BUILDING THE LATIN AMERICA WE WANT: SUPPLEMENTING REPRESENTATIVE DEMOCRACIES WITH CONSENSUS-BUILDING

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Introduction

This article is about using consensus-building to create channels for meaningful participation in public decision-making, in order to supplement representative democracies in Latin America. I argue that the addition of a consensus-building mechanism into the legislative process will create the necessary forum for stakeholders to contribute to the framing and resolution of issues of public concern. Furthermore, as Susskind has argued, allowing citizens to participate at the beginning of decision-making processes will make legislative outcomes more legitimate and decrease the level of political dissatisfaction.

Currently, Latin American citizens have few opportunities or channels to participate meaningfully in the political process. Not only are there few structural institutions that facilitate on-going citizen participation, but the methods and skills for participation are lacking. For example, even though there are a number of laws that encourage citizen participation, there are no mechanisms that facilitate broad-based representation or processes that guarantee inclusion. I argue that minipublics—public deliberation organizations made up of representatives of the various social sectors—and consensus-building demonstrate, on a small-scale, what mechanisms and methods can achieve at the national level.

Latin Americans are eager to participate in public decision-making processes. Young and old, black, white and brown, and rich and poor march for miles to demonstrate against government decisions. University students set fire to tires and public buses in the streets, public workers go on strike regularly, and demonstrators take to the streets, banging pots and pans to show their discontent with government policies. In most cases, despite the exertion and passion of the demonstrators, their efforts are generally meaningless noise in the street. Sometimes, governments respond with small concessions, but most of the time they ignore the protests

and wait out the demonstrations. At times, the lack of effective responses by governments has given birth to extremist reactions, such as guerilla movements and vigilantes who try to affect the change they want in their own violent way. For the average Latin American citizen, this is an unbearable state of affairs.

The University of St. Thomas ("UST") International ADR Research Network has attempted to create a forum for meaningful participation on one issue of public importance in Brazil: how conflict is resolved both in the public and private spheres. Through a consensus-building process in a minipublic forum, participants were able to explore the current state of dispute resolution in Brazil, examine the multi-door courthouse ("MDC") as an option to improve dispute resolution, and recommend the systemic changes necessary for implementation of their findings.

The participants in the UST International ADR Research Network's Brazil Project volunteered to join the project because they saw it as an alternative to making meaningless noise in the street. They saw the project as a viable opportunity to have their voices heard on an issue of public importance, with the hope of promoting change in the way conflict is addressed in the region. What follows is a description of how this project was designed and carried out and the conclusions at which the participants arrived.

Section I describes the project's setting in Brazil and Latin America and provides a brief overview of the challenges to stability in the region. I suggest that supplementing representative democratic decision-making processes with a consensus-building component can bring more stability to the public square. Section II presents the project's design, which is aimed at creating a foundation for public participation—from the structure selected (minipublics) to discuss the issue of judicial reform and the possible solution, to the methodology for deliberation within and across sectors (consensus-building). Finally, it describes the MDC as the subject of the consensus-building exercise carried out by Brazilian participants and facilitated by the UST International ADR Research Network. Section III lays out the project narrative and lessons learned. Section IV reports the results of the consensus-building processes and the recommendations reached by the participants regarding the use of the multi-door courthouse in Brazil and Latin America.

I. Overview

A. Project Setting: Latin America and Brazil

Brazil, the site of the UST International ADR Research Network's pilot project, is significant on the world stage. It is the fifth largest country geographically,[1] the fifth most populous democracy,[2] and it has a prospering economy.[3] A presidential republic,[4] Brazil operates under a positive law system with its basis in civil code.[5] Despite efforts at judicial reform, the legal system is nearly paralyzed by inefficiencies. Currently, there is a backlog of nearly twenty-million cases with an almost ten-year wait for adjudication. A chronic shortage of public defenders and a practically endless right of appeal tend to favor those with wealth and connections.[6]

B. Regional Challenges

Although most Latin American countries are democracies by constitution,[7] their collective history as exploited colonies[8] has

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1 8.5 million square kilometers. The World Bank, Data and Statistics, *Brazil*, 2007, http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20535285~menuPK:1390200~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html (last visited Sept. 30, 2008).

2 191 million inhabitants. *Id*.

3 According to the United Nations Conference on Trade and Development, Brazil is the fifth most attractive country for foreign investment, behind only China, India, the U.S., and Russia. World Investment Report 2008, United Nations Conference on Trade and Development, 34, Table I.20, http://www.unctad.org/en/docs/wir2008_en.pdf (last visited Sept. 30, 2008).

4 Brazil is a federation of 26 states and one federal district. CIA World Factbook, *Brazil*, https://www.cia.gov/library/publications/the-wworld-factbook/geos/br.html, (last visited Sept. 30, 2008). Brazil has more than 5,000 municipalities. *Unidades Territoriais do Nível Município*, http://www.sidra.ibge.gov.br/bda/territorio/tabunit.asp?t=14&n=6&z=t&o=4 (last visited Sept. 30, 2008).

5 Nonetheless, the extraordinary ability of Latin America to "absorb and transform outside influences" remains untapped. *See* Duncan Green, Faces of Latin America 216 (Jean McNeil ed., Monthly Review Press 2006) [hereinafter Green]. Green recounts the famous Brazilian joke that Brazil "is the land of the future and always will be." *Id.* He goes on to argue that the current political and economic systems "squander the region's vast wealth and human potential," and that without change Brazil will continue to be a country of the future. *Id.*

6 Raymond Collitt and Stuart Grudgings, *Brazil's Creaking Justice System Slow to Reform*, REUTERS, May 22, 2008, http;//uk.reuters.com/article/latestcrisis/idUKN2249474820080522.

7 For a short chronology of Latin American history from 1492 to 1961, see Magnus Mörner, Race Mixture in the History of Latin America 151–52 (Little Brown & Co. 1967). Many Latin American countries have fluctuated between authoritarian and non-authoritarian regimes in the post-colonial period. *See* Civil-Military Relations in Latin America

done much to create a political culture that is passive and non-participatory. A number of historical and cultural assumptions have created this culture of socio-political exclusion,[9] which has allowed for weakened civil and democratic institutions and consequent large-scale disenfranchisement. The first of these assumptions is a sort of "magic legalism," in which people expect that the simple passage of laws will itself bring about deep, systemic change.[10] Absent in this assumption is the notion that citizens are capable of introducing change either at the grassroots level or through normal democratic channels.[11]

A second, related cultural framework is the *caudillo*[12] mentality, the assumption that the power and responsibility for change lie

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(David Pion-Berlin ed., Univ. of North Carolina Press 2001). *See also* MARSHALL C. EAKIN, THE HISTORY OF LATIN AMERICA: COLLISION OF CULTURES 351 (Jeremy Black ed., Palgrave Macmillan 2007).

8 LARS SHOULTZ, BENEATH THE UNITED STATES: A HISTORY OF U.S. POLICY TOWARD LATIN AMERICA (Harvard University Press 1998); JOHN A. CROW, THE EPIC OF LATIN AMERICA (University of California Press 1992).

9 Bernardo Kliksberg, one of the preeminent Latin American sociologists and an expert at the Inter-American Development Bank ("IADB") has argued that participation is the key for Latin American stability. Bernardo Kliksberg, *Six Unconventional Theories about Participation, available at* www.iadb.org/ETICA/Documentos/kli_seist-i.doc (available through the Digital Library of the Inter-American Initiative on Social Capital, Ethics and Development). *See also* Bernardo Kliksberg, *Inequality and Development in Latin America: A Procrastinated Debate*, *available at* http://www.iadb.org/etica/documentos/kli_inequ-i.htm; Forum on development and culture stresses role of citizen participation (Paris, Mar. 13, 1999), *available at* http://www.iadb.org/news/articledetail.cfm?language=en&artid=1593; Bernardo Kliksberg, *The Role of Social and Cultural Capital in the Development Process*, *available at* http://www.iadb.org/etica/documentos/kli_elrol-i.doc.

10 Michael Knox, *Continuing Evolution of the Costa Rican Judiciary*, 32 CAL. W. INT'L L.J. 133, 137 (2001).

11 In fact, Green notes that there is tremendous growth in the number of grassroots community groups, from trade unions to peasant groups to women's organizations, that are mobilizing for social improvements. *See* GREEN, *supra* note 5, at 217. However, without channels for meaningful participation in the public square, these groups are limited to a reactionary position without lasting influence on the political agenda.

12 Bakewell gives the provenance and definition of *caudillo*, as follows:

> The word is the diminutive form of *cabo*, which in turn descends from the Latin *caput*, 'head.' The *caudillo*, then, is the 'little head' or the 'little chief.' The diminutive says much about the source of authority of this political type. He was the familiar local leader, the common man risen to power but still close to his, and the populace's, roots; or so, at least, he would have the people think. The word carries also a strong military connotation; the means of gaining prominence is martial prowess. A man did not become a *caudillo* as a strategist but as a successful fighter, in person, in the field.

PETER BAKEWELL, A HISTORY OF LATIN AMERICA 414 (R.I. Moore ed., Blackwell 2d ed. 2004) [hereinafter BAKEWELL]. He observes that "the *caudillo* was typically the product of rural, often isolated, areas, far from colonial capitals in which politically informed creoles made bids for

only with the *caudillo*, the political strongman.[13] Following this way of thinking, citizens delegate political authority to a leader or handful of leaders and then passively wait for results, without holding those leaders accountable. In many ways, the present-day *caudillos* are nothing more than the replacements of the dictators of old,[14] albeit with a democratic face. These few political leaders hold concentrated power and dominate the public square. Citizens tend to regard the *caudillos* as political saviors, that is, as the only ones who have the power to transform society and to control the nation's collective destiny. This mindset reduces citizens to the role of passive political spectators and keeps them asleep, as it were, with regard to their potential political influence. This strong tendency to defer to authority has led to an anemic political culture in which decision-making is left mainly to those in power, exacerbating preexisting power imbalances.[15] The lack of an active, dynamic political culture in which civic institutions thrive has made it

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autonomy in 1810 and later years." *Id*. at 415. Even so, *caudillismo* was not limited to local or isolated areas, but transcended to a supra-region level in the persons of Juan Manuel de Rosas and Antonio Lopez de Santa Anna (in Argentina and Mexico, respectively). *Id*. at 416. Not all *caudillos* were authoritarian; some were more populist than others.

[13] CRIME AND PUNISHMENT IN LATIN AMERICA: LAW AND SOCIETY SINCE LATE COLONIAL TIMES (Ricardo D. Salvatore, Carlos Aguirre & Gilbert M. Joseph eds., Duke Univ. Press 2001) [hereinafter CRIME AND PUNISHMENT] (offering the historical underpinnings of the *caudillo* paradigm). Hanke and Rausch note that "the rise and fall of *caudillos* has long been a basic theme in Latin American history," of which "hundreds, if not thousands, of articles and books have been written." PEOPLE AND ISSUES IN LATIN AMERICAN HISTORY 47 (Lewis Hanke & Jane M. Rausch eds., Markus Weiner Publishers 1997). They note that dictators arose immediately in the ashes of European colonization, citing the examples of Argentina, Chile and Uruguay. *See id. See also* Lauren Benton, *"The Laws of This Country": Foreigners and the Legal Construction of Sovereignty in Uruguay, 1830-1875*, 19 LAW & HIST. REV. 479 (2001).

[14] Bakewell notes:

> [T]he combining of governmental powers in single figures and institutions that was standard practice in colonial times has also proved hard to discard, and has sustained authoritarianism. The post-independence *caudillo* was an unmatchable example of the conflation of executive, law-maker, and judge, with military force added to strengthen him in all three roles. In times of political disorder and economic difficulty, often mutually reinforcing, the model has remained seductively attractive.

BAKEWELL, *supra* note 12, at 546–47.

[15] Joseph C. Bentley, *New Wine in Old Bottles: The Challenges of Developing Leader in Latin America*, *in* CROSS CULTURAL APPROACHES TO LEADERSHIP DEVELOPMENT 29–48 (C. Brooklyn Derr et al., ed., Quorum Books 2002). Bentley has also identified similar, prominent cultural values that prevent change in Latin America. He notes a reverence for tradition that stifles innovation and preference for certainty over the uncertainty that comes with the process of change, along with the attendant sense of fatalism that arises when change is feared. Finally, he observes that order is usually achieved through hierarchical channels, that evaluations are conducted in a way that prevents shame (thereby preserving the status quo), and the result is a strong expectation of adaptation rather than change. *Id.*

difficult to implement any sort of change—political or social—and has served to harden patterns of disenfranchisement and exclusion.[16] Furthermore, the *caudillo* paradigm has caused political instability in the region[17] from the moment of independence until today.

Cyclical political upheavals and strikes also hinder the development of the region.[18] Latin America alternates between two extremes—revolt with full participation, and autocratic rule with no participation. Members of every class—lower, middle and upper—are willing to march in the streets, but usually only when there is no other option, as during an absolute crisis.[19] On the other hand, the same citizens are just as likely to determine that their participation is futile and completely surrender authority to a single leader. What is sorely needed is a viable middle ground that opens a space for the creation and use of social capital in the public sphere, allowing for greater inclusion and participation. Why participation? First, when citizens work together for a common goal, it enables them to gain a broader vision of the common good, beyond their individual situation. Second, citizens benefit from participation at the individual level in two ways: they gain civic skills that can be transferred to other spheres of action, and they gain a better understanding of the perspectives and interests of others. Third, par-

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16 Philip Oxhorn argues that the development of a robust political culture must extend beyond the electoral process. WHAT JUSTICE? WHOSE JUSTICE?: FIGHTING FOR FAIRNESS IN LATIN AMERICA 54 (Susan Eva Eckstein & Timothy P. Wickham-Crowley eds., Univ. of California Press 2003) [hereinafter WHAT JUSTICE? WHOSE JUSTICE?].

17 Aguirre and Salvatore observe that *caudillismo* led to "intermittent political instability, as well as successive waves of enthusiasm and frustration with the application of laws, made it necessary—in the eyes of legislators and jurists—to revise codes and other pieces of legislation constantly. Profusion and confusion were the inevitable result." CRIME AND PUNISHMENT, *supra* note 13, at 5–15. *See also* THE BUSH DOCTRINE AND LATIN AMERICA 183 (Gary Prevost & Carlos Olivia Campos eds., Palgrave Macmillan 2007).

18 THOMAS E. SKIDMORE & PETER H. SMITH, MODERN LATIN AMERICA 441–46 (Oxford Univ. Press 2006) (discussing the major political revolutions in the region: Mexico, Bolivia, Chile, Peru, Guatemala, and Colombia, specifically).

19 Some have interpreted this as a "crisis of democracy," that is, Latin Americans want something other than democratic institutions. Leonardo Avritzer has argued persuasively that, rather than seeing Latin America in a state of democratic crisis, political upheaval is a sign of desire for greater participation in the democratic process. For Avritzer, the problem is a structural one: a lack of channels for meaningful participation. Political upheaval is an attempt on the part of citizens to create a more participatory democracy wherein they are equals who have a voice in political decision-making. He proposes the development of "participatory publics" as a structural mechanism through which citizens can participate more directly in the political process. LEONARDO AVRITZER, DEMOCRACY AND THE PUBLIC SPACE IN LATIN AMERICA 135–37 (Princeton Univ. Press 2002).

ticipation ensures that an individual citizen's interests are considered in public decision-making.[20]

II. Project Design: Creating the Foundation for Public Participation

A. Project Overview

In order to address the challenges described above, the pro bono project, "Investing Social Capital: Exploring the Multi-Door Courthouse as a Catalyst to Maximize Latin American Dispute Resolution Systems," was conceived.[21] I wanted to examine whether tools such as the MDC and consensus-building could be used to build the capacity of citizens meaningfully to participate in private and public dispute resolution processes, and whether the skills, knowledge and experiences learned in an inclusive deliberative process could be transferred to the civic arena. The goal of the Project was to engage various stakeholders in the issue of optimizing dispute resolution systems. By using consensus-building, I aimed to create a forum that allowed for inclusive, participatory deliberation. At a basic level, the Project was about bringing Brazilian citizens together to assess the state of dispute resolution in Brazil, and whether the Multi-door courthouse could help to optimize it. More broadly, however, the Project attempted to create a culture of inclusion in which citizens from a wide range of backgrounds and sectors were invited to participate in deliberations on an issue of public importance.

