THE ATHENS
AI ROUNDTABLE
AI AND THE RULE OF LAW
2020 REPORT

Prepared By:
The Future Society

NOVEMBER 16-17
2020

THE ATHENS ROUNDTABLE
ARTIFICIAL INTELLIGENCE AND THE RULE OF LAW

Under the Patronage of H.E. the President of the Hellenic Republic
Ms. Katerina Sakellaropoulou

8AM - 11:30AM PST
11AM - 2:30PM EST
4PM - 7:30PM GMT
5PM - 8:30PM CET

Co-Hosts

IEEE

THE FUTURE SOCIETY

UNESCO
United Nations
Educational, Scientific and
Cultural Organization

European Parliament
STOA Panel for the Future
of Science and Technology

E.L.O.N.tech
European Law Observatory on New Technologies

COVINGTON

H5

CENTER ON CIVIL JUSTICE
at NYU School of Law

NJC
THE NATIONAL
JUDICIAL COLLEGE
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Jain
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EQUAL

"The rule of law is the bedrock of democracy. It is guaranteed by the separation and balance of power. Too often we see the imperative to digitally augment government strictly through the lens of the executive branch, i.e. public administration. As a result the two other branches of government, while essential, remain largely underserved in the AI revolution. To project our democracies into the 21st century it is imperative to spend much more energy on the responsible adoption of AI in the legislative and the judiciary, building capacity, competence, and standardization. This is critical to ensure that societies capture the upsides of AI while minimizing its downsides and risks."

Nicolas Miailhe
The Future Society

"The Athens Roundtable on AI and the Rule of Law 2020 is officially co-hosted by the European Parliament and its STOA panel: the Committee for the Future of Science and Technology. To intensify its activities in the field of AI, STOA launched its Centre for AI (C4AI) in January 2020. Issues like how societies will safeguard citizens' digital human rights will be of utmost importance in the coming years. The rule of law will have to be synonymous with governments and big corporations respecting these rights and not being able to use AI technologies for gaining access to citizens sensitive personal data or using perception manipulation techniques for that end."

Eva Kaili
European Parliament
(STOA)

"At UNESCO, we are committed to ensuring that all stakeholders are empowered not only to understand the issues at hand, but act to protect the rule of law. On the occasion of the Athens Roundtable 2020, UNESCO launched the development of a massive open online course, developed in cooperation with the IEEE, among other partners, to strengthen capacities of judicial operators to address AI-related issues, ensure that judicial operators are equipped with the necessary information concerning AI-based predictive justice systems, and ensure that prosecuting services, in AI related cases, are aware of the rule of law as it concerns AI technology and correlated risks."

Sasha Rubel
UNESCO

"The mission statement of The National Judicial College is one sentence with two parts. Part 1 commands the College to work to "make the world a more just place." Part 2 says "by educating and inspiring the judiciary." We care more about accomplishing No. 1 than we care about limiting our activities to No. 2. It is undeniable that AI has the potential to improve legal work and judicial decision-making. We support all means of progress toward a more just world. These discussions during the Athens Roundtable will help chart the way forward for technologies that hold so much promise. We are grateful for the opportunity to participate, and we look forward to educating and inspiring judges in how to apply these potentially powerful new tools".

Hon. Benes Z. Aldana
The National Judicial College

"ELONTech is excited to be part of the co-organizers team for the second consecutive year. ELONTech works for the better understanding of the developments that the digital revolution has brought about, the consequences for the professionals of law and tech and for the society at large, while also promoting the inclusion of fairness and ethics into the exponential progress of technology, especially AI. What we need to do to examine all angles of AI application and Justice transformation, is to ask the right questions and find new names for the new social contract that will be agreed."

Mantalena Kaili
ELONTech

"When algorithmic systems are used to support or even to fully assume the function of the decision making process in legal questions directly affecting a human destiny, then enhanced scrutiny is necessary. Black box algorithms, possibly developed on the basis of legacy – and thus inherently biased – data, and with no clear chain of accountability should be considered as unacceptable. So, the concrete question boils down to how we can assess the quality of such computer-based decision supporting systems, with regard to their level of transparency, to the provision of a meaningful scheme of accountability and to assurance of minimisation of bias".

