

# *Time and Cost in Brazilian Federal Courts*

## *Tax foreclosure judicial proceedings*

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### **Abstract**

This essay presents and analyses data gathered by an empirical research about tax foreclosure proceedings in Brazilian federal courts. Specifically, it focuses on issues faced by the administrative and judicial systems to collect unpaid taxes in Brazil, as well as on research conducted to describe those issues, including its goals, methodology and main results. Data-based analysis points to three possible weaknesses in the system: the large number of lawsuits aimed at collecting unpaid taxes, which has become a barrier to general access to justice in Brazil; the Executive branch's bureaucracy that triggers most of those lawsuits and inherent delays; and the very judicial and procedural rules that work as a ritual yielding no other outcomes part from their own existence.

### **Keywords**

Courts and trials – access to justice – cost of public services – methodology and empirical legal studies - Brazilian judicial system – tax foreclosure judicial proceeding

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## 1. Introduction

This article presents an analysis of the functioning and organization of Brazilian courts based on data gathered by an empirical research titled “Unit Cost of Tax Foreclosure Judicial Proceedings”, coordinated by the Brazilian Institute for Applied Economic Research (Ipea – [www.ipea.gov.br](http://www.ipea.gov.br)) in collaboration with the Brazilian National Judicial Council (CNJ – [www.cnj.jus.br](http://www.cnj.jus.br)), in 2009 and 2010.

The official purpose of that research was to calculate the cost of a specific type of lawsuit (the tax foreclosure proceeding) to the Judiciary system in terms of human, material and technological resources. Other aims of that research were: to develop a methodology to calculate costs of judicial proceedings; describe how the Brazilian judicial system really works and how it is managed; identify barriers to access to justice in Federal courts; identify the results of recent policies to improve the functioning of the judicial system and to reduce associated delays; and other related issues that analysis of the above data could disclose.

Tax foreclosure judicial proceedings (“execução fiscal”) are quite appropriate to represent the Brazilian judicial system. As such, conclusions and findings of this research may be extended as valid assumptions to other judicial proceedings.

Differently from other countries, Brazil does not have a separate branch of administrative courts to process and sentence upon rights-related matters in the Executive branch. These matters are processed as lawsuits by the Judiciary system through a special branch (“Justiça Federal”, or “Federal Courts”) that deals with the Federal Government’s interests, such as taxes, pensions, etc.

“Execução fiscal” is a judicial proceeding and, as such, is handled under the umbrella of bureaucratic frameworks applicable to others lawsuits (the judicial bureaucracy); it is also handled by the same cadre of employees, with comparable legal education, whose basic job is to gather and certify thousands of formal papers eventually interpolated by judicial decisions.

Finally, the relevance of “execução fiscal” proceedings derives mainly from the fact that they account for approximately 27 million out of the 86.6 million ongoing lawsuits in Brazilian courts (Brasil, 2010). Over 30% of the judicial system’s human and material resources are dedicated to processing and sentencing such lawsuits. Any

policy to improve access to justice while reducing procedural delays - the majority of which are caused by the Executive branch itself – should dedicate particular attention to this type of proceeding.

Based on the fundamental question of what are the main barriers to access to justice in Brazilian Courts, this research assumes that a large part of lawsuits filed are artificially created by the so-called “suboptimal functioning of State branches”. Whenever the Executive branch is not efficient in managing the State and solving rights-related problems in administrative decision spheres, it generates gaps of unprotected rights that eventually turn into conflicts referred to the Judiciary as lawsuits.

In parallel, the Judiciary, as one of the State branches, also fails to function appropriately. Its inefficiency results in more conflict that eventually becomes additional lawsuits. The large volume of “artificial conflict lawsuits” clogs the agenda of the Judiciary and increases delays. When conflicts related to ordinary rights are brought to Court they are faced with an inordinate amount of lawsuits filed by the Executive branch. “Execução fiscal” is one of these lawsuit types. This research assumes that tax foreclosure proceedings processed at scale, utilizing significant amount of material resources in addition to high financial costs and excessive time burden can be read as a barrier to justice for resolution of conflicts involving ordinary people – the “one shot players”, as named by Galanter.