The Brazil Project sought to provide an innovative, participatory experience for citizen stakeholders in judicial reform. The Project aimed for collaborative, bottom-up participation in which participants were engaged at every stage of the deliberation process. The group of participants was comprised of representa-

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[20] Nancy Burns, Kay Lehman Schlozman & Sidney Verba, The Private Roots of Public Action: Gender, Equality, and Political Participation (Harvard Univ. Press 2001). The authors define political participation as "activity that has the intent or effect of influencing government action—either directly, by affecting the making or implementation of public policy, or indirectly, by influencing the selection of people who make those policies." *Id*. at 4. They argue that the reasons for active political participation are often implied, but should be explicit: "the creation of community and the cultivation of democratic virtues, the development of the capacities of the individual, and the equal protection of interests in public life." *Id*. at 22.

[21] While the University of St. Thomas provided the technology necessary to carry out the project, all of the participants, facilitators and coordinators donated their time and efforts.

tives of seven sectors of society (lawyers, judges, law professors, law students, business leaders, low-income community leaders and representatives of non-governmental organizations). In this project, participants collectively identified problems, gathered relevant information, analyzed and interpreted that information, and developed action plans. They examined options for improving dispute resolution, specifically the Multi-Door Courthouse, a forum that directs incoming court cases to the most appropriate avenues for dispute resolution, as well as alternative methods (e.g., mediation or arbitration) and the traditional court.[22] Through a specialized, virtual, on-line forum, volunteer participants first evaluated the current state of dispute resolution in Brazil.[23] Second, they explored the use of judicial resources[24] and the Multi-Door Courthouse[25] as options to enhance dispute resolution opportunities.[26] Finally, they proposed a systemic approach required for the implementation of their agreement.[27]

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[22] Some reformers generally assume that local actors are simply motivated by personal interest, and are too culturally biased and uninformed of the alternatives to make wise decisions regarding reform. Linn A. Hammergren, *Fifteen Years of Judicial Reform in Latin America: Where We are and Why We Haven't Made More Progress,* U.S. Agency for International Development Global Center for Democracy and Governance (Mar. 2002), http://www.pogar.org/publications/judiciary/linn2/latin.pdf. However, part of the consensus-building process is to teach participants the mechanisms needed to combine their interests in the creation of options and raise awareness about their cultural biases. For names of the Project participants, see *infra* Appendix B. The participants came from four principal Brazilian cities, Rio de Janiero, Sao Paulo, Belo Horizonte and Fortaleza. All of the participants in the project were unpaid volunteers who dedicated countless hours and resources to the project. *See* William R. Potapchuk & Jarle Crocker, *Implementing Consensus-Based Agreements in* THE CONSENSUS-BUILDING HANDBOOK: A COMPREHENSIVE GUIDE TO REACHING AGREEMENT 546–47 (Lawrence Susskind, Sarah McKearnan, & Jennifer Thompson-Larmer eds., Sage Publications 1999) (discussing the importance of social capital for the sustainability of the agreement).

[23] *See infra* National Single Text, Appendix C, Module One. Susskind notes that a single text "blends many points of view into a unified document. This document is then reviewed, debated, and amended by the larger group." LAWRENCE E. SUSSKIND & JEFFREY L. CRUIKSHANK, BREAKING ROBERT'S RULES 103 (Oxford Univ. Press 2006) [hereinafter BREAKING ROBERT'S RULES]. For the seminal conception of the one-text procedure, see ROGER FISHER ET AL., GETTING TO YES (Houghton Mifflin 1991).

[24] Participants heard from experts on the MDC from around the world: Singapore, Nigeria, Argentina, Boston, and Washington, D.C. Experts from the fields of dispute systems design and integrated conflict-management systems also made presentations to the group. The goal was to provide them with expert knowledge in order for them to assess Brazil's situation and make informed decisions regarding it.

[25] *See* STEPHEN B. GOLDBERG ET AL., DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES (Walters Kluwer Law & Business 5th ed. 2007)

[26] *See infra* Appendix C, Module Two, National Single Text.

[27] *See infra* Appendix C, Module Three, National Single Text.

B. Structure: Minipublics

Currently, deliberative processes in Latin America are not fully participatory in two respects. First, the playing field is not level and is pitched in heavy favor of wealth and influence.[28] Second, Latin Americans usually are asked to participate only at the information-gathering and implementation stages, but not in the idea-generation and decision-making stages.[29]

In order to counteract the exclusionary forces that are so dominant in Latin American culture, the Project used the concept of the "minipublic" as its basic structure, following the work of Professor Archon Fung at Harvard's John F. Kennedy School of Government. A "minipublic" is an organization in which the diverse interests of society's sectors (in our case, the courts, NGOs, community leaders, lawyers, business groups, professors, and students) are self-consciously represented for the purpose of public deliberation. These types of groups aim to "improve[e] the quality of participation and deliberation"[30] by offering a forum in which various sectors of society can be heard on issues of public importance.[31]

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28 *See* Kliksberg, *supra* note 9.

29 It should be noted that even at the information-gathering stage, the issue is already framed, and participants do not have the opportunity to even frame the issue for themselves. In an analytical typology which she calls the "Ladder of Participation," Sherry Arnstein described the various levels of citizen participation in public decision-making, from non-participation, through levels of token participation, to full participation. At the lowest level, citizens are not enabled to participate in planning or implementation processes; at the middle level, they are given a voice by offering information or through consultation, but there is no assurance that their views will be heeded. At the highest levels, citizens actively participate in decision-making and management of implementation. According to Arnstein's typology, Latin American citizens are non-participatory members in democratic decision-making, and at best, are mere tokens at the table with no guarantees that their recommendations will even be considered. *See* Sherry R. Arnstein, *A Ladder of Participation*, 35 J. AM. INST. PLANNERS 216, 224 (1969).

30 Archon Fung, *Survey Article: Recipes for Public Spheres: Eight Institutional Design Choices and Their Consequences*, 11 J. POL. PHIL. 338, 340 (2003) [hereinafter Fung, *Survey*]; *see also* Archon Fung & Erik Olin Wright, *The Principles and Institutional Design of Empowered Participatory Governance*, *in* DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE 15–24 (Archon Fung & Erik Olin Wright eds., Verso 2003) [hereinafter Fung & Wright].

31 Fung notes that there are four basic types of institutional design options: the minipublic as an educative forum; as a participatory advisory panel; as a participatory problem-solving collaboration; or as a participatory democratic governance group. Fung, *Survey*, *supra* note 30, at 340–42. It is significant to note that the first option offers the least amount of direct influence in policy making, while the last option provides the most. In the first option, the goal is to educate public opinion by providing access to information and to allow for the diversity of opinions to be considered in the deliberations on a given subject. A participatory advisory panel aims not only to "improve the quality of . . . public opinion" through education but also to influence public

Fung notes that these types of participatory groups "rely upon the commitment and capacities of ordinary people to make sensible decisions through reasoned deliberation and empowered because they attempt to tie action to discussion."[32]

I chose to create a hybrid minipublic, combining aspects of the educative forum and the advisory panel minipublic. The advisory panel minipublic emphasizes affecting the political process by creating linkages with policy makers.[33] The educative minipublic's emphasis on inclusion and on creating an open forum for articulating and refining opinions in order to make informed decisions was appropriate to the Latin American context. By providing an environment where each participant's contributions are considered, the weaker voices that are more easily drowned out in public debate can be heard. In addition, the educative forum focuses on the provision of free access to information. Full participation by all sectors in the deliberative process, Fung acknowledges, is not automatic. He argues that public deliberation groups such as minipublics should be designed in a way that allows those unaccustomed to articulating and defending their interests in public to

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policy by developing relationships between the group and decision makers. *Id*. at 341. A participatory problem-solving collaboration seeks a similar relationship but over the longer term and usually for the purpose of dealing with trenchant public problems. The fourth and final option, a minipublic aimed at participatory democratic governance, "seeks to incorporate direct citizen voices into the determination of policy agendas" for the purpose of righting a perceived imbalance favoring the rich and powerful. *Id*. at 342.

[32] Fung & Wright, *supra* note 30, at 5. In the case of the Brazil Project, the selection and training of sector facilitators was the key to the success of our minipublic. I recruited professional mediators in Brazil to serve as sector facilitators and gave them training in consensus-building, with a strong emphasis on managing for fairness and transparency in the process. The sector facilitators were then asked to recruit representatives of the diverse groups within their sector (e.g., lawyers, non-profits, low-income communities) in order to gather into the process as many different perspectives as possible. Each group created the ground rules for dialogue, which were shaped by the norms modeled in the training videos they watched; much of the time the norms were enforced by the groups themselves, with occasional reinforcement by the facilitator. This will be discussed in greater detail *infra*.

[33] In order to strengthen linkages with policymakers, two principal drafters of the Brazilian mediation law, Dr. Kazuo Watanabe and Dr. Ada Pellegrini Grinover, joined the project. *See* Lei No. 4.827, de 1998 (proposed amendment 21 de junho de 2006) (providing the full text of the mediation law). Drs. Watanabe and Grinover, together with two of the project's national representatives, will be presenting the findings to a congressional symposium on civil procedure law. For more information on the congressional symposium, see Brazilian Institute of Procedural Law, http://www.direitoprocessual.org.br. In addition, the research, findings, and preferences established by our educative forum will be published by *Escola de Direito do Rio do Janiero, da Fundaçao Getulio Vargas*, through their judicial research section. Ultimately, their project aims to create formal partnerships with the state, as described in the third model, in order to inject creative solutions into persistent public problems. In this way, the project aims to provide greater governmental accountability by bringing the government closer to the public sphere.

have the opportunity to develop that civic skill.[34] Good facilitation, together with a carefully constructed minipublic, will ensure that "the weak, and not necessarily those with the best ideas or arguments, have ample time to speak and express themselves."[35]

In the case of the Brazil Project, the structural design of a hybrid advisory-educative minipublic, as well as the emphasis on diversity and inclusion in the training, allowed the groups to counter socioeconomic and political inequalities, which are normally encountered in the public sphere in Latin America,[36] and which pose a significant hindrance to free and open discourse. Moreover, all participants had access to the same bank of knowledge and skills, thus privileging no single group over another.[37] Participants heard directly from experts and received information from all over the world during their information-gathering and deliberations,[38] enabling stakeholders to make informed decisions for themselves.[39]

C. Methodology: Consensus-Building Within and Across Sectors

In order to create a deliberative experience that was as inclusive as possible, the Project adapted the consensus-building process created by Professor Lawrence Susskind of M.I.T. and the Harvard Program on Negotiation. Susskind has established a five-step pro-

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34 Fung, *Survey*, *supra* note 30, at 344.

35 *Id.*

36 *See* WHAT JUSTICE? WHOSE JUSTICE?, *supra* note 16, at 54 (discussing the lack of channels for broad participation in political processes in Latin America).

37 The facilitators were responsible for 'translating' any technical or specialized language, to ensure that every participant could understand the information and skills offered.

38 Meetings were conducted on a real-time online platform, Breeze. The meetings were recorded and archived on the website to allow those participants who could not attend in real-time to have access to the experts. It also gave participants the opportunity to review the material at will.

39 Fung, *Survey*, *supra* note 30, at 340–41. Fung argues that this form of minipublic addresses "problems of representation, reasonableness, and information," and that "conversations between citizens [can] dramatically improve the quality of their public opinion." *Id.* While it is true that simple provision of information does not necessarily lead to informed decision-making, the Brazil Project members were guided through a process that enabled them to identify their positions, interests and values in order use the information to further those positions, interests and values.

cess[40] for building consensus aimed at creating more stable agreements than otherwise attained through traditional methods.[41]

Consensus-building is distinguished from normal modes of decision-making because the process is based on several key premises.[42] First, consensus-building is an ongoing process in which participation and dialogue are critical. Second, consensus-building does not mean that everyone must agree on one position. Third, each agreement created must be the best alternative to the status quo for all involved. Finally, because disagreement is at the core of the need for the consensus-building process, all minority opinions will be heard and will not be erased; hence, the final outcome will include all voices.

The above qualities made consensus-building the preferable methodology for the Brazil Project, since our primary goals were to involve all the sectors of society in addressing the problem of judicial reform and to create a space where all sectors could be heard. This approach also helped to involve participants at each stage of the decision-making process.

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[40] SUSSKIND & CRUIKSHANK, *supra* note 23, at 169–72. For an exhaustive treatment of the methodology, *see* Potapchuk & Crocker, *supra* note 22; *see also* LAWRENCE E. SUSSKIND & JEFFREY L. CRUIKSHANK, BREAKING THE IMPASSE: CONSENSUAL APPROACHES TO RESOLVING PUBLIC DISPUTES (Basic Books 1987). In the first stage, called the "convening" stage, the facilitator identifies the key stakeholders, assesses their concerns, and gathers information. In the second phase, the roles, responsibilities, ground rules, scope, budgets, and timetables are clarified. It is in the third phase when the difficult work of group problem solving is done, and the goal is to "generate packages, proposals, and ideas that can help all the parties do better than they would in the absence of an agreement." *Id*. at 26. This is done in steps in order to keep all possible options on the table so that the full range of combinations can be considered. The fourth stage is when the agreements are negotiated and drafted, ensuring that all parties leave with a satisfactory agreement. The final phase is the implementation phase, where everyone is held to the commitments as spelled out in the agreement.

[41] Robert's Rules is the traditional method of decision-making in an orderly and efficient manner. However, as Susskind observes, there are significant structural disadvantages inherent in Robert's Rules. First, by allowing decision-making only through majority rule, Robert's Rules inevitably creates dissatisfied minorities, thereby making the outcomes fundamentally unstable. Second, by prizing order and efficient decisions over optimal outcomes, it offers little opportunity to reframe issues and negotiate trade-offs, leading to win-lose outcomes. Thus, it sacrifices quality decisions to the desire for efficiency. Third, the legitimacy of the decisions is significantly undermined because Robert's Rules does not allow for the involvement of all members in the final decision. Finally, Robert's Rules is a procedure that offers a significant unfair advantage to those members who are parliamentary experts in the procedural process and can use the process to their own benefit. It disadvantages those who are not procedural experts. Thus, Robert's Rules is a structure that benefits power and expertise. Robert's Rules is fundamentally exclusive, and imposes the ground rules on participants. Consensus-building, on the other hand, allows participants to create and define the rules of their decision-making process. Thus, it is inclusive from the very beginning. For further discussion, see SUSSKIND, *supra* note 23, at 3–16.

[42] Potapchuk & Crocker, *supra* note 22, at 3–5.

The Brazil Project used some of the latest technologies to link participants across a wide geographical area. Consensus-building was carried out through virtual dialogues, utilizing a creative combination of software, online discussion forums, conference calls, videos, and videoconferencing. Facilitators worked online with participants, both synchronously (using text, audio, and video chats) and asynchronously (using e-mail and threaded discussions) to ensure progress in the consensus-building conversation.[43]

D. Topic Selected: Exploring the Multi-Door Courthouse

While the general aim of the exercise was to assess judicial reform, participants also were asked to explore and assess the suitability of the MDC. The MDC, first proposed and designed by Harvard Law School professor Frank Sander, was intended as a method for relieving courts of excessive litigation and case backlogs. He envisioned it as a flexible mechanism that would serve to send cases to the most appropriate forum for resolution.[44] A screener would offer an initial evaluation of a conflict and then, based on their assessment, direct the conflicting parties to the dispute resolution method best suited to their conflict, whether an ADR method or a traditional court. Jeffrey Stempel has described the multi-door courthouse as a "government-administered clearinghouse" for disputes.[45] The hope was that the application of this mechanism to the judicial system would bring about more effective dispute resolution systems.