Konstantinos Karachalios
IEEE

"Covington is proud to contribute to the important dialogue on how to translate AI principles into policies and practices. Our global and multi-disciplinary Artificial Intelligence Initiative helps organizations achieve their AI objectives in the evolving legal landscape by providing advice in many areas including policy matters, AI and data governance, product counseling, compliance and risk management, privacy, intellectual property, trade controls, procurement, and transactions and other corporate matters."

Lee Tiedrich
Covington & Burling LLP

"The use of artificial intelligence in both the public and private sectors brings both transformative possibilities for making the world a better place and unprecedented risks to civil and human rights, economic, racial, and environmental justice, and democratic legitimacy. By bringing technical and non-technical stakeholders — lawyers, policymakers, advocates, engineers, industry leaders, ethicists, and more — from around the globe together to develop capacity to anticipate, recognize, and respond to the challenges and opportunities this new world brings, the Athens Roundtable is doing vital work; JFI is proud to be a collaborator and sponsor."

Jerome Hodges
Jain Family Institute

"The Center on Civil Justice is a proud co-host of the second Athens Roundtable. We were also a partner in the first Athens Roundtable. The goals of these Roundtables coincide with the central mission of the Center, to foster the rule of law in a democratic society and to find practical and effective ways to ensure that AI is adopted in a trustworthy manner not just in the US but internationally. To those ends, beginning before the first Athens Conference, we have engaged many stakeholders — regulators, practitioners, judges, general counsel's offices, compliance officers, and procurement departments — bringing them together at one of the premier academic institutions in the US to discuss the issues and find sensible solutions".

Peter Zimroth
Center on Civil Justice at NYU School of Law

"I'm thrilled to have helped convene prominent representatives from industry, academia, think tanks, the judiciary, and regulatory bodies focused on ensuring the trustworthy adoption of artificial intelligence in legal and compliance functions in industry, the practice of law, and the institutions of state, including the judiciary. Such adoption is predicated on a thorough examination of the effectiveness of AI systems and the expertise of their operators in these high risk domains. The Athens Roundtable seeks to make a concrete contribute to the development of evidence-based standards and certifications in this respect."

Nicolas Economou
H5

The Athens AI Roundtable on Artificial Intelligence and the Rule of Law is a unique multi-stakeholder international initiative dedicated to realizing in practice the trustworthy adoption (or avoidance of adoption) of AI in legal systems, legal practice, and related compliance.

Different sets of principles have been promulgated by the OECD, the IEEE, and many others for the ethical adoption of AI in society. This creates a new challenge: how to implement such principles into practice. Specifically, the Athens Roundtable seeks to advance the institutionalization of evidence (including standards and certifications/accreditations), policy frameworks, and stakeholder education that will enable evidence-based, trustworthy adoption (or avoidance of adoption) of AI in legal systems, legal practice, and associated compliance.

The Athens Roundtable, held this year on November 16-17 in an interactive virtual format, is the premier international, multi- stakeholder roundtable specifically focused on legal systems and the rule of law. It was co-founded in 2019 by The Future Society, IEEE SA and ELONtech, and held under the patronage of H.E. the President of the Hellenic Republic Ms. Katerina Sakellaropoulou.

This year's edition was co-hosted with UNESCO, European Parliament (STOA), the National Judicial College, Covington & Burling, the Center on Civil Justice at NYU School of Law, H5, and the Jain Family Institute, with support from additional partners including the Stanford Human-Centered AI Institute, Debevoise & Plimpton LLP, Latham & Watkins LLP, the Association of E-Discovery Specialists (ACEDS), EqualAI, the Managing Electronic Retrieval (MER) Conference, and the Harvard Kennedy School Emerging Technologies Alumni Association.

The two-day roundtable, hosted virtually from New York City, welcomed back many of the first edition's participants to create continuity in purpose, but also expanded participation to the Global South, with the support of UNESCO. Approximately 1,000 attendees joined the gathering. The objective of the 2020 proceedings was to review the progress of the AI governance initiatives of key participating legislative, regulatory and non-regulatory bodies, to hear the perspectives of General Counsel and Chief Compliance Officers of global corporations and other civil society stakeholders, to exchange views on emerging best practices, to discuss the world's most mature AI standards and certifications initiatives, and to examine those initiatives in the context of specific real-world AI applications.