Another important task in this research is collecting and systematizing information required to calculate proceeding costs and to identify barriers to justice regarding “execução fiscal”. The main difficulty posed to any analysis of the Brazilian judicial system is an absolute lack of information (Cunha et al, 2005). Building and systematizing empirical data about court functioning has been unusual. Information normally made available by Courts is useful to lawyers only in their ordinary work of handling lawsuits. Such information is nearly useless for scientific purposes. Recently, Brazilian courts have started to organize their information in statistical bases; however, this task is still incipient and any effort to analyze the functioning of courts must either look for or be able to provide its own databases. This becomes even more complex in the case of research to calculate the costs of processing lawsuits, which depends on specific methodologies.

This paper aims to present the construction of the methodology used in this research, as well as relevant information gathered and some of the analysis that they

support. First, it presents the structure of the Brazilian judicial system and the tax foreclosure process. Second, it presents the main data gathered by the research – such as the average length of time spent in "execução fiscal" lawsuits, the organization of federal courts, human resource allocation, and the major outcomes of tax foreclosure proceedings. Lastly, it highlights points of analysis that derive from data collected, detailing how such analysis is related to public policies that cover administration of the judicial system in Brazil.

## **2. The Brazilian Judicial System and tax foreclosure judicial proceedings**

"Execução fiscal" judicial proceedings embed both the main characteristics and the problems of the Brazilian Judicial system. As mentioned above, this type of suit account for 31% of total ongoing lawsuits in Brazil (Brasil, 2010). However related to economic activity, this type of lawsuit is found in every single region of the country and, in each of them, may incorporate aspects of local work methodologies, economic activity and organization of public services. In terms of civil procedures, "execução fiscal" is a rather simple judicial proceeding, with a limited number of steps, rare opportunities for discussion between the parties, sentences issued by the judge and short windows for defense and appeals. It is comparable to an administrative proceeding that surveys and forecloses debtors' properties – only it is conducted by the Judiciary system. "Execução fiscal" also concentrates outcomes from the three branches of the State (Executive, Legislative and Judiciary) and draws interest from society at large for it deals , as it deals with payment of taxes.

The paragraphs below present details about the complex proceedings to collect unpaid taxes in Brazil, involving both the Executive and the Judiciary branches. The proceeding to certify and to collect federal tax owed is hybrid and quite complex. It starts in administrative agencies (Federal Revenue) and ends in long and strenuous judicial proceedings in Federal Courts – the tax foreclosure proceeding.

The flowchart below describes the main steps of both administrative and judicial proceedings. At the administrative level, these proceedings originate at the Federal Revenue Secretariat, more specifically in Federal Revenue Offices or local inspection authority to which legislation delegate this function. By means of this procedure, the taxable subject of a given tax liability is notified so as to challenge the debt. This kicks off an administrative contestation that produces expert examinations

and reports. In the end, the relevant Federal Revenue Office issues a decision. This decision may be challenged by either voluntary or administrative appeal or, alternatively, by mandatory remittance to second level administrative bodies, i.e. the Taxpayer Councils. In some cases, the decision may be challenged at the special level, i.e. the Finance Ministry.

Still at the administrative level, the National Revenue Attorney's Office performs registration of the debt and proposes legal action. This is a simple procedure composed basically by registration of the debt in the federal registry of delinquent taxpayers – which is preceded by an Attorney's assessment and determination of the legality of the previous administrative procedure conducted by the Federal Revenue Secretariat. This assessment is based on Paragraph 5, Article Second of Law n. 6.830/80 which provides the requirements for registration of debt in the delinquent taxpayers' roster. The Attorney determines registration of the debt once the legitimacy of the procedure has been confirmed. That is done internally by means of an entry in the delinquent taxpayers' automated system. The system generates a registration protocol that allows for future retrieval of a tax delinquency certificate (CDA), based upon which the Attorney's Office proposes a legal execution writ. That procedure is described in flowchart.