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43 I am indebted to Lawrence Susskind for his suggestion to work using virtual forums. His experience in carrying out complex negotiations through virtual forums has offered valuable lessons to me.

44 *See generally* THE POUND CONFERENCE: PERSPECTIVES ON JUSTICE IN THE FUTURE (A. Leo Levin & Russell R. Wheeler eds., West Publishing Co. 1979); Frank E.A. Sander, *Dispute Resolution: Raising the Bar and Enlarging the Canon*, 54 J. LEGAL EDUC. 115 (2004); Michael L. Moffitt, *Special Section: Frank Sander and His Legacy as an ADR Pioneer: Before the Big Gang the Making of an ADR Pioneer*, 22 NEGOT. J. 437 (2006); Frank E.A. Sander & Lukasz Rozdeiczer, *Matching Cases and Dispute Resolution Procedures: Detailed Analysis Leading to a Mediation-Centered Approach*, 11 HARV. NEGOT. L. REV. 1 (2006); Frank E. A. Sander & Steven B. Goldberg, *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure*, 10 NEGOT. J. 49 (1994).

45 Jeffrey Stempel, *Reflections on Judicial ADR and the Multi-Door Courthouse at Twenty: Fait Accompli, Failed Overture, or Fledgling Adulthood?* 1 OHIO ST. J. ON DISP. RESOL. 297, 331 (1996) (offering a nice history of the multi-door courthouse).

The multi-door courthouse concept has been utilized in several places throughout the United States,[46] as well as internationally. In the last decade, the MDC has been imported by Argentina, Singapore and Nigeria.[47] The Nigerian Lagos MDC opened in

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[46] Multi-door courthouses have been established in many states. *See, e.g.,* Philadelphia Courts First Judicial District, *Dispute Resolution Program*, http://courts.phila.gov/municipal/civil/#drp; Thomas F. Christian, *Running Statewide Dispute Resolution Programs—The New York Experience*, 81 KY. L.J. 1093 (1993); Middlesex, MA Multi-Door Courthouse, www.multidoor.org; Supreme Judicial Court/Trial Court Standing Committee on Dispute Resolution, *A Guide to Court-Connected Alternative Dispute Resolution Services*, http://www.mass.gov/courts/courtsandjudges/courts/supremejudicialcourt/ccadr0601large.pdf; Peter W. Agnes Jr., *A Reform Agenda for Court-Connected Dispute Resolution in Massachusetts*, 40 APR B.B.J. 4 (1996); Heather Winston Gebbia, *Alternative Dispute Resolution in Massachusetts: The Road to 2022 is Not Without Potholes*, 1 SUFFOLK J. TRIAL & APP. ADVOC. 115 (1995); Martin J. Newhouse, *Some Reflections on ADR and the Changing Role of the Courts*, 39 B.B.J. 15 (1995); Kenneth K. Stuart & Cynthia A. Savage, *The Multi-Door Courthouse: How It's Working*, 26 COLO. LAW. 13 (1997); William H. Erickson & Cynthia A. Savage, *ADR in Colorado*, 54 DISP. RESOL. J. 60 (1999); Cynthia A. Savage, *Post-Decree Multi-Door Courthouse: A Pilot Program for the State*, 27 COLO. LAW. 109 (1998); Nancy Thoennes, *Mediating Disputes Involving Parenting Time & Responsibilities in Colorado's 10th Judicial District Assessing the Benefits to Courts*, August 2002, www.centerpolicyresearch.org; Superior Court of California County of Santa Mateo, *Appropriate Dispute Resolution Progarams*, http://www.sanmateocourt.org/generalinfo/sitemap.html; Lawrence B. Solum, *Alternative Court Structures in the Future of the California Judiciary: 2020 Vision*, 66 CAL. L. REV. 2121 (1993); Rosario Flagg, *Multi-Option ADR Project Evaluation Report July 2002-July 2003*, http://www.sanmateocourt.org/adr/evaluations/1—Evaluation-Introduction.pdf; David J. Meadows, *Bay Area Court ADR: Developments in Programs and Confidentiality of Mediation*, 26 SAN FRANCISCO ATT'Y 24 (2000); Tara Shockley, *Two Decades of Justice: The Dispute Resolution Center and Houston Volunteer Lawyers Program Have Been Serving the Houston Community for Over 20 Years*, 39 HOUS. LAW. 18 (2002); District of Columbia Multi-door Courthouse, http://www.dccourts.gov/dccourts/superior/multi/index.jsp; Gladys Kessler & Linda J. Finkelstein, *The Evolution of a Multi-Door Courthouse*, 37 CATH. U. L. REV. 577 (1988); Sue Darst Tate, *Alternative Dispute Resolution System 2001 Annual Report [Oklahoma]*, 2001, http://www.oscn.net/static/adr/annualreports.aspx; Sue Darst Tate, *Alternative Dispute Resolution System 2005 Annual Report*, 2005, http://www.oscn.net/static/adr/Documents/ADRSREPORT2005.pdf; Delaware Courthouse, http://courts.delaware.gov/Courts/Superior%20Court/ADR/ADR/adr_delaware.htm; DeKalb County, Iowa Multi-Door Courthouse, http://www.co.dekalb.ga.us/superior/dispute.htm; Court Mediation Programs, www.state.ak.us/courts/mediation.htm#programs; *Alternative Dispute Resolution in the Alaska Court System*, 1997, www.ajc.state.ak.us/_download/adr.pdf; KIMBERLY ANN KOSCH, 2005 FLORIDA MEDIATION AND ARBITRATION PROGRAMS: A COMPENDIUM (2005); J. Anderson Little, *The Multi-Door Courthouse Has Finally Arrived: New Settlement Procedures are Now Available in Superior Court*, http://www.mediationincnc.com/article6.html; STEVEN H. CLARKE, ELIZABETH D. ELLEN & KELLY MCCORMICK, COURT ORDERED CIVIL CASE MEDIATION IN NORTH CAROLINA: AN EVALUATION OF ITS EFFECTS (Inst. of Gov't., The University of North Carolina at Chapel Hill 1996); DANIEL E. KLEIN JR., MEDIATION AND HANDBOOK FOR MARYLAND LAWYERS (MICPL 1999).

[47] Argentina: Justicia/Participacion Cumunitaria, http://www.argentina.gov.ar/argentia/portal/paginas.dhtml?pagina=385 (last visited Mar. 20, 2009); Nigera: The Lagos Multi-Door Courthouse, http://www.lagosmultidoor.org/thecentre.aspx (last visited Mar. 20, 2009); Singapore: The Subordinate Courts of Singapore: About MDC-CiC, http://app.subcourts.gov.sg/mdc-cic/page.aspx?pageid=10661 (last visited Mar. 20, 2009).

June 2002 and, in addition to the option of litigation, offers parties the chance to participate in neutral evaluation, mediation, and arbitration. The Singapore MDC began in 1998. The Argentinean MDC has had limited development. As a result, it is not as effective a mechanism as it could be. I believe that the degree of participation was not sufficient at any of the phases in order to ensure successful implementation.

E. Adapting the MDC to the Latin American Context

I believe that the MDC has not been used to its full potential in Latin America, leaving much of its value untapped. I wanted to explore these ideas with other Latin Americans, and the Brazil Project became the forum in which these ideas could be tested. Even though I believe in the potential of the MDC, I wanted Brazilians to explore it and assess it from their unique perspective. By giving direct access to the knowledge and expertise, the participants were able to determine its suitability for themselves.

It is my theory that the multi-door courthouse, if appropriately adapted, could be a useful mechanism for bolstering social capital in Latin America. It offers a custom-made approach to meeting the needs of the parties, rather than a one-size-fits-all remedy, and this ensures a greater likelihood of obtaining a successful negotiated settlement. Nobel Laureate Amartya Sen suggests that in order for citizens to truly own responsibility for outcomes affecting them, they first must be empowered by knowing the different choices available to them.[48] Through the mechanism of the MDC, citizens are educated about the various dispute resolution options available to them and empowered to make decisions that are in their own best interests. The MDC provides an experience in which citizens can learn the skills necessary to work through conflict, rather than being subjected to a court-imposed outcome. Furthermore, the MDC can teach collaboration, a much needed skill in a culture dominated by an adversarial win-lose mindset.

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48 AMARTYA SEN, DEVELOPMENT AS FREEDOM 295–97 (Anchor Books 2000). He explains how human beings should be viewed not merely as the means of production but as the driving force of production. He suggests that developments should focus on the expansion of human ability and the desire to lead more worthwhile and liberated lives. Development, therefore, should be a "process of expanding substantive freedoms" for citizens. *Id.* at 297. In this sense, the role of social institutions—for example, the judiciary, NGOs, the media, and legislatures—is to enhance and maintain individual freedoms. I argue that the MDC can contribute to this goal, which will be addressed in a forthcoming article.

Second, the MDC can strengthen democratic processes and institutions. The experience of informed, participatory decision-making in the private sphere has the capacity for empowering citizens to participate in the public sphere.[49] Instead of being locked in a binary pattern of either passivity or aggression, the multi-door courthouse can open a spectrum of options for problem-solving. Giving citizens the tools and the expectation of participation in problem-solving at the personal level can inspire them to translate those tools and expectations into the public square. The invaluable experience of collaborating in order to bring about a sustainable agreement could help to revive local communities by encouraging citizens to take a greater role in local democratic processes. The promotion of more effective ways of interacting when conflict arises on personal, social, or political levels can strengthen local communities. A more inclusive, participatory democracy is a more stable democracy.

Third, the MDC can be an instrument for bringing about effective judicial reforms. Routing disputes to the appropriate forum for resolution can remove from the docket's backlog those cases that could be handled effectively through an ADR method. By making access to justice[50] through the courts more efficient, and therefore more affordable and available, the MDC can enhance the credibility of the judiciary by making it more accountable and transparent to citizens. Finally, the enforcement of human rights,

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[49] Social pacification, that is, moving beyond social upheaval and violence, is an important goal for Brazilians. The judiciary has not been able to deliver that, because the service of justice is provided for the satisfaction of one party and to the detriment of the other. This is disruptive to harmony. ADR can contribute to finding solutions that take into account both parties' interests, thus enhancing both parties' satisfaction. Silencing everyone is one way to achieve social pacification, but at the cost of free speech. Letting everyone talk without structure, on the other hand, produces chaos. Participation in an organized way does not suppress nor orchestrate what the parties say or do, but instead guides their interaction. This way, instead of producing either an oppressive silence, or noise, they would produce music. Then, this experience of meaningful interaction would transform the way the parties participate, first in the private sphere and then eventually in the public sphere.

[50] Judicial backlogs can occur for myriad reasons, and addressing them requires a multi-pronged approach. Professor Sander has remarked elsewhere that the introduction of the multi-door courthouse could in fact lead to an increase in caseload. *See* Sander, *supra* note 44. However, the Brazilian participants themselves define access to justice more broadly than access to a judicial decision. Rather, they see it as access to the best and most appropriate forum for the dispute at hand. In addition, ADR in Brazil operates under a very slight shadow of the law, and by linking ADR to the court system, it will enable the judiciary to cast a stronger shadow. I discuss this issue at length in an earlier article. *See* Mariana Hernandez Crespo, *A Systemic Perspective of ADR in Latin America: Enhancing the Shadow of the Law through Citizen's Participation*, 10 CARDOZO J. CONFLICT RESOL. 91 (2008).

too, would benefit because justice would not be limited to those with the money, power, and influence to navigate a lengthy, labyrinthine, and opaque judicial process.

A foundational idea underpinning the UST Research Network is to create a linkage between the United States and Brazil, in order to bring about effective change, serve as a conduit for knowledge, and bring ADR to the public square in Latin America. Our aim is to ensure that the knowledge gained here in the United States is living and active, and not simply gathering dust on a library shelf. By simply engaging social actors in order to discuss an idea and allowing them to begin a conversation in a specific context, it is possible to create a space in which prevailing socio-economic inequalities are set aside and a culture of inclusion can be built. ADR and the multi-door courthouse, by offering new ways to address conflict while at the same time providing experiences of civic participation, are levers that can move Latin America from a culture of passive political reaction to a culture of democratic action.

III. Project Narrative

A. Establishing the Structure: Designing Virtual Public Squares

A significant challenge in our research was the establishment of an effective and sustainable structure for the consensus-building project. At first, we believed we could simply create minipublics following on Fung's work. However, I quickly learned that it would require several teams to facilitate the consensus-building process. I formed an academic team to collaborate in the process and an administrative team to coordinate the people and technology needed.

1. Academic Team

The academic team was essential to our project because the expert members provided invaluable oversight and guidance on substance, procedure, policy and pedagogy. The academic team was composed of: Frank Sander, creator of the multi-door courthouse and Professor Emeritus of Law at Harvard Law School, who provided guidance on the substance of the project; Professor Lawrence Susskind, director of the Public Disputes Program at Harvard and founder of the Consensus-Building Institute, who

provided guidance on methodology and procedure; Dr. Yann Duzert, academic coordinator of the Master of International Management program at the Brazilian School of Public and Business Administration (EBAPE) and co-author of *Manual of Complex Negotiations*,[51] who provided advice on procedure; Carlos Diaz, Fellow at the Center for Public Leadership at the John F. Kennedy School of Government at Harvard, who offered guidance on policy; and Gianmar Boulton, pedagogical consultant. Team members from Brazil were essential in order to help us adapt the methodology and material to work effectively in the Brazilian context.[52]

2. Administrative Team

Our administrative team was composed of experts in the United States and Latin America.[53] These members coordinated technology, facilitated the consensus-building process for the participants, and provided motivation and encouragement. The Latin American team members provided the troubleshooting and motivation on the ground in Brazil.

3. Technology: Designing Virtual Public Squares

In addition to an organizational structure, the Project required a technological platform that would allow the participants located throughout Brazil to communicate in real time with each other and with the main office in the United States. The technology needed to link multiple locations was complex and required technicians both in the United States and in Brazil. In order to do this, we created a website that would serve as a virtual office accessible from both Brazil and the United States, and would act as a virtual classroom, where people could meet and interact. It was written in English, Spanish, and Portuguese, in order to establish a recognizable and authoritative presence in Latin American countries. The website became an essential tool for overcoming the aforementioned language barrier. This enabled us to disseminate information more quickly and seamlessly to those actively participating in

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51 Yann Duzert, Manual de Negociacões Complexas (FGV Editora 2007).

52 See the appendices for a complete organizational structure, along with explanation of job functions.

53 The Brazil Project lasted ten months, from June 2007 to March 2008. The first two months were spent training group facilitators in consensus-building. The next three months were then spent training the participants themselves in consensus-building. The final five months were spent building sector and national consensus in three areas: 1) the current use of dispute resolution systems in Brazil; 2) the multi-door courthouse as an option to improve dispute resolution systems in Brazil; and 3) methods for implementing the MDC across the judicial system.

the Research Network, and it also allowed policymakers and actors in Latin America to have access to the conversation. This website design enabled us to reach different audiences and allowed everyone to have their interests addressed.[54]

B. Laying the Foundation

1. Identifying the Parties: Engaging Committed Participants

Critical to the creation of the minipublic was the selection of participants from Brazil. We wanted to represent as many of the sectors of society as possible as have a stake in judicial reform, and we focused on seven: judges, lawyers, law professors (academia), law students, nonprofits, *favelas* (slums) and business. Because the issue at hand was judicial reform and the multi-door courthouse, it was natural to involve the judges, lawyers, law professors and law students. We wanted to extend an invitation to nonprofits and to the business sector because their work is significantly affected by the current judicial backlogs. We also chose to involve leaders or members of the *favela* communities in order to bring representation of the traditionally disenfranchised majority into the project. The hope was that by opening up a public deliberation process to those who are generally marginalized in the political process, a more sustainable agreement on judicial reform could be reached.