OPENING ADDRESSES

"Three points should anchor the discussion around AI and the rule of law: the values of free and open societies, dynamic and flexible legal and regulatory frameworks and cross-Atlantic consensus."

Carl Bildt, former Prime Minister and former Foreign Minister of Sweden; Senior Advisor, Covington & Burling LLP

"The discussions we have today about how to regulate AI, will reverberate for generations to come. We are settings the rules for a technology, which has the potential to transform our society even more profoundly than the internet."

Representative Yvette D. Clarke, U.S. House of Representatives, Vice Chair of the Energy and Commerce Committee

AI REGULATORY AND NON-REGULATORY INITIATIVES: UPDATES AND OBJECTIVES

This plenary discussed the work institutions are doing on standards for trustworthy AI, while also trying to advance AI innovation in compliance with these standards. Panelists spoke about how legislation and multilateral agreements—both of which are being prepared in 2021—can work in collaboration with civil society and business associations to mitigate AI risks and protect human rights, democracy and rule of law.

The panel also raised the importance of **bridging the gap between black letter law** and **interpretation** of the law in order to draft quick and open legislation that allows the development but prevents the harm.

Kilian Gross
EU Commission

Eileen M. Lach
IEEE;
The Future Society

Jan Kleijssen
Council of Europe

Alison Snyder
Axios

TRUSTWORTHY AI: A VIEW FROM INDUSTRY

This discussion with senior industry executives touched on the different national approaches, international collaboration, and standard harmonization that will be required in order to allow the industrial sector to navigate questions around the trustworthiness of AI. Panelists discussed the need for a clearer definition of "high risk AI" and inclusion of fairness and human rights in the process.

Furthermore, the panel suggested that improving the **dynamism** of current regulation should be accompanied by **standards** and **soft law** as they are collaborative, technically based, empirically based and, most importantly, practically achievable.

Julia Brickell
H5 - Columbia
University

Michael Fitzpatrick
Google

Freek Staehr
SAP Legal

Frank Torres
Microsoft

Jochen van der Burgt
Daimler

Lee Tiedrich
Covington & Burling
LLP

INTERACTING WITH THE AUDIENCE

1
Do you think that small and medium sized businesses would welcome standards and regulations?

2
Do you think that there is a need for AI regulations and/or standards and other "soft law" measures?

3
How important is global harmonization for AI regulations and standards?

64% Yes
36% No

88% Combination of regulations and standards/soft law
7% Standards and soft law only
3% Regulations only

74% Very important
24% Somewhat important
2% A bad idea

SUPERVISING AI: THE ROLE OF CORPORATE BOARDS

With the increased adoption of AI across the enterprise, shareholders and regulators are looking at corporate boards to take a proactive role in establishing governance processes and supervising the complex risks posed by the technology. This group discussed key questions that corporate boards must ask in order to ensure they are informed about how AI is being used, and how to strike the appropriate balance between the technology's risks and benefits. The group also explored how senior leadership and legal departments can effectively educate and brief boards about the regulatory, legal, and operational risks posed by AI, along with the obligations that boards have with regards to supervising AI under U.S. law and global regulatory guidance.

Anna Gressel, Debevoise & Plimpton LLP
Avi Gesser, Debevoise & Plimpton LLP
Edward M. Stroz, Stroz Friedberg

AI IN CORPORATE AND REGULATORY COMPLIANCE

AI, if applied as part of a trustworthy process, can improve the effectiveness and efficiency of compliance functions, help uncover new insights, and propel innovation, empowering compliance professionals to provide timely oversight to their companies and mitigate regulatory compliance, business, and reputational risks. This session framed the challenges and the trustworthy implementation of compliance-focused AI, under the prism of practical considerations for those looking to deploy similar technologies while providing a corporate view to non-corporate stakeholders in the sound deployment of AI in compliance settings.

Michael Morneault, H5
Benjamin S. Haley, Burling LLP
Geng Li, Anheuser-Busch InBev

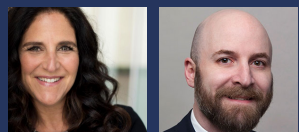## USE OF AI IN THE PUBLIC DOMAIN & IMPLICATIONS FOR THE LAW

AI promises to transform how government agencies operate and carry out their missions. This session examined where AI will have the biggest impact in the public domain, with a look at the challenges posed by the need for transparency, protection of privacy, prevention of bias, and accountability among both the developers and users of AI systems. The group focused beyond the headlines and shared highlights of a recently-completed report on AI in the U.S. government, including discussion of some case studies involving AI being used in enforcement and adjudication.