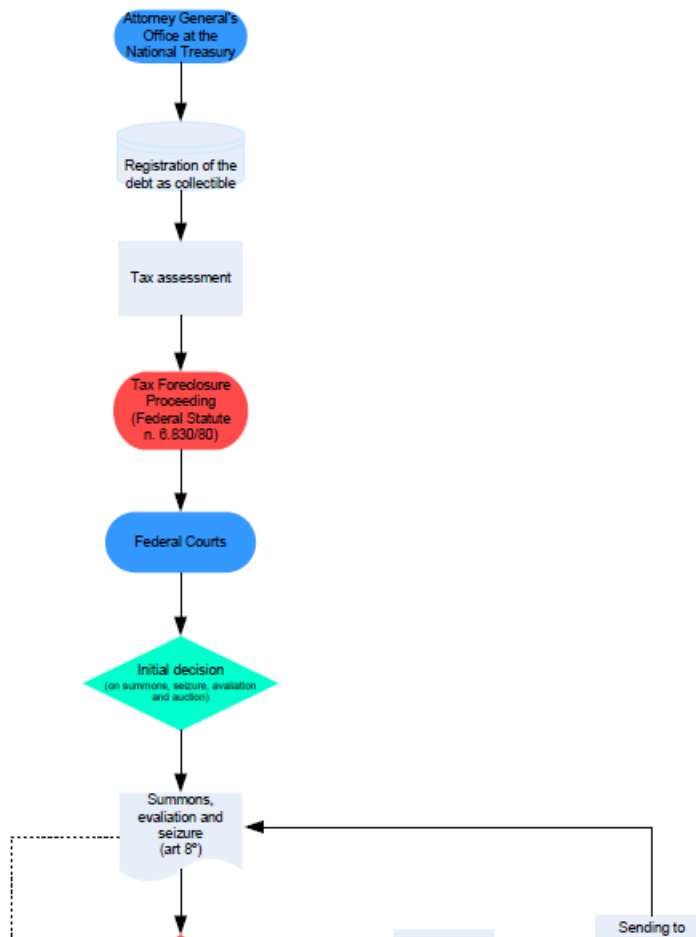
A tax foreclosure lawsuit is the final stage of a long process aimed at collecting unpaid taxes. The process begins in administrative agencies and ends up in courts. The administrative proceeding is not limited to registration of the debt, which serves to certify the existence of the debt and to notify the debtor of such certification; indeed, it involves a process of presentation and assessment of the debtor's defense before an administrative board. The results of administrative proceedings are used in the judicial process, but do not stand in for it. Normally, judicial proceedings provide other opportunities for debtor defense and involve a due trial process.