Once the sectors were identified, it was necessary to recruit facilitators and participants. Through careful consideration and trial and error,[55] I arrived at three criteria to guide us in the selection process. I knew that the Project would require people who were committed, innovative, and possessed the motivation to learn consensus-building skills, and who were open to using new technol-

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[54] UST information technology consultants were essential in helping us identify the tools we needed. To meet our virtual office and classroom needs, we used Blackboard as a platform and organized it according to country and then by sector. Security codes ensured that access was limited to the sector participants of a specific country; this enabled them to conduct research without being influenced by information from other sectors. For example, a judge in Brazil could access the project website, click into "Brazil," and then click into "judicial sector." From there the judge could access only those documents pertaining to other project members from his or her sector. For the virtual classrooms, we used Breeze technology as our platform. Our information-technology specialist in Brazil was essential to the success of the project because he possessed both the computer and language skills to train the participants to use the virtual office and classrooms. Because this was the Network's pilot project, we spent a great deal of time tweaking technologies.

[55] An earlier attempt at recruiting participants in Latin America for a consensus-building exercise had demonstrated that there is a direct relationship between the level of interest and the level of commitment to seeing the project through to the end.

ogies.[56] The search for participants began with trips to Sao Paulo, Belo Horizonte, Brasilia, and Rio de Janeiro in Brazil. I gave speeches to different organizations in different cities, and met with members of bar associations, chambers of commerce, universities and Congress. This allowed me to engage with potential participants and evaluate their levels of commitment, skills, and innovation. In the end, it was the professional mediators who showed enough enthusiasm and commitment to lead the efforts of putting together and leading teams, as well as to learn the online technology for virtual meetings.

The facilitators also helped to identify individual participants from the different sectors who could represent and speak on behalf of their own group or field. Each sector had a facilitator who was a professional mediator trained in consensus-building. These facilitators trained their sector's participants in consensus-building and basic ADR skills centered on inclusion. Our facilitators were vital to the success of the project, not only because they were charged with selecting the members of their sector teams, but also because it was the facilitators' responsibilities to keep their teams engaged throughout the long consensus-building process.

2. Training the Parties: Capitalizing on Diversity to Build Consensus

In *Breaking Robert's Rules*, Susskind observes that the more training participants receive, the easier consensus-building is.[57] However, currently in Brazil, parties in an ADR process get to the table with very little knowledge of what the process entails, leaving leadership of the process to the mediator. The parties also arrive at the table with an adversarial, win-lose paradigm, and have little training in collaborative participation, let alone value creation. The Project therefore aimed to inform the participants as much as possible about the consensus-building process itself. In addition, it trained them in basic collaboration skills, which helped facilitate the process and improve outcomes.[58]

Training occurred in two stages. In the first stage, administrative team members were trained in civic engagement and commu-

[56] Some of our early participants were intimidated by the technology (Breeze) that was used to facilitate communication between participants and the UST team. Because they also lacked the motivation to learn it, their ability to participate effectively was affected. Thus, we learned that technological skill was an essential criterion for participation.

[57] BREAKING ROBERT'S RULES, *supra* note 23, at 161.

[58] For example, in the Washington, D. C. Multi-Door Courthouse, parties to a mediation undergo a mandatory three-hour training session.

nity-based advocacy, which focused on involving citizens in the public square in an effective and meaningful way. It also emphasized the use of diversity, not merely its toleration, in the consensus-building process in order to create value. This training instilled a deep appreciation for the opportunities and strengths that diversity can bring to the consensus-building process, which the administrative team used to motivate and encourage the sectors and their facilitators throughout the process.

Because we needed to overcome a knowledge gap with our participants, the Brazil Project lasted ten months, from June 2007 to March 2008. The first two months were spent training group facilitators in consensus-building. The next three months were dedicated to training, and the remaining five months to carrying out the three main tasks: first, to build consensus on the current use of ADR in Brazil; second, to explore the multi-door courthouse as an option to improve the dispute resolution systems in Brazil; and third, to examine methods of implementing the multi-door courthouse across the system, from the law schools, to the courts, to broader society. Consensus was first built at the sector level and later at the national level.

In the case of the UST Brazil Project, the training component was complicated by the large number of parties, distance, and the issues involved. Most existing training material was aimed at English-speaking mediation professionals, but we also needed material to provide the basic skills to non-expert, Latin American, lay participants. We opted to create a video series that emphasized diversity, in order to counter the dominant culture of exclusion and to create value and promote inclusion through ADR in the Latin American context. This training was created by Latin Americans for Latin Americans. Through the training videos, we were able to impart the skills necessary for effective participation in the consensus-building process. Produced at the University of St. Thomas, the videos condensed the essentials of consensus-building into a guide for the participants. The three-month long training, entitled *Optimal Solutions: Using Diversity for Value Creation*, was divided into seven segments.[59] For the first month, the sector participants

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[59] Segment 1: Learning to Combine: Creating a Product More Complete, Efficient and Sustainable; Segment 2: UST International Research Network; Segment 3: The Value of Diversity as an Indispensable Resource: A Change in Paradigm; Segment 4: Principles of Conflict Diagnosis and Negotiation: Each Person is in their own World, but there is only one World for All People; Segment 5: How to Move from Noise to Music: Collaboration; Segment 6: Building Power and its Limitations; Segment 7: The Importance of Individual Participation in Value Creation.

watched the videos and discussed them with their facilitator to ensure that the basic ADR skills and theoretical framework were grasped. The training required a commitment of approximately three hours per week, including lectures and online discussions. Only after all of the preliminary training was completed could we begin the consensus-building process.

This training provided key tools for communication, including how to gather and ask for information, how to provide information, how to actively listen, and most importantly, how to reframe issues from different perspectives. What distinguishes *Optimal Solutions* from other ADR processes is that it raises participants' awareness about the diversity of perspectives and cultural values. It also teaches all the stakeholders how to communicate and interact on a level playing field. More precisely, it shows those in traditional positions of power how to listen to those who are normally marginalized in public decision-making processes, and how to use knowledge, needs and perspectives to help create value for a sustainable solution,[60] one that every stakeholder can accept. Stated another way, it shows the disenfranchised how to communicate their needs, ideas and perspectives to the group, how to look at problems from various perspectives, that their perspectives are valuable, and to speak the language of the dominant political discourse. The overriding concept is complementarity,[61] which means one person or group has what the other lacks.

C. Building Knowledge: Brazil's Consensus-Building Process

The process began with the facilitators distributing questionnaires to the participants. The questionnaires were introduced as a tool to help participants identify, with the guidance of the facilitator, their positions, interests and values. The questions focused on the issues around which they would be building consensus: how their community currently deals with conflict, the MDC as an option, and their perspective on what needs to change in the

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[60] It is precisely the promise of value creation that can serve as an incentive to those in power to participate.

[61] *See* SOCIAL ENTERPRISE KNOWLEDGE NETWORK, EFFECTIVE MANAGEMENT OF SOCIAL ENTERPRISES: LESSONS FROM BUSINESSES AND CIVIL SOCIETY ORGANIZATIONS IN IBEROAMERICA (James Austin et al. eds., David Rockefeller Center for Latin American Studies 2006) (citing examples of collaboration between business and civic society organizations to create value and address social problems in Venezuela, Chile, Colombia, Brazil, and El Salvador, to name a few instances).

system in order to implement their solution. Once the parties completed the questionnaire, the facilitator interviewed them individually to ensure that their positions, interests and values were accurately represented and understood. The facilitator then created a document that presented anonymously all of the positions, interests and values of each team member. When each sector group convened, its facilitator already had done much of the work, which enabled each group to reach consensus faster.

During the sector meetings, the documents were presented and discussed, and if anyone disliked an aspect of the document, they were given an opportunity to propose an alternative that everyone could live with. Once this stage of the process was complete, the documents were ratified at the sector level and then at the national level. Thus, consensus had to be built at two levels: first within the sector, where the initial documents were produced, and second at the national level, where representatives of the various sectors created consensus across sectors.

Training Modules

The first module was entitled "Understanding ADR in the Brazilian Context." Using the process described above, each of the participants articulated their unique perspective. This ensured that every participant and every sector's viewpoint was acknowledged. Respect for the individual and sector positions was vital to the success of the process because members of the judiciary frame the issue of judicial reform very differently than members of the *favela*. This module opened up the possibility of combining strengths to bring about sustainable and effective change.

Module Two, "Exploring the Multi-Door Courthouse as an Option," explained the thesis and goal of the project. It aimed to understand whether and how the multi-door courthouse would work in the Latin American and Brazilian context and under which circumstances and for what purpose it could be successfully implemented.[62] In this module, participants heard firsthand from theo-

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[62] Because of the marked differences between the U.S. and Latin American contexts, the purpose of the multi-door courthouse would be very different from its main purpose in the United States. For instance, one of the main differences between the U.S. and Latin America is that in the U.S., ADR processes operate under the "shadow of the law." Thus, if alternative dispute resolution methods fail to bring about an agreement, parties always have recourse to the court system. The court acts as a BATNA (Better Alternative to a Negotiated Agreement) for parties at the bargaining table; that is, parties know that they can walk away from the bargaining table if an agreement is perceived to be less than fair, and they can take their dispute to the courts. This is not true for Latin American countries like Brazil. Recourse to the courts is not

rists and practitioners from around the world who are experts on the MDC. Directors of multi-door courthouses and experts from Nigeria, Boston, Washington, D.C., Argentina, and Singapore were excited to have the opportunity to share their knowledge with the project participants.[63] In addition to the virtual meetings with the experts, we also made available resources provided by the experts on the project website, so that participants could easily access all of the information.

The third module, "Creating Options and Systematic Mechanisms for Implementation," was an opportunity for the Brazilian participants to brainstorm about possible options in addition to the multi-door courthouse, as well as to think creatively about methods for implementation. This approach was built on the well-founded assumption that we could not simply export the multi-door courthouse and expect it to work without adaptation to the peculiar situation of Brazil.[64] Another significant assumption underpinning this module was the conviction that diversity is a key resource that can be used to challenge the current paradigm.

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practical, as current judicial backlogs mean that cases may not be heard for nearly ten years, in some instances. *See* Mariana Hernandez Crespo, *A Systemic Perspective of ADR in Latin America: Enhancing the Shadow of the Law through Citizen Participation*, 10 CARDOZO J. CONFLICT RESOL. 91 (2008).

[63] Coordinating the virtual meetings between experts and the participants presented its own unique challenges, particularly because of the time zone differences with Nigeria (eight hours) and Singapore (thirteen hours). We were pleased to have the following experts join us: Jeannie Adams, from the Multi-Door Courthouse in Washington, D.C.; Kenny Aina, Director of the Lagos, Nigeria Multi-Door Courthouse; Stephen Chiang, Case Administrator for the Singapore Multi-door Courthouse; Timothy Germany, Commissioner of Mediation with the Federal Mediation and Conciliation Service, who mediates private sector labor disputes with a wide spectrum of industries; Carole Houk, JD, LLM, who is CEO of Carole Houk International, LLC (CHI), which specializes in the design, implementation, and evaluation of integrated conflict management systems for organizations; Deborah Katz, JD, Model Workplace Program Executive at the U.S. Transportation Security Administration (TSA), with primary responsibility for development and implementation of TSA's Integrated Conflict Management System which provides skills and structure including processes and organizational support for proactive conflict management; Alejandro Lareo, from the Argentina Multi-Door Courthouse; Joyce Low, Deputy Director of the Primary Dispute Resolution Center at the Singapore Multi-Door Courthouse; James McCormack, from the Boston Multi-door Courthouse; and Dr. Mallary Tytel, President and founder, Healthy Workplaces. Dr. Tytel is the former CEO of an international nonprofit corporation; served as a key advisor to senior level civilian and military personnel within the U.S. Department of Defense; created and delivered and innovated leadership development training program in over 40 military communities worldwide; and has provided oversight for three Congressionally mandated pilot programs for high risk populations in sixteen communities across the country.

[64] *See* Abraham F. Lowenthal, *The United States and Latin American Democracy: Learning from History*, *in* EXPORTING DEMOCRACY: THE UNITED STATES AND LATIN AMERICA: CASE STUDIES 280 (Abraham F. Lowenthal ed., Johns Hopkins University Press 1991).

Also in this third module, we introduced the participants to the latest innovations in ADR. We brought in experts on dispute system design and integrated conflict-management systems. These subfields within ADR work to avert conflict before it occurs, and attempt to address it in a systemic way. Two guest experts were invited to explain the theoretical framework of the field and how cultural assumptions work, giving the participants a systemic perspective.[65] We also invited two practitioners to give us concrete examples. In collaboration with the American Bar Association (ABA) Section of Dispute Resolution, we were able to identify and invite some of the top practitioners who are experts at working with large scale projects. We brought an expert from the Transportation Security Administration ("TSA"), whose experience could translate to a large-scale project like judicial reform in Brazil. Participants also heard from a systems-design expert working in the health-care field, who testified to the remarkable spread of ADR and systems design within the United States, offering hope to the participants that similar change may be possible for Brazil. After learning about the theory and practice of ADR and its subfields, the participants met with their groups to discuss and to make important decisions about why, what, and how systemic change could be brought to Brazil.

IV. The Results of the Brazilian Consensus-Building Process

The consensus-building process required that the sectors craft a consensus document following the completion of each module. After this, representatives of each sector convened to create a single text for each module containing their consensus at the national level. In considering the importance of ADR, each of the sectors had specific and unique reasons why ADR could benefit them. Again and again, the participants emphasized the potential for ADR and the multi-door courthouse to resolve disputes more quickly and cost-efficiently and to be more effective at preserving and fostering peace and cooperation.

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65 All of these presentations were recorded for use with future projects and their participants.

Lawyers

Participants in the lawyers' sector thought ADR could provide a culture of peace strengthened by the improved communications and relations between people. They also saw the potential for creating a less confrontational and violent environment—one that is balanced and able to allow the full exercise of citizenship. The lawyers agreed that ADR could improve participation, respect for the autonomy and self-determination of people, accountability, confidentiality, and quality of service. Finally, they observed that ADR could lead to a broader consideration of the meaning and application of justice that allows for the possibility that judgments in and of themselves may not be the best service for justice; rather, negotiated settlements may serve justice more completely.

Law Professors

For the law professors in Brazil, ADR is important for one significant reason. They educate and shape future law professionals and are thus a natural source of cultural change. Since ADR needs to be included in all areas of social practice and integration, bringing information about ADR to the universities will enhance its development and encourage its practice.

Business Sector

The participants from the business sector consider mediation and conciliation to be important because fast decisions, the preservation of commercial relations, and a focus on the future are fundamental to economic productivity. Arbitration is important when evidence needs to be evaluated and negotiations have come to a standstill; it allows for timely and technically specialized decisions that are important for the development of business deals to proceed.

Law Students

The Brazilian law students were focused on humanizing the law to emphasize human dignity and to include more participation by the people. ADR is important to law students for the following reasons: 1) it is necessary to understand a conflict in several ways, especially in order to choose the most appropriate mechanism for resolution; 2) ADR reveals overlapping conflicts (apparent and real) and thus demonstrates the need for the application of justice to be broader than the existing legislation; 3) there is a need to modify how the judicial process is taught, from adversarial to coop-

erative paradigms, and from lose-win to win-win; 4) ADR humanizes the study of law and emphasizes the importance of participation, as well as helping people recover their dignity by presenting them as people and not just parties in the legal process; 5) it is necessary to modify the notion that the judiciary is the only means to resolve conflicts by showing that ADR can provide faster solutions, more focused on the issues in question; and 6) it is necessary to present the study of law as something complex and continuously evolving, rather than as something simply formal and technical.

