 2013.

MADEIRA, Lígia Mori; GELISKI, Leonardo. Políticas sociais nos tribunais intermediários: Tribunais Regionais Federais em evidência. *In*: FUNDACIÓN KONRAD ADENAUER. **Anuario de Derecho Constitucional Latinoamericano**. n. 23. Bogotá, 2017, p. 305-326.

OLIVEIRA, Vanessa Elias; NORONHA, Lincoln. Judiciary-Executive relations in policy making: the case of drug distribution in the State of São Paulo. **Brazilian Political Science Review**, v. 5, n. 2, p. 10-38, 2011.

OLIVEIRA, Vanessa Elias; MARCHETTI, Vitor. Judiciário e o controle sobre as Políticas Públicas: a judicialização da educação no município de São Paulo. *In*: ENCONTRO NACIONAL DA ANPOCS, 37. **Anais [...]**. Águas de Lindóia, 2013.

OLIVEIRA, Vanessa Elias; SILVA, Mariana Pereira; MARCHETTI, Vitor. Judiciário e Políticas Públicas: a judicialização da educação infantil em São Paulo. **Educação & Sociedade**, v. 39, n. 144, 2018.

PEPE, Vera Lúcia E. *et al.* A judicialização da saúde e os novos desafios da gestão da assistência farmacêutica. **Ciência & Saúde Coletiva**, v. 15, p. 2405-2414, 2010.

RODRIGUES, Rayane Vieira; OLIVEIRA, Vanessa Elias de. Judicialização da política de educação: interações Judiciário-Executivo em São Bernardo do Campo (SP). **Revista Brasileira de Iniciação Científica**, v. 4, n. 4, 2017.

SILVA, Andreia Regina Haas; DALLA CORTE, Ezequiel. Judicialização na assistência farmacêutica do Sistema Único de Saúde. **Ciência em Movimento**, v. 13, n. 27, p. 19-25, 2011.

SILVA, Naiane Louback da. The judicialization of the Continued Benefit Payments (BPC) from provision of social assistance. **Serviço Social & Sociedade**, v. 111, p. 555-575, 2012.

SILVEIRA, Adriana A. Dragone. A exigibilidade do direito à educação básica pelo Sistema de Justiça: uma análise da produção brasileira do conhecimento. **Revista Brasileira de Política e Administração da Educação**, v. 24, n. 3, p. 537-555, 2008.

SILVEIRA, Adriana A. Dragone. Judicialização da educação para a efetivação do direito à educação básica. **Jornal de Políticas Educacionais**, v. 5, n. 9, p. 30-40, 2011.

SMULOVITZ, Catalina. Legal inequality and federalism: Domestic violence laws in the Argentine Provinces. **Latin American Politics and Society**, v. 57, n. 3, p. 1-26, 2015.

TAYLOR, Matthew M. The judiciary and public policies in Brazil. **Dados: Revista de Ciências Sociais**, v. 50, n. 2, 2007.

TRAVASSOS, Denise Vieira *et al.* Judicialização da Saúde: um estudo de caso de três tribunais brasileiros. **Ciência & Saúde Coletiva**, v. 18, p. 3419-3429, 2013.

WANG, Daniel; FERRAZ, Octavio Luiz Motta. Reaching Out of the Needy? Access to Justice and Public Attorneys' Role in Right to Health Litigation in the City of São Paulo. **SUR - Revista Internacional de Direitos Humanos**, v. 10, n. 18, p. 159-179, 2013.

WANG, Daniel *et al.* Os impactos da judicialização da saúde no município de São Paulo: gasto público e organização federativa. **Revista de Administração Pública**, v. 48, n. 5, p. 1191-1206, 2014.