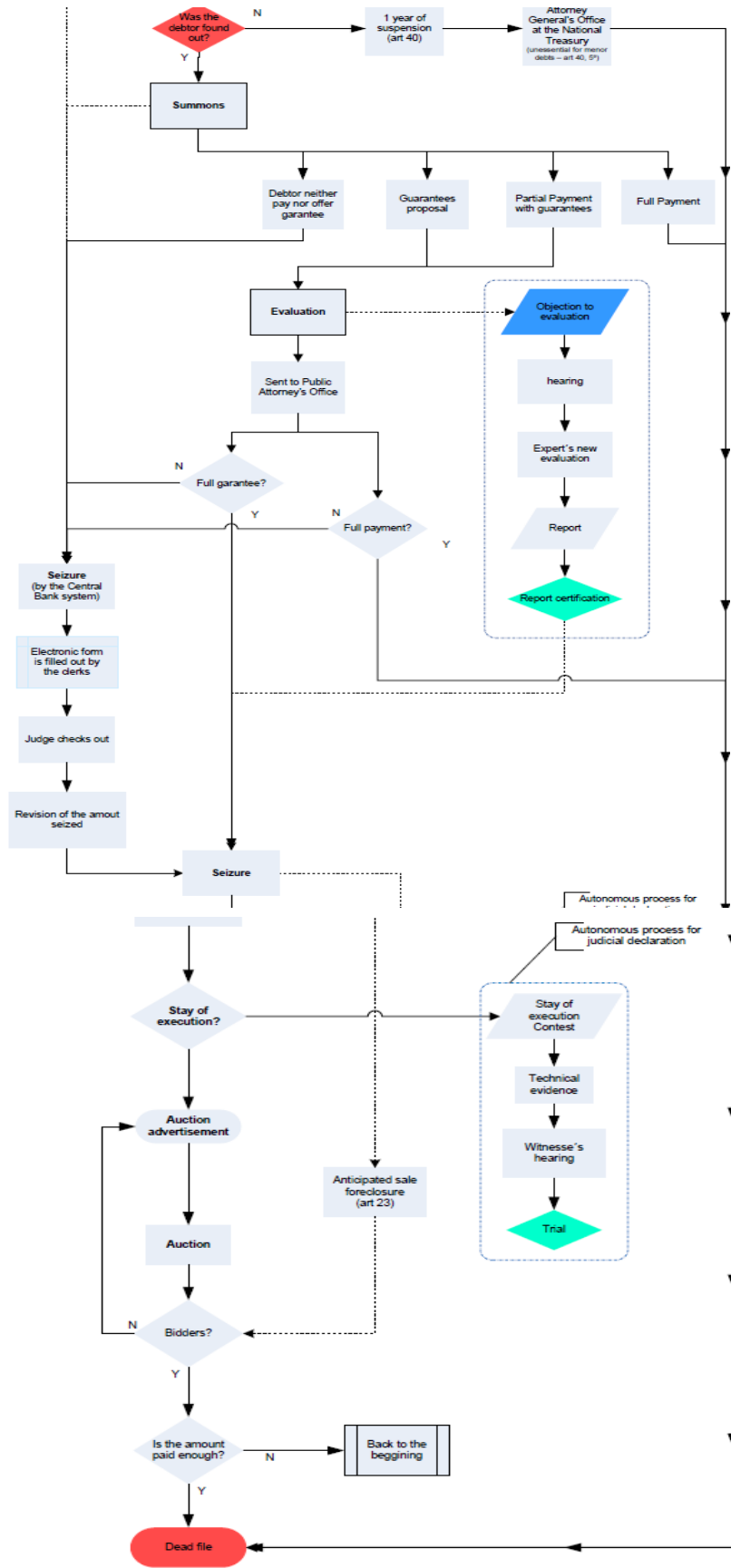
At the judicial stage, judicial tax foreclosure proceedings, which are ruled by Law 6.830/80, follow the general guidelines of a legal execution writ – with exceptions that contemplate the peculiarities of Public Revenue – and apply indistinctively to the collection of federal, state and municipal taxes. The Tax Delinquency Certificate is filed judicially as an initial brief; the debtor is notified in order to either pay the debt or offer guarantees against it. In case the debtor does not do one or other, the Federal Revenue Services (FRS) seizes assets in an amount that is sufficient to guarantee the debt. At the same time, the FRS conducts an assessment of

such assets. The debtor may challenge the assessment and embargo execution. Upon decision related to these incidents - which may require action by Regional Federal Courts, the Supreme Court and the Supreme Federal Court – seized assets or property are either granted or transferred by public auction. Such procedure is described in Flowchart below.

**Fig. 1 - Flowchart of the tax foreclosure judicial proceeding in the Federal Courts, according to Law n. 6.830/80**

**Tax Foreclosure Proceeding – Federal Statute n. 6.830/80**  
Federal District Courts





The figure above depicts a tax foreclosure lawsuit as designed by law, with all the actions and steps required to accomplish fiscal credit, i.e., following public judicial auction that results in payment to the creditor. That is the law in books. As one will see in item 4 below, law in action differs considerably from this legal framework.