Low-Income Communities

The participants from the *favelas* (slums) thought ADR was important because it teaches that conflicts can be solved in a peaceful, rewarding way. People need to know that there are several ways to resolve conflict so that they can choose a path of harmonious co-existence. The use of ADR creates a positive regard for those involved, allowing them to walk with dignity in their community and to help others. It shows that the proper functioning of justice requires new ways of dealing with problems. Finally, building a solution together makes the decision more satisfactory.

Judges

For judges, this exploration of ADR and the multi-door courthouse was important because it added new knowledge and techniques to those already in use. The judges wanted to examine the multi-door courthouses around the world for convenience and ease of implementation in Brazil. The judges appreciated the opportunity to exchange knowledge among different groups. They discussed common ideas about the application of ADR in Brazil and also about the shortcomings of the judiciary, including the identification of areas for improvement. They welcomed the opportunity to work together and to reflect on the importance of alternative methods, as well as techniques of mediation and the multi-door courthouse.

Non-Governmental Organizations ("NGOs")

Finally, for the NGO sector, ADR was important because of its emphasis on the ability of people to solve their problems and differences through dialogue and reflection. Participants in this sector observed that ADR enhances democracy and citizenship, in addition to renewing trust in fairness among people. It also can

contribute to the judicial function while taking into account the need for conceptual changes within the judiciary itself. Lastly, the representatives of the NGOs thought that ADR allowed access to fairness mechanisms and benefited social relations.

National Single Texts

The national consensus-building documents, called single texts,[66] reflect many of the same themes. Overwhelmingly, they found that ADR makes the dispute-resolution process more efficient, more affordable and less destructive to social relations. Non-adversarial methods of dispute resolution were most desired; the participants felt that these methods would be a path to creating a culture of cooperation and peace, instead of the current culture of socially destructive litigiousness. Most importantly, the participants saw ADR as a way to broaden access to justice and to improve the quality of judgments and solutions.

Module One Single Text

The Single Text from Module One describes the current state of conflict resolution in Brazil. In it, the participants agree that the average citizen is either passive in conflict or resorts to the judiciary, with no middle option for finding resolution. There is a pervasive culture of litigation promoted by the lawyers. This leads to too many people seeking redress in the courts when many disputes could be better settled elsewhere. The judiciary itself is backlogged and takes in more cases than it can process adequately. The participants felt that the judiciary was not impartial, and that it makes the laws work for only a few rather than all citizens as is constitutionally guaranteed. They also felt that judicial decisions do not take into account the real needs and interests of the parties, which makes many judgments unsustainable.

There have been attempts at improvement that have done a little to alleviate the situation. Efforts to offer free legal assistance to low-income parties, to simplify procedural law, and to provide more information on rights, while useful, have not been enough to create adequate access to justice.[67] Indeed, the participants unani-

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66 For the single texts from each module, see *infra* appendices. What follows is the author's summary in translation.

67 Although these and other isolated actions have tried to improve conflict resolution in Brazil, there is a lack of joint effort between public and private organizations that could focus on conflict prevention. The participants felt that this disconnect may be one of the reasons as to why the law is not better disseminated and understood by all citizens.

mously said that the judiciary needs to be restructured in order to make the judicial process more efficient, affordable, streamlined and equal.

An interest common to all of the sectors was the "pacification, well-being, and common good of society." All participants want a more equal, less violent society that does not resort to riots, violence, or unrest when there is conflict. In many ways, ADR and the multi-door courthouse could be the new paradigm for conflict resolution that could provide a path to peace for the whole of society. ADR and the multi-door courthouse bring a sense of responsibility to citizens, and those who are responsible for the conflict are also responsible for addressing it. "The parties should be the protagonists in the resolution of their conflict," the participants noted in the Module One Single Text. The elements of accountability and participation can help to prevent future conflicts, and, because of this ADR, and the multi-door courthouse should be promoted by political leaders and made accessible to everyone. Clearly, for the Brazilian participants, ADR and the multi-door courthouse are important elements in bringing about social restoration through efficient and effective agreements. They believe that ADR and the multi-door courthouse can bring about "social pacification," a culture of peace, equal treatment for all members of society, better access to justice and can restore trust in the judiciary.

Although there is tremendous interest and hope in ADR and the multi-door courthouse for Brazil, the participants still envision a strong role for the judiciary. They do not see ADR and the MDC as replacing or competing with the judiciary, but rather as complementing it. Bringing ADR into the menu of options for resolving disputes will allow the judiciary to be more efficient and effective, freeing up many of the cases currently in the backlog. ADR can offer speed, inclusiveness and sustainable, negotiated solutions to disputes that may have languished in the courts.

Module Two Single Text

The Module Two Single Text explored the option of the multi-door courthouse in the context of the Brazilian reality. Again, the participants emphasized the need for structural change within the judiciary in order to broaden and facilitate access to justice. They wanted better infrastructure and training for judges and for the process to be faster and more affordable with little emotional cost

to the parties. In short, they wanted the judiciary to reflect the values of efficiency, credibility and effectiveness.

Of particular note is the fact that the participants did not like the use of the word "court" in reference to the multi-door courthouse. Rather, they preferred the term "forum." They noted that in Portuguese the word "forum" connotes directness and being open and accessible to all citizens. The word "court," on the other hand, connotes a lack of transparency,[68] as well as remoteness from citizens.

On the whole, the participants viewed the multi-door courthouse very favorably. They appreciated the possibility of informed decision-making by citizens, the transparency of the options and the process itself, and increased access to justice. Notably, they liked the fact that the multi-door courthouse encourages citizens to be the protagonists in the resolution of their own disputes. The MDC would increase the citizens' responsibility and their commitment to a solution. It also would stimulate shared decision-making, which familiarizes citizens with a participatory way of problem-solving. This, in turn, could allow them to become more independent in times of dispute or crisis, rather than depending on the government for resolution. Finally, use of the multi-door courthouse gives citizens experience in actively managing their own personal disputes, and thus, empowers them for active participation in public affairs.

The participants note, however, that the current litigious culture will be difficult to overcome. It will be hard to move people from the binary of passivity-litigation to a middle ground provided by the multi-door courthouse and ADR. In order to overcome this challenge, the participants first agreed that it is critical that ADR methods be promoted more broadly throughout the country and be included in law school curricula. Second, they noted that the regulation and monitoring of ADR professionals and forums would alleviate concerns about receiving second-class justice.[69] Third, the

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68 Luis Moreno-Ocampo, former head of Transparency International and present chief prosecutor at the International Criminal Court, has written and commented a great deal on ways to deal with corruption. He argues that people need incentives to be good and avoid corruptive behavior, and that governments need to offer incentives to bring about positive social change. *See* LUIS MORENO-OCAMPO, EN DEFENSA PROPIA: CÓMO SALIR DE LA CORRUPCIÓN (Editorial Sudamericana 1993).

69 They noted that the experience of corruption may generate distrust and fear that the multi-door courthouse could lead to unfair decisions because of intimidation or manipulation. Of course, if the judiciary were functioning as a viable alternative to ADR, this concern could be easily allayed.

interdisciplinary training of ADR professionals and the development of physical infrastructure will go a long way toward establishing the legitimacy of ADR and the multi-door courthouse. Finally, the establishment of effective evaluation methods would also legitimize the multi-door courthouse and ADR.[70]

Module Three Single Text

The Single Text of Module Three discussed strategies for accomplishing the proposed changes from a systemic perspective. The participants emphasized that they do not consider ADR and the multi-door courthouse to be a replacement for the judiciary but rather see it as a complement to the judiciary. They also thought that ADR and the MDC could improve the qualitative access to justice that is guaranteed by the Brazilian constitution because of the focus on matching and routing disputes to the most appropriate forum. Because "qualitative access" presupposes speed, economic access and adequate protection, the linking of the multi-door courthouse to the courts could assist in providing this constitutional guarantee.

The participants looked at various ways to promote ADR and the multi-door courthouse in Brazil. They noted that promotions should emphasize that these methods are more inclusive and promote jointly negotiated decisions, in addition to being faster, more affordable and causing less negative emotional impact on the parties. They were keen to stress that ADR and the multi-door courthouse have a preventative nature because they give citizens tools to settle future disputes before they escalate. The participants noted that Brazilians are sympathetic to finding joint solutions because of their creativity, cordiality, solidarity, and the ability to express themselves. They see themselves as a truly pluralistic society with a natural ability to manage diversity.

This Single Text also included specific recommendations for improving the judicial sector through better training, compensation and infrastructure, among other things. The participants discussed short-term, medium-term and long-term solutions for increasing judicial efficiency. These include the passage of a mediation law under discussion, expanding ADR into higher education curricula, and adopting effective evaluation systems. They felt that these efforts should move forward through a joint collaboration of public

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[70] They suggest that evaluation be both quantitative and qualitative. Data should be gathered on the speed of resolution, how many of the agreements are enforced, the average cost of a procedure and the level of satisfaction of the parties, as compared to the traditional system.

and private organizations and be led by the National Council of Justice.

V. Advancing Participatory Decision-Making: Next Steps

Through the Brazil Project, the UST International ADR Research Network demonstrated that a diverse range of stakeholders across a wide geographic area can build consensus. Through a participatory process, participants were able to frame the issues, create, evaluate and select options, and agree on possible methods for implementation. The UST International ADR Research Network offered the tools and training necessary to begin the process of optimizing dispute resolutions systems; it remains for the Brazilians to carry it out.[71]

In addition to learning that such large-scale consensus-building is possible, we also learned much about what kinds of resources were necessary to facilitate the process. If future endeavors, such as this one, are to be carried out in the region, I suggest emphasizing the training of facilitators and participants, which was essential for the success of this particular project. Furthermore, facilitators helped participants to identify their positions, interests and values. Experts on the subjects of the multi-door courthouse and dispute system design shared knowledge, which allowed participants to make informed decisions. Even if training may seem lengthy and cumbersome, it allows for the creation of the culture and skills necessary for successful consensus-building. Moreover, comprehensive training in the use of diversity to create value in ADR will affect the outcome of a particular consensus-building process.

Most importantly, training builds capacity. Our participants have begun to develop informed decision-making and conflict resolution skills that can be transferred to other spheres, both public and private. The ability to make informed decisions with a clear understanding of one's positions, interests and values, together with substantive knowledge about the issue at hand, is critical for meaningful participation in democratic processes.

And what of Latin America's future? Citizens can continue marching, burning tires and banging their pots and pans, or, as the

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[71] *See* Breaking Robert's Rules, *supra* note 23, at 131–53 (for a discussion of the need for final ratification).

participants in Brazil have demonstrated, Latin Americans can start building the Latin America they want. By engaging in consensus-building as a supplement to traditional representative legislative processes, citizens and governments together can bring the greater social and political stability that the region desperately needs. There is only so much that can be done through an academic exercise. Latin Americans must be the ones to create the institutions that allow for meaningful and dynamic public participation.

APPENDIX A
ORGANIZATIONAL STRUCTURE

A. American Academic Team

1. *Executive Director*: UST professor Mariana Hernández Crespo
   - Designs the modules by crafting questions that challenge the participants' perceptions and increase their awareness of the filters through which they assess conflicts and options
   - Facilitates the virtual forums by guiding the process to ensure that participants value their differences, and use those same differences to work collectively
   - Trains facilitators
   - Coordinates substantive research
   - Oversees the national coordinators with regard to project content
   - Organizes and designs the final encounter
   - Analyzes and publishes the final results
2. *Advisory Board*: Provides general guidance and oversight
   - Frank Sander, Professor Emeritus, Harvard Law School
     - ° Creator of the multi-door courthouse model
     - ° An expert in alternative methods of dispute resolution
   - Lawrence Susskind, Professor, Harvard and MIT
     - ° Director of The Public Disputes Program at Harvard Law School
     - ° Founder and senior advisor of The Consensus-Building Institute
3. *Academic Consultants*: Faculty members who assist in crafting the modules in their specific fields of expertise

B. Executive Board and Regional Team

1. *Executive Board* (reports to Executive Director)
   a. Pedagogical Consultant
      - Assists in designing and reviewing teaching methods and strategies
      - Analyzes the pedagogical progression of the project

   b. Technical Director
      - Facilitates the integrated use of a combination of software, online forums, conference calls, videos, and videoconferencing

- Distributes and collects online surveys and questionnaires

c. Communications Director
- Manages publicity
- Designs and administers website hosted by The University of St. Thomas
- Provides general administrative support

d. Regional Administrative Coordinator
- Conveys information between Executive Director and National Coordinators
- Oversees technological aspects of project for region, including training participants to use platforms and programs
- Oversees the national coordinators with regard to project logistics
- Translates all English documents from Executive Director into Spanish
- Maintains database of participants

2. *Regional Team* (one per region, e.g. Latin America)

a. Regional Administrative Coordinator
- Conveys information between Executive Director and National Coordinators
- Oversees technological aspects of project for region, including training participants to use platforms and programs
- Oversees the national coordinators with regard to project logistics
- Translates all English documents from Executive Director into Spanish
- Maintains database of participants
- Organizes master archive of documents

b. Associate Regional Administrative Coordinator
- Reports to Administrative Coordinator
- Compiles and organizes all project documents, including translations and proofreading
- Maintains database of participants

3. Regional Communications Consultants
- Manage publicity
- Design and administer website hosted by The University of St. Thomas
- Provide general administrative support

4. Regional Technology Team

a. Regional Technology Advisor

- Provides a high level of expertise in troubleshooting technological problems

b. Regional Technology Consultant

- Facilitates the integrated use of a combination of software, online forums, conference calls, videos, and videoconferencing, especially in terms of language translation
- Distributes and collects online surveys and questionnaires

C. National Teams (one per country)

1. *National Project Representatives*
   - Work in contact with Executive Director
   - Suggest institutions and individuals with like interests for association
   - Draw national and international interest in the project due to expertise in this area and knowledge of current national events
   - Lend voices to final results for future applications
2. *National Facilitators*
   - Responsible for enlisting Sector Coordinators and participants, and encouraging commitment
   - Oversee the sector meetings with regard to content
   - Oversee technological aspects of project for their countries, including training participants to use platforms and programs
   - Oversee the Sector Facilitators with regard to logistics
   - Maintain open communication lines within and among sectors
   - Gather and organize information from all sectors, in terms of participants and documents
   - Convey information between Regional Administrative Coordinator and Sector Facilitators
   - Translate project material from Spanish to local language (i.e. Portuguese) or dialect

D. Sector Leaders: Academic, Business, Favela, Judicial (judges), Legal (lawyers), Nonprofit, and Student (one per country, per sector)

1. *Sector Facilitators*
   - Enlist participants

- Facilitate a series of semi-weekly, two-hour meetings with five members of their sectors, via online videoconferencing, in which they lead a consensus-building process
- Play the crucial role of outside guides who provide a new perspective on an old situation and challenge old assumptions
- Convey information between participants and national administrative coordinators
- Participate in a national online forum to share results

2. *Sector Executive Coordinators*
   - Assist with enlisting participants
   - Coordinate meeting logistics

E. Sector Representatives (four per sector, per country)

- Maintain an awareness of their constituency's current interests and strive to represent them in the consensus-building process
- Listen and ask questions, ensuring that everyone's interests and values are taken into account during the process and in crafting the final agreement
- Learn to talk to one another, avoiding deadlock, to define and work collectively toward common goals
- Become aware of their assumptions in interpretation and the cultural values behind the logic accepted for each argument
- Collectively reach final consensus in each phase of the project

APPENDIX B
MEMBERS OF THE SEVEN SECTOR GROUPS

Executive Director: University of St. Thomas School of Law professor Mariana Hernández Crespo teaches international alternative dispute resolution, mediation, and environmental problem-solving. She is the founder of the UST International ADR Research Network.