Jeanna N. Matthews, Clarkson Univ.
Daniel E. Ho, Stanford Law School
David Engstrom, Stanford Law School

AI AND DATA GOVERNANCE & OPEN DATA INITIATIVES

While broad consensus around AI principles has emerged, practices for translating these principles into practices and for data governance continue to evolve. Many organizations also are engaging in efforts to help make more data available for AI training and other purposes. This session's panel of experts shared insights on emerging AI and data governance practices and open data initiatives being employed.

Lee Tiedrich, Covington & Burling LLP
David Hoffman, Intel Corporation
Shawnna Hoffman-Childress, IBM
Charina Chou, Google

AI AND PRIVACY

This session explored the privacy implications Artificial Intelligence faces across different regimes, with a particular focus on the U.S. and Europe, each of which have unique approaches to questions such as that of the fundamental right to privacy. The discussion shone a light on the complex policy considerations involved in addressing the development of AI systems, the enforcement of those systems, and the rapid rate of innovation that creates moving targets for regulators and the companies they regulate.
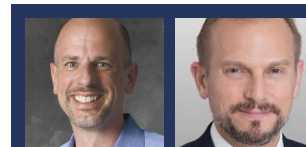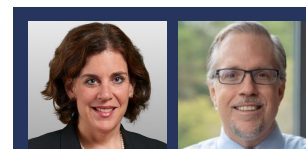
Michael Rubin, Latham and Watkins LLP
Karen Silverman, The Cantellus Group

AI IN CORPORATE LEGAL OPERATIONS

Corporate compliance is a central to companies' legal strategy, and this session focused on the various ways that AI is impacting legal practitioners who focus on this space. As the world has become smaller, legal complexity has increased, with countries like the UK and Brazil stepping up enforcement activity alongside the U.S. Companies are also under new and growing obligation to deploy data-driven compliance programs which leverage the latest tools and technology, including AI. This session analyzed the role of lawyers in helping their companies and clients navigate the new expectations, challenges (including bias), and opportunities that AI poses to the corporate compliance function.

Connie Brenton, NetApp
Justin Hectus, Keesal Young & Logan
Karla Whebe, H5
Amy Sellars, Cardinal Health

ONLINE DISPUTE RESOLUTION

In an increasingly digital global economy, there has been growing interest among legal researchers, policymakers, and practitioners in expanding online dispute resolution (ODR), supported by the accelerated use of AI, to expedite justice delivery outside courtrooms. In the context of COVID-19, ODR has garnered unprecedented interest, as courts around the world have had to conduct online, remote hearings in civil and criminal proceedings. This session explored the opportunities and challenges brought on by ODR, along with approaches to ensure various stakeholders can be involved in the design and implementation of ODR tools that are fit for resolving disputes today and in the future.

Mimi Zou, Oxford Univ.
Helen Dodds, NED
Emma van Gelder, Erasmus Univ. Rotterdam
Darin Thompson, Ministry of Attorney General
(BC, CAN)

AI IN CIVIL AND CRIMINAL DISCOVERY

Electronic discovery is the only legal domain that combines sound scientific evidence of the extent to which AI can be effective in a specific domain, nearly fifteen years of experience in actual proceedings, and a measure of public transparency into the practices that have begun to crystallize in to norms. In a case-study format, drawing from AI-enabled discovery, this session examined the broader opportunities and challenges that artificial intelligence presents in legal, judicial, and compliance functions. It will also examine concrete proposals to help ensure that, when AI is adopted in such functions, it is adopted on the basis of an informed trust.

Bruce Hedin, H5
Maura R. Grossman, Univ. of Waterloo
Yannick Meneceur, Council of Europe (CAHAI)
Hon. Paul W. Grimm, US District Court
(Maryland)

INTELLECTUAL PROPERTY IN THE AGE OF AI

Protecting intellectual property rights (IPRs) in relation to AI technologies is increasingly important in order to create the legal certainty and build the trust needed to encourage investment in these technologies. The interrelation of AI and IPRs also raises questions across a large range of fields including ethics, accountability or privacy, which require a coordinated approach. This session discussed the challenges of effectively safeguarding AI enabled innovation using the traditional IPR system. It also explored elements of a possible future framework that could address identified gaps and necessary tradeoffs, taking into account the needs of different stakeholder groups.