### **3. The research – methodological information**

#### ***3.1. Problems in "execução fiscal" proceedings***

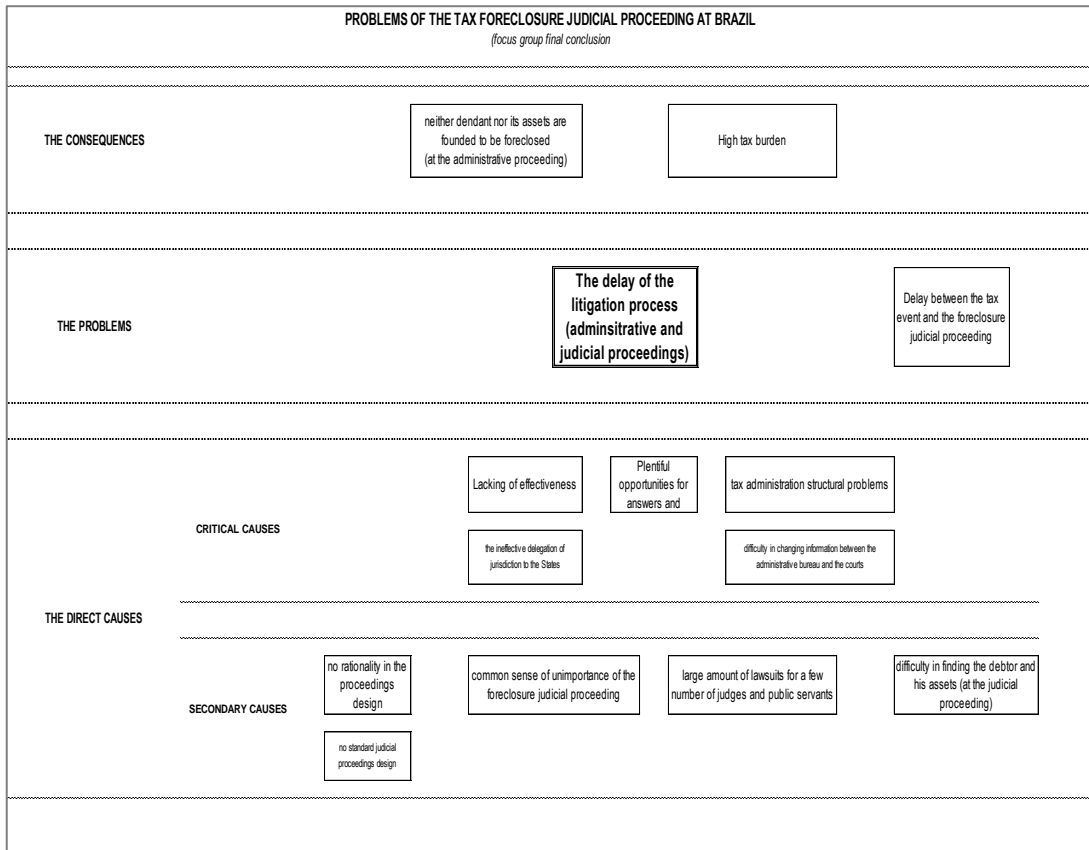
In order to best identify and understand the problems inherent to federal tax foreclosure and the variables that determine its cost, in January 2010<sup>1</sup> this study set up focus groups with representatives from the Regional Federal Courts, the National Revenue General Attorney's Office and the National Revenue Services from all regions of Brazilian Federal Justice. That assessment shed some light on elements that, according to judges, play a prominent role in determining the cost of, and obstacles to, the operation of federal courts. Findings were documented in a flow chart that includes possible causes and consequences, as follows:

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<sup>1</sup> 1a. Região: Acre, Amazonas, Amapá, Minas Gerais, Pará, Roraima, Rondônia, Tocantins, Bahia, Distrito Federal, Goiás, Maranhão, Mato Grosso e Piauí; ii) 2a. Região: Rio de Janeiro e Espírito Santo; iii) 3a. Região: São Paulo e Mato Grosso do Sul; iv) 4a. Região: Rio Grande do Sul, Paraná e Santa Catarina; e v) 5a. Região: Sergipe, Alagoas, Pernambuco, Rio Grande do Norte, Ceará e Paraíba.