Advisory Board:
Frank Sander—Professor Emeritus, Harvard Law School and creator of the multi-door courthouse model. He is also an expert in alternative methods of dispute resolution.
Lawrence Susskind—Professor, Harvard and MIT and Director of the Public Disputes Program at Harvard Law School. He is also founder and senior advisor of the Consensus Building Institute.

Academic Consultants:
Carlos E. Díaz Rosillo—teaches about and researches chief executive leadership, public sector institutions, and public policy. He is a head teaching Fellow at the Center for Public Leadership at the John F. Kennedy School of Government at Harvard University (Ph.D ABD) and a visiting professor at Florida International University.
Yann Duzert—is the academic coordinator of the Master of International Management program at the Brazilian School of Public and Business Administration (EBAPE), and is Director of the Executive Education/Semana FGV at FGV Management. He is coauthor of the book *Manual of Complex Negotiations*.

Pedagogical Consultant:
Gianmar Molero de Boulton—holds an M.A. in Education from Loyola Marymount University in Los Angeles, California. She has served as the General Coordinator of a Civic Education Workshop in five Venezuelan public schools, and she supervised a Mayor's Office project for returning dropouts to schools in Caracas, Venezuela. She received training designed at Harvard University for coaching social leaders and multi-party negotiation, and has taught an honors course in civic engagement at Universidad Metropolitana in Caracas.

Regional Administrative Coordinator:
Ana Teresa Machado de Yepes—is currently a professor and Dean of Students at Universidad Metropolitana in Caracas, Venezuela, where she teaches Public Leadership and has co-taught an honors

course in civic engagement and other courses on multi-party negotiation, as part of a Harvard Law School clinic.

Associate Regional Administrative Coordinator:
Maria Florencia Tischler—holds a degree in Political Science and International Affairs from Northeastern University. She is currently working on her thesis to receive her master's degree in International Administration (MAIA) from the University of Miami. Tischler has conducted research and worked with low- and moderate-income families and individuals in Venezuela and the U.S.

Regional Communications Consultants:
Isabel Cristina Yepes Machado—graduated in 2006 from Universidad Católica Andres Bello with a degree in Journalism, and a concentration in mass media. She has extensive experience working in rural communities to support the empowerment of citizens. Currently she works as a Press Department Coordinator at ESTIMA Comunicaciones Inc.
Angela Francis—is a bilingual personal banker at Wells Fargo, where she has provided financial services to the public for the last four years. She is an active member of HOLA ("Heritage of Latino Americans"), a nonprofit organization for the local community at Wells Fargo. She earned her BA in Architecture from "La Universidad del Zulia" (LUZ) in Maracaibo, Venezuela.

Regional Technology Advisor:
Carlos A. Morales—is Senior Programmer and Technical Lead at Quilogy, Inc., a Global Systems Integrator and Microsoft Certified Gold Partner. He has over six years of IT, networking, and software development experience, helping companies across the U.S. to solve complex business problems.

Regional Technology Consultant:
Germán R. Eiras—received his degree in Administrative Sciences, with a concentration in Management, from the Metropolitan University. He was the Vice President of Finance and the Committee Organizer of the Employee Fair "Contacto Empresarial" from September 2001 to April 2002. At present, Eiras is Coordinator of the Career Center of the Metropolitan University, and is studying for a specialized degree in Integrated Communications.

National Project Representatives:
Ada Pellegrini Grinover—is a Professor of Procedural Criminal Law at the University of São Paulo. A retired State Attorney, Pro-

fessor Grinover is the Chairwoman of the Brazilian Institute of Procedural Law and an academic of the Brazilian Academy of Legal Culture and of Paulista Law Academy. The Brazilian Institute of Consumer's Defense and Politics instituted the Ada Pellegrini Grinover award in 1998, for the best yearly monograph on consumer's rights.

Kazuo Watanabe—is a lawyer, professor, and retired judge of Tribunal de Justiça de São Paulo. He graduated from Faculdade de Direito da Universidade de São Paulo in 1959, holds master's and doctorate degrees in procedural law, and teaches at the post-graduate level. He is Doctor Honoris at Keio University, Tokyo, Japan. Watanabe is also founder and president of Centro Brasileiro de Estudos e Pesquisas Judiciais (CEBEPEJ) and of Instituto de Direito Comparado Brasil Japão.

National Facilitators:

Tania Almeida (National Facilitator)—is a senior partner of MEDIARE (CeQUEquipenter of Conflict Management), where she works as a consultant, supervisor and teacher in conflict mediation and dialogue facilitation. She is also a guest professor at Getulio Vargas Foundation Law School–RJ, where she teaches mediation and conciliation. Almeida works as an Inter-American Development Bank Researcher on alternative dispute resolution methods and is a member of the Coordination and Control Committee of the Inter-American Development Bank's Brazilian Project for the Development of Mediation and Arbitration in Small and Medium Firms.

Rafael Alves de Almeida (Assistant National Facilitator)—is the Coordinator of the Post-graduate Courses in Law at the Fundação Getulio Vargas Law School of Rio de Janeiro. He is currently a Lecturer on Mediation and Arbitration at FGV DIREITO RIO. He is a partner at the Law Firm Alves & Rocha Vianna—Sociedade de Advogados. He completed his LL.M in International Business Law at the London School of Economics and Political Science, and his Master of Laws in Regulation and Competition at Candido Mendes University, Rio de Janeiro. He finished the Magistrate School of Rio de Janeiro, took his Law degree at the Federal University of Rio de Janeiro—UFRJ, and his degree in Economics at Candido Mendes University. He is also a member of: (i) The Permanent Body of Conciliators and Arbitrators of the FGV Conciliation and Arbitration Centre, (ii) the Brazilian Bar Association, (iii) the Young International Arbitration Group, of the London Court of International Arbitration, (iv) GEDECON—Competition

Law Research Group, (v) International Centre for Dispute Resolution Young & International Group, and (vi) International Society for Ecological Economics.

Sector Representatives:

Lawyers' Group

Lia Regina Castaldi Sampaio (Facilitator)—Lawyer, psychologist and mediator; VP of the Mediation area of the IMAB (Institute of Arbitration and Mediation of Brazil); President of the NGO—Association Social Interaction Network.

Adolfo Braga Neto (Sector Representative)—Lawyer and Mediator; President of IMAB (Institute of Arbitration and Mediation of Brazil); VP of CONIMA (National Council of Mediation and Arbitration Institutions).

Marco Antonio Garcia Lopes Lorencini (Exec. Coordinator)—Lawyer and teacher; Ph.D in Civil Procedure Law from the University of São Paulo, Brazil ("Alternative Dispute Resolution Methods and State Dispute Resolution").

Juliana Demarchi—Lawyer; District Attorney of São Paulo; Ph.D in Civil Procedure Law from the University of Sao Paulo, Brazil; Mediator associated with IMAB.

Caroline Costa—Lawyer; Secretary of Arbitration, Mediator and Arbitrator—Chamber of Mediation and Arbitration of the Engineering Institute.

Luis Fernando de Freitas Penteado—Lawyer and mediator; Professor of Environmental Law at the Pontifical Catholic University of São Paulo—SP.

Christian Garcia Vieira—Lawyer; LL.M in Civil Procedure Law from Pontifical Catholic University of São Paulo—SP.

University Professors' Group

Tania Almeida (National Facilitator)—M.D. in Neuropsychiatry; Graduate courses in Sociology, Psychoanalysis and Family Therapy; M.B.A. in Business Management; Master in Mediation; Conflict Mediation and Dialogue consultant; Supervisor and teacher; Senior Partner of MEDIARE (Dialogues and Decision Procedures).

Rafael Alves de Almeida (Sector Representative and Asst. National Facilitator)—Lawyer and economist; Lecturer and coordinator of the post-graduate courses in law at Getulio Vargas Foundation Law School in Rio de Janeiro; LLM in International Business Law at London School of Economics.

Celso Simões Bredariol—Agronomic Engineer; Director of the Tropical Botany National School in Rio de Janeiro Botanical Garden's Research Institute; Ph.D in Environmental Planning at the Federal University of Rio de Janeiro.

Rodrigo Dias da Rocha Viana (Exec. Coordinator)—Lawyer; Lecturer and coordinator of the post-graduate courses at Getulio Vargas Foundation Law School in Rio de Janeiro. LL.M degree in Alternative Dispute Resolution from Kingston University, London.

Cristiane-Maria Henrichs—Master in Law—State and Citizenship; Associate Professor of Law at the Catholic University of Petropolis—UCP; Coordinator of the Project on Mediation and Arbitration of the UCP Law School.

Business Professionals' Group

Gabriela Assmar (Facilitator)—Lawyer and mediator, with extensive business experience in tax consulting, banking, telecom, tire and recycling industries.

Carolina Menezes (Chairperson)—Represents the steel companies sector; in-house lawyer at Thyssen Krupp Brazil; Mediator.

Celia Passos (Executive Coordinator)—Represents the ADR and Legal Services sector; CEO of ISA-ADRs, and ADR and legal services provider.

Julio Assuf—Represents the family-held companies in the commercial sector; CEO of Casas Assuf, a family-held company in textiles and luxury accessories business.

Letícia Feres—Represents the communications and telecommunications sectors; in-house lawyer at Organizações Globo.

Rodrigo Graça Aranha—Represents the commercial sector as a whole. Responsible for Governmental Affairs at the Commercial Federation in the State of Rio de Janeiro—FECOMÉRCIO—RJ.

Law Students' Group

Lilia Maia de Morais Sales (Facilitator)—Lawyer and mediator with extensive experience in Community Mediation and Family Mediation; Coordinator of graduate courses at the University of Fortaleza.

Alda Cirilo—Law student at the University of Fortaleza; participant in the "Projeto de extensão universitária—Cidadania Ativa."

Andrine Nunes—Graduate student in the Master of Law program at the University of Fortaleza; dissertation theme: public security and conflict mediation.

Mariana Almeida—Law student at the Federal University of Ceará; researcher at the University.

Rodrigo Faria (Sector Representative)—Law student at the Federal University of Ceara; member of the Projeto de extensão universitária—CAJU.

Sandra Vale (Executive Coordinator)—Graduate student in the Master of Law program at the University of Fortaleza; dissertation theme: democracy and conflict mediation.

Favelas' Group

Ronan Ramos de Oliveira Júnior (Facilitator)—Lawyer and mediator.

Iran Martins de Oliveira (Sector Representative)—Lieutenant Police State (Tenente da Policia Militar de MG); specialized group working in areas of risk (GEPAR—Grupo Especializado em Policiamento em areas de Risco).

Adão Caetano Silva (Executive Coordinator)—President of the association of residents in the Vila Cemig favela (slum).

Maria Aparecida Quintilho dos Santos—domestic (illiterate).

Ronei Ferreira Borges—delivery man (arrested; he is in the penitential system).

Judges' Group

Agenor Lisot (Facilitator)—Economist, Faculdades Metropolitanas Unidas, São Paulo; Judicial Expert; Mediator.

Michel Betenje Romano—BA in Law, Faculdades Metropolitanas Unidas, São Paulo; Specialist in Diffuse and Collective Interests at the Escola Superior do Ministerio Publico (2003); State Prosecutor.

Mariella Ferraz de Arruda Pollice Nogueira—BA in Law; Judge at Campinas—São Paulo.

Fernando da Fonseca Gajardoni—Ph.D in Civil Procedural Law, University of São Paulo; Judge in Sao Paulo; Law professor at Faculdade de Direito de Franca—São Paulo.

Valeria Ferioli Lagrasta Luchiari (Sector Representative)—BA in Law, University of São Paulo—USP; Director of Conciliation and Mediation of Apamagis (Associacao Paulista de Magistrados).

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NGOs' Group

Vânia Izzo de Abreu (Facilitator)—Psychologist, mediator and coordinator of the Childline Project in Brazil; representative of the NGO Instituto NOOS de Pesquisas Sistêmicas e Desenvolvimento

de Redes Sociais, in Rio de Janeiro, dedicated to family violence prevention and gender violence prevention.

Célia Bernardes—Psychologist, mediator and coordinator of the mediation section of the NGO Instituto Familiae in São Paulo, dedicated to the training of mediators and family therapists.

Cristina Fernandes (Exec. Coordinator)—Psychologist, consultant and technical researcher; representative of the NGO RUMMOS Assessoria Pesquisa e Avaliação in Rio de Janeiro, dedicated to violence prevention through human rights.

Dario Córdova Posada—Psychologist; representative of the NGO INBRAPA (Instituto Brasileiro de Desenvolvimento, Ensino e Pesquisa da Administração Publica) in Rio de Janeiro, which supports management and human resources training.

Ernesto Rezende Neto (Sector Representative)—Lawyer, mediator, teacher and supervisor of Mediation Practice offices—Instituto Familiae; representative of the NGO Mediativa—Instituto de Mediação Transformativa, dedicated to research, development and implementation of ADR.

APPENDIX C
National Consensus-building Single Text Document
Module One
Consensus-building: The State of Brazilian Alternative Dispute Resolution (ADR)

1. Members of this research project feel honored that Brazil was chosen as the first country in Latin America to participate in this important research about conflict resolution. The participants are delighted to have been chosen as representatives of the different sectors.

2. The following text represents the perspectives of seven different sectors of Brazilian society—lawyers, judges, law professors, law students, and leaders in the business, nonprofit, and low-income communities. Each sector was represented by five members, and each member thoughtfully answered a questionnaire about conflict resolution.

3. All the members in the group participated in every stage of this research. Everyone watched the videos, responded to the questionnaires, participated in the individual interviews, met to discuss the knowledge and understanding gained through watching the videos, and contributed to building consensus about our ideas. All of us were very interested in the topic of alternative dispute resolution (ADR) and welcomed the possibility to combine our knowledge using a consensus-building method. A facilitator in each sector, previously trained in consensus building by the University of St. Thomas, drafted a single text that summarized the thoughts of all the members in their sector. This text is a compilation of all the facilitators' drafts for the first module of this research project, which focused on building knowledge about the actual use of ADR methods in Brazil.

5. Our different sectors stated that in our culture in Brazil the average citizen facing conflict would have different options for resolving the problem—remaining passive, using coercion, going to the judiciary, or using ADR. Disputes most commonly are dealt with by remaining passive or through the judiciary. ADR is currently the last option chosen. In our culture, religious and community leaders also use ADR techniques as a way of managing conflict. In our view, grassroots mobilization often is used in order to push a resolution about environmental concerns.

6. Under the current system of conflict resolution in Brazil, some important actions have been taken to facilitate justice:

- The government has provided legal representation to those in economic need through use of public defense and the waiving of judicial fees.
- Small Claims Courts, known as Juizados Especiais, both civil and criminal, have been created (Law 9099-95).
- Both public and private institutions have attempted to publish and distribute explanations of citizens' rights under the law.

7. Despite these efforts, citizens still lack knowledge about ADR, and lawyers often resist using ADR.

8. There are both pros and cons to the current systems of dispute resolution in Brazil.

9. On the negative side, we observed:
   - Going to the judiciary is a time-consuming process, and the wait for court-issued resolutions can take an excessive amount of time. The large number of pending cases and extended legal procedures make this method of conflict resolution expensive both in terms of time and of money.
   - We note that in Brazil there exists a culture of litigation that, to a certain extent, has been fostered by the lawyers themselves. The judicial process is bogged down by excessive bureaucracy, which makes it difficult for the courts to produce effective results. Our society operates under the assumption that the judiciary does not perform fairly, and that although the laws are passed for the protection and benefit of all citizens, they seem to benefit only a few. Despite the fact that access to justice is a constitutional right of all citizens in Brazil, its enforcement still has not been fully implemented. We unanimously recognize the weakened condition of the judiciary. For this reason, we believe that there is an imperative need for structural changes in the judicial system.
   - Many judicial decisions do not consider the real needs and interests of the parties involved in a specific dispute, but the parties nevertheless are forced to accept the court's decisions.
   - Despite isolated actions aimed at improving the dispute resolution system in Brazil, it is important to note the lack of joint effort between the private and public sectors to develop a culture that prevents conflict. There is

little effort made to distribute information about ADR, and lawyers are distrustful of alternatives to litigation, fearing that ADR could reduce their area of practice.