Ulrike Till, World Intellectual Property Org.
Clara Neppel, IEEE Europe
Rachel Free, EU and UK Patent Attorney
Stephane Sejourne, MEP
Jean-Marc Deltorn, CEIPI Univ. of Strasbourg

THE LAWYER'S ROLE IN REDUCING BIAS IN AI SYSTEMS

Bias in AI systems is a central concern for deployment of the technology, and lawyers play an important role in addressing such concerns. This session examined the nature of this role, as well as the role of governments and industry in contributing to addressing the implicit human biases which make it hard to detect and remove bias from AI systems. The group discussed how algorithms can be very much like opinions—they affect a product's success, legal liability, and more—and the need to aim to reduce the harms created by poorly designed systems that can have a dramatic impact on peoples' quality of life.

Miriam Vogel, EqualAI
Alexandra R. Givens, Center for Democracy and Technology
David Dorfman, Office of Rep. Yvette Clarke
Mantalena Kaili, ELONTech

AI AND JUDICIAL EDUCATION

This session focused on UNESCO's massive open online course (MOOC), 'AI and the Judiciary.' It included an in-depth analysis of the course structure and main objective: to strengthen capacities of judicial operators to address AI-related issues in their domain. The MOOC is composed of multiple modules, more specifically on: digital justice, online courts, algorithmic bias, AI tools adopted in the legal system, AI in law enforcement, ethics, governance, and regulation and ruling on AI (addressed from a human's rights approach). The course also covers the relation of AI with freedom of expression, privacy, freedom of information.

Hon. Benes Aldana, National Judicial College
Sasha Rubel, UNESCO
David Siffert, NYU School of Law
Isabela Ferrari, Second Reg. Federal Court
(Rio de Janeiro, BR)

ABA RESOLUTION 112 AND BEYOND

With AI unleashing potential for consequences not easily foreseen, lawyers must address ethics in new contexts, propelled by existing rules as well as ABA Resolution 112 and varied international offerings. This panel considered the implications of AI-related advances for the practice of law and the legal system, along with the question of how lawyers can recognize the power and limitations of complex technologies that operate in a black box and ethically use or advise others on their use. Beyond a discussion about the theoretical problem, the group talked about the practical steps available to lawyers who seek to address this challenge.

Sophia A. Bhatti, Simmons Wavelength Ltd.
Julie Brickell, H5
Anthony Davis, Columbia Univ.
Michael Quartararo, ACEDS

OPENING ADDRESSES

"The legal system needs that we answer the question: "How can we tell the difference between AI that can be trusted and AI that cannot be trusted to advance justice?"

Isabela Ferrari, Federal Judge, Second Regional Federal Court (Rio de Janeiro), Brazil

"Humans should be trained to interpret correctly what AI is providing and embed AI's output in their decision making process, especially in high-risk applications."

Francesca Rossi, IBM AI Ethics Global Leader, AAI President-Elect

THE SEARCH FOR THE UNICORN

This discussion about 'The Unicorn' addressed the need and opportunities for developing an **integrated, flexible, evidence-based regulatory and non-regulatory framework.** The panel also discussed opportunities for international cooperation with respect to the development of evidence-based approaches that can inform both **"hard law"** and **"soft law"** instruments. The panel also heard from salient standards-setting organizations about their current work and objectives in this respect.

Elham Tabassi
NIST

Clementina Barbaro
Council of Europe

Nicolas Economou
H5

Merethe Eckhardt
Council of Europe

Marc Canellas
IEEE USA

TRUSTWORTHY AI

V.K Rajah
Advisory Council on the Ethical Use of AI and Data

Jim Shaughnessy
Workday

Lord Clement-Jones
UK House of Lords

Martin Hansen
Covington & Burling LLP

Eva Kaili
European Parliament

Kay Firth-Butterfield
World Economic Forum

This plenary discussion with international regulators and practitioners touched on the way that Covid-19 has changed the way we think about privacy, by manifesting the importance of **contextual regulation** to address specific threats posed by AI systems. The group raised the need for governments to address privacy concerns by enforcing **cause-specific uses** which promote the common good and involve public input to shape legal frameworks.