**Fig. 2 - Summary diagnosis of causal relations between problems**



The main problem pointed out by focus group participants is the duration of the judicial process. Delays are mentioned as a central problem on a list of causes and consequences that restrict access to, and elevate the operational costs of processes, in addition to contributing to a perceived inequity in results.

Besides time, other factors have been identified as causes of a perceived low efficacy of fiscal foreclosure. Deficiencies of the legal instrument used to collect unpaid taxes were also highlighted as relevant. From the stand point of the judicial collection phase, i.e., fiscal execution itself, this cause has been illustrated by the multiplicity of appeals that lead to indefinite revision of decisions, in addition to the means available to locate the debtor's assets.

Institutional design was also pointed out as a barrier to better functioning of tax foreclosure. Specifically, interviewees stated that many cases would have been resolved at the administrative level, thus dispensing the need of a legal case. Besides that, administrative bodies do not provide the Judicial System with sufficient information to ensure that tax foreclosure achieves good results. The need to formally solicit such information causes considerable delay in legal cases.

Legislative deficiencies lead to lack of uniformity in procedures. This was also singled out as a cause of problems in tax foreclosure proceedings.

The structure of the Judiciary Branch was deemed deficient in terms of the number of employees. Such staff shortage poses additional difficulties to tax foreclosure proceedings. Besides, interviewees stated that tax foreclosure cases are not a priority for the Judiciary Branch, be it the higher courts or public servants themselves.

Another highlight was the country's high tax burden, pointed out as a consequence of high tax default rates, as well as a factor that generates an "impunity culture in the country."

### ***3.2.A methodology to calculate the cost of judicial proceedings in Brazil***

Given the many-fold nature (structural, legislative, cultural, etc.) of problems noted, this research will focus on the issue that has been singled out as the pivot of all those problems: delay in processing judicial tax foreclosure cases. Management of public servants' time is the main factor impacting legal case proceedings in the Brazilian justice system; likewise, public servants' compensation is the main component of the government's budget, reaching as much as 90.79% of the total budget, on the average. As such, research was geared towards identifying the total time spent in processing tax foreclosure cases and describing, in detail, the partial time schedules that make up the total time.

Estimation of processing time assumed the description and measurement of human resource allocation in each procedural step of tax foreclosure proceedings. Time was either represented by the "total processing time" or by the sum of "partial time dedicated to activities." This time excludes from "waiting time" to the review of records, also known as case "dead time" (Brasil, 2007). Human resource allocation was based on actual activities and on the compensation plan for the Brazilian Judiciary System's servants.

The combined measurement of processing *time* and organization and functioning of *activities* depended upon specific investigation tools. In order to produce information that is both accurate and useful to management of the justice system the research combined the methods known as *Weighted Caseload*, Activity-based Cost (ABC) and *Delphi*.

The *weighted caseload* method aims to measure the total amount of time needed to complete a process. Measuring is based on identification of steps required along processing and on calculation of the product of time employed by the average frequency in which it occurs. Data from material and technological resources are added at the end of the process. (Judicial Advisory Study Committee, 2003).

The ABC method was used to identify the chain of activities that make up the process. Based on input-activity-product integration, this method measures the partial effective cost of each activity implemented along the development of a give process. This method is recommended to measure the cost of procedures that do not necessarily have an economically appreciable product.

Finally, the Delphi technique allows for estimation of the time needed to conduct each procedural activity. In this research, estimates were done through interviews with public servants involved in such activities in courts that house lawsuits selected in the sampling.