10. On the positive side, we want to point out:
    - Brazilian culture seems to be demonstrating a new receptivity to ADR. For example, mediation law is currently under discussion in the National Congress, as well as regulation for the use of arbitration in Brazil (Law 9307-96).
    - There appears to be increased interest in obtaining knowledge and training in order to be able to utilize ADR. We cite the following examples: the publication of the pamphlet for "good arbitration" by the Minister of Justice in 2007; the promotion of the week of conciliation by the National Council of Justice in 2007; the incorporation of such courses as mediation, conciliation, and arbitration into university curriculums; recent legislative changes to the process of information-gathering and in the execution of court cases in an attempt to accelerate the judicial process; the creation of Centers for the Study of ADR, Chambers of Arbitration, centers specializing in mediation, and other programs aimed at educating citizens about the different ADR techniques and methods.
    - The Brazilian judiciary has established forms of ADR, such as conciliation and arbitration, in centers that were created by provisions of the Judicial Council of the Magistrate (Laws 893-4 and 953-05). Parties involved in conflict resolution have the opportunity to select options, and there are provisions for a third-party facilitator.
    - Some Brazilian courts make use of volunteers mediators. Family cases can include the participation of two mediators who do not have legal backgrounds.
    - The public defender's office, which is understood as "an entrance door," is very effective, especially in giving the less privileged population access to justice. Special courts have been identified as channels for resolving small-claims cases relatively quickly.
    - When we try to map the Brazilian reality as it relates to conflict resolution, two different areas demonstrate potential for the pacification and common good of the so-

> ciety—improving the services of the courts, and increasing the knowledge and practice of ADR. Everyone agrees that it is necessary for society to address the real needs of citizens, making it more fair, more egalitarian, more human, and less violent. The adoption of ADR as a new paradigm for resolving conflicts would contribute to the creation of a society with these qualities.

11. There is an interest in restructuring the judiciary in order to speed-up its services, make its services more economically accessible, streamline preliminary processes, and treat the parties equally. Similarly, a society aspiring to develop should foster a civic culture which expects that those who are responsible for creating conflict also would actively participate in its resolution. This cultural understanding would allow disputing parties to become protagonists in the resolution of their own conflict. To help foster such understanding, we expect that our political leaders, specifically, should promote a preventative approach to conflict.

12. We observe that our culture is open to the introduction of ADR, which is likely to be adapted in useful ways in order to provide efficient resolution of the most diverse conflicts. There is interest in spreading knowledge about ADR to the general public, and more specifically, to the professionals in the area of conflict resolution. We think that the inclusion of all sectors of society is necessary to the success of ADR, especially during the decision-making process and in the search for negotiated solutions based on consensus. We aim to broaden the access to justice and to raise consciousness among the different members of society so that everyone can obtain negotiated solutions.

13. With regard to the values that we were able to identify, it is important for us to raise awareness about ADR in order to improve social relations, efficiency, and the effectiveness of agreements aimed at resolving disputes. We want to create a culture of peace and promote equal treatment for all the actors involved in conflicts. The effective administration of justice, broader access to justice, and trust in a credible judiciary are also important concerns.

14. The inequality that exists between the large number of cases and the far smaller number of judicial decisions is one of the principal problems hindering conflict resolution in Brazil. The structure of the judiciary is insufficient to handle the huge volume of cases, and this translates into judicial delays. An excessive bu-

reaucracy and excessive regulation, paired with a lack of monitoring and limited enforcement of the law, generates impunity that has a negative psychological impact on the parties who bring their case to the judiciary.

15. There is interest in increasing the rule of law in society. In order to do this, besides enforcing judicial judgments, the government should promote strategies that will decrease impunity and serve to level the playing field for all parties involved in the litigation.

16. In contrast to the problems the judicial system faces, we also observe the following benefit: A decentralization of judicial power has facilitated access to justice throughout the country. In fact, this has helped in the enforcement of rights and consequently has enhanced the rule of law in our society.

17. It is the opinion of all of the members who participated in this research project that the following issues need to be resolved exclusively by the judiciary: issues regarding the safety of the population, the satisfaction of their primary needs, and those issues regarding civil rights, enforcement of the law, human rights, and punishment. Crimes against the financial system also were mentioned.

18. The most common methods of ADR used in our culture are, from best- to least-known: direct negotiation, conciliation, mediation, and arbitration. They offer the following benefits: speed; efficiency; neutrality in the forum of discussion; informality; flexibility; confidentiality, especially when there is a neutral third party; preservation of the relationship between the parties after resolution of the conflict; attention to the interest and values of the parties; a joint effort to create solutions that bring mutual benefits to those involved in the dispute; empowerment of the parties; and the promotion of dialogue. Furthermore, ADR allows the parties to craft solutions that are better tailored to their real needs.

19. With regard to mediation, there is consensus about its advantages and opportunities, especially given the fact that it allows the parties to be heard, leading them to develop a sense of responsibility over their agreed-upon solutions.

20. With regard to arbitration, this method is the one that currently is more accessible to the large and medium-sized corporations. This is principally because the majority of the population is unfamiliar with the characteristics and advantages of arbitration.

21. With regard to conciliation, despite the benefits mentioned above, some of the following issues were identified in con-

junction with the use of a neutral third party: there is no mandatory training requirement for the neutral third party, a lack of monitoring with regard to any training received by the neutral third party, and a lack of regulation in the profession.

22. Conciliation also includes mechanisms that bring the parties together to create solutions better tailored to their needs than those mandated by the courts. Some of these mechanisms are not yet familiar in our country; for example, mini-trials and the use of early neutral evaluation. In the opinion of the members of the groups we represent, we believe that it is essential to our national economic and social development to change the paradigm from an adversarial system to a system in which the solutions are reached in a collaborative and participative way.

23. We see the need for broader examination of ADR methods themselves as well as their viability.

24. We believe that the following types of cases would greatly benefit from the use of ADR: small-claims conflicts; conflicts in which the issue has not escalated; conflicts between parties who have a close relationship, the preservation of which benefits society at large (such as those involved in contracts and service contracts, family relationships among family members, neighbors, work relationships, relationships at schools, car accidents, alimony); conflicts in which a time table should be enforced; conflicts that involve several parties and several interests; and conflicts over environmental issues. We also note that ADR is used frequently to resolve cases among the medium and large-sized corporations.

25. There is consensus in our groups that ADR can complement the function of the judiciary, can broaden the access to justice (*lato sensu*) by reducing the high demand for judicial process, and help parties in conflict to reach better agreements. A multi-door forum (or courthouse) could actually promote the opportunity to redirect different cases to the forum most convenient for their resolution.

26. We believe ADR is of interest for the speed and inclusiveness it offers, as well as for its negotiated solutions that take into account the interests, needs, and perspectives of all the parties involved. Complementing the functions of the judiciary, the use of ADR could promote a more specialized focus, and it could aid the judicial system by allowing judges to concentrate on the issues that are tailored to their specific skills and functions.

27. We expect that ADR will become better known and will be utilized by Brazilians. We believe that promotion of the prac-

tice of ADR can enhance social coexistence. We hope that ADR will be implemented appropriately, in the judiciary and those used in the private arena. This can help our society by moving toward the birth of a new professional field—one that is dedicated to the prevention and resolution of conflict.

National Consensus-Building Single-Text Document
Module Two
Exploring the Option of the Multi-Door Courthouse in the Brazilian Reality

1. Brazilians recently have demonstrated a desire for structural change in the judiciary that would lead to an improvement in the quality of the attention and service citizens receive from the courts. The goal is to broaden and facilitate all citizens' access to justice. The following factors, which are desired by members of our society, are necessary in order for the courts to dispense justice: highly qualified professionals working within the judiciary, an operational structure that provides speed and access to information, and provisions that facilitate adequate participation in the decision-making process.

2. When we examined the judiciary, we observed the following recurrent themes: the need for better infrastructure; the need for training for judges; the need for the judiciary to render quicker decisions and to provide higher-quality service; the need to prevent delays that hamper the efficiency of the judicial process, wasting time and financial resources. Such delays exact high emotional costs from the parties involved. Representatives of the different sectors involved in this research project list efficiency, credibility, and effectiveness as the predominant value they desire as a judiciary.

3. Among the positive results hoped for and advanced in the 1994 judicial reform, we want to point out the following: a broadened access to justice, an increase in the speed with which cases are resolved, an increase in credibility of the judiciary, and an increase in the rule of law. We also see as important the need for a new judicial mindset that prioritizes effectiveness and credibility in the judicial process. This is achieved not only by relying exclusively on the judgments of the courts, but also by turning to other forms of conflict resolution that are relevant to the promotion of values in the social, moral, and legal arenas. The interest in broadening judicial reform includes increasing interest in the implementation of

the multi-door forum (or multi-door courthouse), training professionals in ADR, and broadening the promotion of ADR.

4. In referring to the multi-door courthouse, the terms "forum" or "multi-door" were adopted by some of the participants in this research. The terms "court" and "tribunal" in our culture refer to tribunals formed by several judges; the term "forum" is preferred because it implies a more direct contact with the users of the system.

5. Representatives of the sectors in this research project regarded the multi-door forum very highly. The principal attraction of the multi-door forum is the range of possibilities it offers to the average citizen. Because it clarifies different methods of ADR, a citizen can decide which method is most suitable for his or her situation. This option to choose a method of conflict resolution, paired with the informality and reduced time required to reach a resolution, allows average citizens to become a protagonist in the resolution of their conflicts. This gives citizens involved in disputes a sense of responsibility and commitment toward the resolution of their issues. In addition, tailoring the methods to the situation at hand increases the effectiveness of the solution.

6. The multi-door forum stimulates shared decision-making. The average citizen is invited to build the solution to his or her conflict and to become familiar with a participatory form of conflict resolution. This broadens the possibility that citizens would resolve future disputes using dialogue and negotiation without requiring the intervention of the state. This democratic forum for conflict resolution promotes the empowerment of the parties through their active role and participation in managing their own lives and relationships.

7. The multi-door forum is characterized by transparency. Under this system, before the parties involved submit themselves to the authority of a third party to adjudicate their conflict, they receive information about other ADR methods that are available. The multi-door forum differs from the method of conflict resolution currently used by the judiciary in which the parties submit themselves to procedures that they may not understand well.

8. The multi-door forum increases access to justice since it opens space for the judiciary to be less centralized. It brings the justice system closer to the community and frees judges to deal primarily with the cases that require their judicial expertise.

9. One of the major hurdles to implementation of the multi-door forum is the pervasive idea that conflict resolution consists

mainly of the adjudication of cases. The current system, so reliant on adjudication, does not confer to the parties the responsibility to solve their conflicts without the help of the judiciary. Currently in Brazil, disputing parties tend to move directly from conflict to litigation, ignoring the many ADR methods that could be used before going before a judge.

10. In order for the multi-door forum to be implemented in Brazil in an effective and efficient way, we identified the need for the following: promotion of the characteristics and the use of different ADR methods aimed at both lawyers and average citizens; inclusion of courses on ADR in the curriculum at universities and in technical disciplines that have a focus on conflict, especially among lawyers needing education in the area of conflict resolution; incentives for the multi-disciplinary training of professionals so that they act together to implement ADR methods (participants in this research project note that it will be important to regulate the work of these professionals and to set fair compensation for practitioners in this new field); an infrastructure that provides for different methods of ADR; and the monitoring of all of the above.

11. In considering how the multi-door forum might be implemented in our country, we want to offer some reflections about the method, conditions, and environment required:

- A current environment of resistance exists that must be addressed: ADR methods are perceived to lack true justice if there is no judicial oversight, and ADR also is viewed as interfering with the role of the state.
- It is important to set up minimum training for professionals in the field of ADR, and to create a process of selection in order to establish the credibility of ADR.
- Because there is much fear about possible exclusion, it is crucial to emphasize that ADR requires the participation of all—especially lawyers, some of whom fear that third-party providers of ADR will take away their business. They must be shown the legitimacy of ADR and learn that they are not excluded from utilizing these options.
- Another prevalent fear that needs to be addressed is that intimidation by one of the parties or a lack of good faith could result in unfair solutions.
- The role of the judiciary must be clearly defined.

12. The implementation of the multi-door forum could be validated by statistics, including: how long it takes to resolve conflicts;

the number of agreements reached; the index of enforcement of the agreements; the cost of these procedures; and level of satisfaction of the parties, especially compared to satisfaction with the traditional system of justice. This analysis should be qualitative and quantitative, and should include statistics provided by private institutions as well as by the judiciary. The quantitative analysis should be interpreted, taking into account the qualitative variables.

13. Mediation and arbitration in Brazilian culture are seen as effective methods of dispute resolution. Despite the lack of information, there are statistics provided by some institutions that corroborate this fact. Some chambers of arbitration and institutions that specialize in mediation have demonstrated results that show efficiency when mediation is used, and have shown that mediation is especially successful when it preserves emotional and cultural relationships.

14. There are other ADR methods, little known in Brazil, that differ from mediation and arbitration. These include mini-trials, early neutral evaluations, rent-a-judge, and fact-finding. Knowledge of these ADR methods is restricted to academia and the corporate arena. While the public is aware of some of these hybrids, it is important to disseminate accurate information about these ADR methods so that they can be considered for specific cases.

15. We want to point out that ADR has ample capacity to take into account the interests of speed, efficiency, and effectiveness, as well as to address questions pertaining to judicial credibility, in order to promote solutions that the disputing parties themselves can control. There is a preoccupation with regard to the efficiency of the results, and especially with regard to the enforcement of agreements reached through ADR. Therefore, it is important to take precautions to ensure the implementation of negotiated solutions.

16. Finally, we identify a desire for the implementation of ADR as a way to include those living in the neighborhoods and small communities that are outside the urban areas, and especially those living in rural locations that have difficulty accessing the judiciary. It was suggested that members of those communities could act as neutral third parties.

Module Three
Strategies to Implement the Suggested Change from a Systematic Perspective

1. In order to promote ADR at the national level, we should present it as a system of various methods that not only resolve conflicts with speed and efficiency, but that also include participation of the citizens in the process. ADR should be promoted as a way to facilitate access to, and democratization of, justice.

2. We should stress that ADR methods are capable of broadening the options available to resolve conflicts, and that ADR methods complement and promote a higher level of peace than the current adversarial system provided by the judiciary. For matters of inalienable rights, the parties involved in a conflict could go to the judiciary. Alternatively, they could turn to arbitration or use other methods leading to consensual agreement. Thus, ADR could be perceived as a result of the modern organization of justice, which is based on a mindset that broadens access and enhances social peace.

3. For this reason, ADR methods should be presented not as alternative means, but rather, as complementary to the role of the judiciary. ADR allows the participation of social actors in the resolution of their own conflicts, which could, in turn, lead to greater promotion of the constitutional right of access to justice. The Brazilian Constitution does not guarantee an access to justice that is merely formal but one that is qualitative, meaning that it presupposes effectiveness, speed, and an adequate guarantee of rights. In the judiciary, this guarantee of rights is achieved only through the authoritative adjudication of a judgment. A judgment is not the only solution, however, nor is it always the best one in a particular conflict, given the peculiarities and specificities of the parties in conflict. Instead, the best solution could be an agreement among the parties, especially in cases involving a permanent relationship—for example, cases that deal with neighbors or partners of a corporation or an association, cases involving a relationship of commerce, or any case where there is a legal relation that could continue.