There is also a critical need for **common standards** and **mutual recognition schemes** as regulatory fragmentation imposes higher costs, slower innovation and inequities in the global recovery.

THE FUTURE OF INT'L AI GOVERNANCE: COOPERATION OR COMPETITION?

The panel spoke about the way that AI is forcing us to review some of the most essential "social contracts" that govern how we live, work and socialize; not by re-writing our constitutions, but by pushing us to **revisit existing governance instruments** pertaining to the industrial sector or, more fundamentally, to human rights, privacy, free trade, and more.

The panelists noted that governing the rise of AI is a project of **reconciling the universal with the plural**, staying true to the best of our values: liberty, self-determination, and democracy, while facing the urgency of climate action, development, and soaring inequalities.

Nicolas Miailhe
The Future Society

Bertrand Braunschweig
GPAI

Laura Galindo
OECD

Jan Kleijssen
Council of Europe

Paul Nemitz
European Commission

Sasha Rubel
UNESCO

As we proceed from principles to practice, the 2021 edition of the event, which will take place at UNESCO's headquarters in Paris, will leverage the progress and initiatives spawned from the 2019 and 2020 editions to achieve its ambition of improving the governance of AI in legal systems.

Therefore, it will enable the crystallization of a common framework for the adoption of AI in legal systems in the US, European countries, and other OECD members. The main purpose of working toward a common framework is to converge towards universally accepted but locally adaptable common practices for using AI tools in court cases, evidence discovery, and other activities directly relevant to the rule of law.

The common framework will impact the legal community's work on evidentiary standards, education, and policy in several aspects:

- The work of stakeholders, including lawyers, judges, educational institutions, advocates, bar associations, corporate boards, and procurement, privacy, risk, and compliance officers by providing a framework for the use and integration of AI.
- The work of regulatory and non-regulatory bodies engaged in the development of norms for the trustworthy adoption of AI.

The standards and certification work of IEEE's Ethics Certification Program for Autonomous and Intelligent Systems (ECPAIS).

The high-level representatives will be personally involved in the formation of the consensus and will be enjoined to take initiatives to spread this discussion and these principles in their own courts, businesses, governments, and jurisdiction. As a result, we are ensuring that the legal systems in the US, the European Union, the UK, Brazil, other European countries, and other OECD members can leverage the opportunities brought about by digital and AI tools while protecting their fairness, their justice and the respect for fundamental human rights.

What the Athens Roundtable is and aims to achieve over the next years has been beautifully and effectively put into words, in the form of a call to action, by one of our distinguished guest speakers, Brazilian Federal Judge Isabela Ferrari. This call to action should resonate with regulators, standards-setting bodies, judges, lawyers, compliance practitioners, and legal and judicial education institutions as they seek to address the fundamental question: **"How can we tell the difference between AI that can be trusted and AI that cannot be trusted to advance justice?"** Judge Ferrari invited participating stakeholders to focus their work on three axes:

First, in the current absence of AI standards and certifications, multi-stakeholder collaboration focused, in the short term, on the creation of sound instruments that courts and lawyers can rely on in their everyday work where they already use AI.

Second, the development of annual benchmarking programs for AI applications in legal and judicial systems, modeled on the US NIST TREC Legal Track. Such benchmarking programs should seek to produce trustworthy, transparent evidence, accessible to all, of whether specific legal, judicial, and compliance AI applications are effective at meeting desirable objectives.

Third, and most importantly, the development of sound, evidence-based standards and certifications for AI systems and their operators in legal, judicial, and compliance environments. In a data-driven society, these standards should not overlook concerns about cybersecurity in relation to AI systems.

"I call on all institutional stakeholders to feel the burning sense of urgency that I feel. And I ask of you to tell us during this gathering, and to report back to us when we meet again next year at the 2021 edition of The Athens Roundtable: what have you done, what will you do, how will you do it, and by when will you do it, to make sure that we, the judges of the world, the custodians of your legal systems, the guardians of your rights and liberties, but ordinary citizens as well, can know when to trust and when to mistrust AI to advance justice, access to justice, and through the institution of the law, our shared humanist ideals. As Chico Buarque says, "quem espera nunca alcança": those who wait never reach"

Isabela Ferrari, Federal Judge, Second Regional Federal Court (Rio de Janeiro, BZ)