4. The solution adopted in the Brazilian system, which channels all the conflicts through adjudication and utilizes very little ADR, has generated a "culture of judgment." This has produced an excessive use of the judiciary, which has translated into an absurd volume of cases, creating a backlog that reflects inefficiency and inadequacy on the part of the judiciary.

5. The lack of knowledge about ADR must be overcome in order to be able to provide access to justice, as is found in first-world countries such as the United States and Japan, among others. In Brazil, for example, there have been efforts to promote ADR, and legislative efforts to promote the use of Small Claims Courts for civil claims of minor complexity; however, legislators have given very little attention to the Brazilian mindset. In our culture that prizes judgments, it is believed that the judiciary is the most important decision-maker when conflicts arise.

6. It is necessary to change this cultural mindset. Furthermore, it is important to achieve this shift in order to be successful in promoting ADR.

7. In order to change this mindset, it will be necessary to pass through several stages. Initially, it would be essential to carry out research at a national level with the goal of producing a diagnosis of the main problems that are faced by the Brazilian judiciary. The research should focus on the lack of access to justice and identify its causes. Once these causes are identified, the ADR methods could contribute to solving some of the difficulties by supplementing the current system. It is important to supplement this information with statistics in order produce a quantitative analysis. It also is important to have some qualitative analysis and strategies on the national level in order to move forward.

8. It would be equally important to obtain research about the current practices of ADR in different locations in Brazil. Of benefit would be a national encounter in which the different ADR institutions and the ADR professionals could share the results that they have obtained and could coordinate their efforts. Finally, strategies would need to be defined in order to raise awareness about the best ways to implement ADR in the different segments of society through a common effort.

9. We wish to point out some of the fundamental characteristics that could help prepare Brazilian society for the implementation of ADR. ADR could be promoted in the following ways:

- All of these methods are inclusive, and decisions are made in a joint effort. Adversarial approaches are excluded. The parties themselves, after they dialogue, would look for their interests and seek to reach solutions based on mutual satisfaction; they would be accompanied by a third party to facilitate this dialogue.
- Individual peace and social peace can be reached through these practices: they exclude adversarial ap-

proaches and emphasize the participation of citizens in the resolution of their issues through joint decision-making, thus making the parties committed to the solutions. Implementation is easier because the parties would have voluntarily reached agreement. In this way, ADR could facilitate the enforcement of the agreements, and would prevent having to go through an appeal process, which is part of the judicial system. This in turn could establish the grounds for a participatory democracy.

- ADR would increase the effective functioning of the judicial system. The use of ADR would increase the alternatives, therefore broadening access to justice. By reducing the number of cases that are taken to the judiciary, ADR reduces the backlog. The possibility of using ADR not only during the process, but also before a case is filed would help the judiciary by allowing it to focus on the cases that are better tailored for the courts.
- ADR would lower costs, improve speed, and lessen emotional strain. Solutions would be faster and the cost would be significantly reduced both emotionally and financially.
- ADR includes an important preventative aspect. The parties' co-authorship of the solution to their conflict would help the implementation of the agreement, and also would help the parties to better manage future conflicts, avoiding the disruption of their relationship or the possibility of new conflict escalating into violence.
- ADR presents a choice of the methods to resolve the case at hand. The broadened spectrum of conflict resolution methods would allow the parties to choose which method is the best suited for their case, based on an understanding of the real needs of the parties; this in turn would promote more effectiveness.
- Information regarding ADR methods is readily available. The parties in conflict should be informed by those familiar with the different available methods. In this way, parties will be able to choose, making an informed decision with regard to the forum best tailored to their conflict.

10. We identify the following diverse needs for the successful promotion of ADR:

- Training to provide information and skills to the judiciary, as well as to public schools, community centers, schools for the police, schools for the military, and any other community institutions.
- Publication of articles about ADR in newspapers and legal and non-legal journals.
- Creation of advertising campaigns that can reach broad audiences. These could include informational materials as well as positive first-person accounts of experiences with ADR, both nationally and internationally.
- Establishment of university and graduate courses pertaining to ADR. Some universities in Brazil already have implemented ADR courses (both mandatory and elective) in their curriculum.
- Implementation of pilot projects within and outside the judiciary.
- Creation of incentives to broaden the channels of dialogue in organizations and public institutions so that they will adopt ADR clauses in their contracts.
- Strengthening of networks that already exist and creating new networks that would bring together organizations and professionals dedicated to ADR, with the goal of promoting and expanding knowledge and sharing experiences.
- Creation of joint practices and promotion between governmental and non-governmental institutions in public and private sectors.

11. In addition, each citizen in Brazil also could contribute to the implementation of ADR through their own use and promotion of it, using the judiciary only as a last resort. This attitude would promote a more participatory environment in which parties could resolve conflicts. The Brazilian people share characteristics of affinity for the practice of joint solutions, creativity, facility of communication, willingness to express their feelings, cordiality, informality, solidarity, and optimism. These are all part of our profile, which results from a mix of different cultures and people found in Brazil. We are a pluralistic society, and that gives us the skills for managing diversity and differences.

12. Some institutions were identified as useful systems to improve dispute resolution in Brazil, such as the chambers of mediation and arbitration, NGOs, community centers, schools,

corporations, and multi-door forum pilot projects in some judicial districts.

13. Similarly, Brazilian citizens can also contribute to the improvement of the judiciary in Brazil. Among the actions that they can take in order to do so are the following: learn about ADR and its dynamics for the purpose of promoting an adequate use of it; search for other ways to resolve conflict and guide others to do the same, since many cases that go to the judiciary could benefit from ADR methods; act as neutral third parties; reframe concepts in an ethical manner in order to use ADR in a way that is consistent with the procedural norms.

14. We believe that citizens should meet in order to discuss the different ways in which the judicial system in Brazil could be improved. We think that these forums should be at a national or regional level. They could be academic or not, and they should be formed by jurists, legislators, politicians, representatives of the members of different social classes, and representatives of different sectors of civic society. It is important to mention, as an example, that when there was a discussion about the draft for the mediation law, there were several public discussions that were carried out with significant participation of the stakeholders. This stimulated and promoted changes that were important in the text of the draft of the law.

15. With regard to the ways in which the judicial system in Brazil could be improved, several proposals were identified:

- Broadening the legislative reform that has already been initiated;
- Creating a new mindset among the lawyers and promoting a multi-disciplinary dialogue;
- Instituting permanent training specifically for the judges and staff in the court system, restructuring the courts to match the demand of cases, and ensuring that judges and staff would receive fair compensation;
- Improving the structure and the technology used by the judiciary, and adopting innovative forms of delivering judicial services to speed procedures;
- Integrating ADR in the draft of the mediation law, which already provides for a voluntary decision before the judicial process has started (once the process has been initiated, mediation would be mandatory. When the parties do not reach agreement through mediation, the judicial process would continue). This could pro-

mote a culture of consensus and could also reduce judicial expenses.

- Introducing ADR methods to the judiciary through the multi-door forum, accompanied by the necessary training for those who are going to inform the clients of the judicial system about the available ADR options, as well as the necessary training for those that work in the court system.

16. In order for Brazilians to embrace a change of mindset in relation to ADR and the multi-door forum, it is important that an institution closely connected with the judiciary and having jurisdiction, authority, and national credibility be in charge, such as the National Council of Justice. With the help of civic groups, it can oversee the gradual implementation and organization of new public policy. This would encompass all of the different above-mentioned methods of dispute resolution. The existence of an official institution that would organize, control, and monitor, even from a distance, the various ADR methods could help to prevent the misuse of ADR by citizens or institutions. A public policy promoting ADR needs the support of an official institution in order to overcome obstacles and ensure that ADR could be adequately implemented in all locations.

17. We propose some concrete and immediate solutions to increase the efficiency of the judicial system in Brazil through the implementation of ADR in the short, medium and long term.

- Short-term: to request that the judiciary create conciliation and mediation centers in all jurisdictions of every state in Brazil through their tribunals of justice (a successful experience has shown to be very fruitful in Sao Paulo); to approve the proposed law of mediation law, currently before the national Congress, which would introduce mediation into the judiciary in Brazil; to train conciliators and mediators in theoretical and practical content in order to have a uniform national curriculum, with a even distribution of work as well as fair compensation for those practicing in this field; to promote ADR not only among those in the legal field, but also among those in other sectors who routinely deal with conflicts (those who deal with infant and juvenile issues, with the environment, and with the population in general); to develop methods to promote ADR in all the Brazilian states through projects such as the "*caravana legal*,"

which would be part of the sections of the Brazilian Bar Association and local institutions; to broaden the programs currently existing in the courts that deal with domestic violence, and the community-based programs that deal with access to justice.

- In the mid-term: to broaden the number of chambers of mediation and arbitration, as well as the community-based mediation centers; to change the curriculum in the courses at the graduate level, with the goal that the different professionals would acquire the necessary knowledge and skills in the practice of ADR; to establish a public policy that would promote ADR methods; to include in the elementary school curriculum basic conflict resolution skills based in ADR; to broaden the monitoring of law schools, and, if necessary, close schools that do not prove to be effective.
- In the long-term: to establish goals for evaluating the use of ADR within and outside the judiciary, adapting procedures and legal norms to promote ongoing training; to strengthen the regional entities, for example, the Center of the Study of Justice of the Americas (CEJA); to broaden the use of ADR methods in the *barrios* and the small communities.

18. Similarly, when we thought about the concrete and immediate solutions that could be implemented in order to increase the efficiency of ADR in Brazil, we discussed the following proposals regarding to the short, medium, and long term. Because an increase in the efficiency of the judiciary in Brazil is intimately connected to the efficiency of ADR, the ideas previously expressed with regard to the judicial system also were mentioned in conjunction with increasing the efficiency of ADR methods in Brazil.

19. In the short term, we agree that public policy directed toward financing the implementation of ADR is required, and in addition, it is necessary to have the means to support the promotion of ADR in order to increase awareness in the population. Training is necessary for those who are going to be providing the services, especially the clerks who will serve to screen the cases. Also, in the short term, we want to point out the need to have a coordinated action between the House of Representatives and the National Council of Justice in order to pass the pending mediation law that is currently before Congress.

20. In the medium term (five years), it will be important to establish programs of restorative justice in schools as well as in the public and private sectors, including NGOs and universities. Implementation of a public policy with regard to ADR in Brazil should encompass areas such as education, health, urban planning, and transportation, among others.

21. In the long term (ten years), many of the solutions that were suggested refer to the need for exchange of information about ADR among the Latin American countries and also with other countries in the world. For example, we have had the opportunity to learn from Bogotá and Medellín, Colombia about their public policies on mediation. We also consider it important to mention the use of ADR in small communities, especially in rural areas.

22. There were different opinions regarding who should actually lead the efforts to promote ADR in Brazil. There is a common interest that this should be a joint effort done with collaboration and solidarity among non-profit organizations, the Brazilian National Congress, the judiciary, and civic groups. All of these stakeholders have the common interest of wanting access to justice and desiring the promotion of a culture of peace.

23. Because of the need for integrated action among different institutions in order to coordinate public policy, we concluded that it is important to have an institution to lead the efforts. Thus, we decided that the National Council of Justice, which was created by recent judicial reform, should be in charge, given the fact that it is formed by judges and representatives of civic society. NGOs and other associations of organized citizens were considered, however, because they could legitimate the participatory character that this movement should have. Therefore, it should not be the National Council of Justice alone, but a joint effort with these civic organizations.

24. We note that joint efforts involving public and private sectors already are underway in Brazil, and this makes it even more important to integrate actions among the different institutions working in this area.

25. We believe that very few Brazilians are aware of the broad spectrum of ADR methods available. The majority of citizens still lack effective knowledge, and Brazil still lacks an effective implementation of ADR.

26. With regard to evaluation of ADR, there should be both quantitative analysis (the number of agreements reached) and

qualitative analysis (the monitoring of results). ADR methods could be evaluated according to the type of conflict and the goals of the parties. We think it is important to create a database in order to ensure social accountability. It was mentioned that the criteria to be used for evaluation should be clearly stated beforehand in the public policy, and these criteria should be uniform across the nation.

27. It is important to note the evaluation of ADR already instigated by the public sector and NGOs in the research carried out by the Ministry of Justice at the end of 2004. This research concludes that "there should be qualitative analysis of the programs with the goal of creating homogeneous criteria that would help us on the principles and concepts, including concepts such as ADR, mediator, and negotiator as well as the methodologies, goals and results expected."

28. With regard to ADR and how it could be incorporated in the judiciary under the current system, our group has the following opinions:

- ADR already was incorporated into the judicial system through earlier legislation and through the conciliation movement by the National Council of Justice, as well as through the implementation of the centers of conciliation and mediation in São Paulo. Much remains to be done, however, not only with regard to the use of ADR methods, but also with regard to the change of mindset for lawyers and the community at large, all of whom rely heavily on what we call "a culture of judicial judgments." The approval of the mediation law will help to integrate mediation to the judiciary, and in this way, it will help to create a "culture of consensus."

29. The second view is that ADR should be related, but not integral, to the judiciary. This is based on our current civil procedural code that expressly establishes that the judge can be helped by a conciliator (article 277, paragraph 1) and establishes that the judge would be the one to schedule an audience in order to integrate conciliation "when it would be regarded to rights that would allow the parties to negotiate" (article 331). These laws are the results of legislative modifications that were carried out in 1995 and 2002, respectively. Therefore in 2004, the Tribunal of Justice in the state of São Paulo issued a norm (law 893-04, modifying law 953-05) authorizing the creation and installation of the center of conciliation and mediation in the jurisdiction of the capital and in

the interior of the state for civil matters that deal with property rights, and family, juvenile, and infant matters. The practice of ADR in the judicial system began before this law was passed, through NGOs and institutions of the judiciary and the public ministry, in which some projects were executed by these organizations. This practice has been occurring gradually, but is intensifying day after day in such a way that, in the state of São Paulo, there already are more than 100 centers of conciliation and mediation currently in place and operational.

30. It was suggested that private institutions should try to promote ADR and focus on preventative approaches to conflict that would be initiated before a case is filed, thus reducing judiciary backlog. At the same time, the judicial process should include ADR.

31. The creation of laws and norms will help to promote and implement ADR methods in the judiciary. In this regard, several Portuguese terms were discussed to refer to the English term "multi-door courthouse," such as "forum multi-door," "forum of multiple doors," "tribunal of multi-doors," "center of dispute resolution," "system of multiple options," and "system of multiple choices."

32. Some consider that the best strategy for implementation of the multi-door forum in Brazil would be the definite incorporation of the ADR to the judiciary. This would promote the use of ADR in different social classes, and would require alteration of some of the laws as well as the training of neutral third-party experts.

33. We think that in this system, the selection of the door should be a choice of the parties themselves, and that its access should be voluntary. We believe that trained personnel should clarify and offer guidance to parties about the different options available to them, informing them of advantages and disadvantages. They should assist the parties in matching the dispute to the most appropriate forum, taking into account each specific case. Some preferred that the selection should be mandatory. This is motivated by a desire to hasten the knowledge, promotion, and acculturation of ADR. Others think that the selection of ADR should be voluntary. Similarly, some think that a member of the judiciary should be the one offering clarification about the most appropriate methods of ADR. Others preferred that the methods should be explained and the most appropriate one indicated to the

disputing parties; this should be only a point of reference for the parties, leaving the parties in control of the final decision.

34. The value that underlies this document is the belief that ADR has intrinsic value, and in addition, could help perfect the justice system.

35. In order to give ADR a relevant position and allow it space in our culture, we believe that it is important to identify, clarify, and underline the positive aspects of both the judiciary and ADR, focusing on their benefits and their complementary and interdependent aspects.