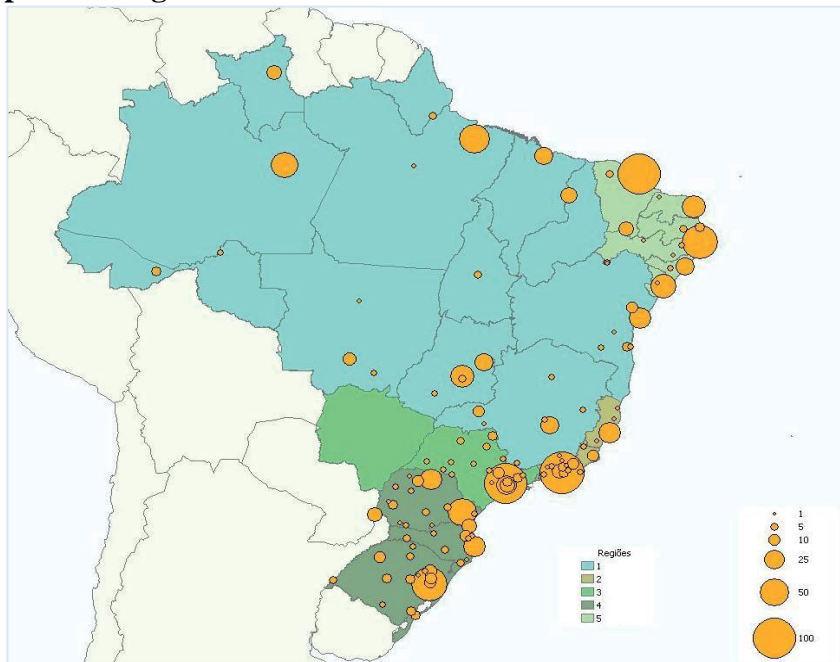
Os dados de tempo e atividades coletados na pesquisa permitiram construir um processo-tipo de execução fiscal, resultado médio dos processos analisados e que serviu de parâmetro para as análises (o “PEFM”).

#### **4. The main data gathered by the research and some analysis**

The results stem from ample investigation based on a sample of 1510 completed cases with final dismissal by the Federal Court in 2009. This sample was statistically extracted from a total population of 176.122 cases, in a confident interval of 96% and an error mistake of 2,5% base. The sample cases are spread among 182 federal district courts, which were visited between July and September, 2010.

The map bellow shows the location of the lawsuits those composed the national sample – as we said, the tax foreclosure lawsuits map is related to the distribution of the economic activity.

**Fig. 3 - Distribution of the sample in Brazilian cities and political regions**



For the gathering of the results, the research built an ideal type of judicial foreclosure proceeding that was called the “PEFM” - the medium tax foreclosure proceeding. This is an abstract model of the "execução fiscal" proceeding designed to show the general data about time processing and the delay bottlenecks, as well as to be a frame to insert the data related to the values of salaries and other general budget information from which the research could calculate the costs of the proceeding.

The PEFM revealed that the tax foreclosure proceeding takes, in average, **8 years, 2 months and 9 days** from the initial petitions until the date it is sent to the dead files. But, based on the survey by the Delphi method, the total amount of time necessary to process one lawsuit is around **10 hours and 8 minutes**. This second data is just an ideal reference for the analysis, so as it is far from a real one, once it does not consider the practical circumstances that involves a judicial process, neither the human nature of the processing agent (the judicial clerk register) nor the long line of records waiting to be processed (the stock of lawsuits). These two data specially works to point to the reasons for large gap between them: it's not expectable to process a tax foreclosure lawsuit in 10 hours, but there must be a variable sort of explanations for the prolonging of this lawsuit for 8 years. In other words, part of this gap is legitimate and another part is not. The question is to try to differ and to identify each one of them and to point the reasons that could explain it.

Once the results point to two intervals, the research calculated two costs of this lawsuit. One tax foreclosure proceeding may cost something between R\$ 1.854,23 (one thousand, eight hundred and fifty four reais and twenty three cents) and R\$ 4.685,39 (four thousand, six hundred and eighty five reais and thirty nine cents), according to the method of calculus. Similarly, it must be noted that the first amount is not a real one and the second one is not necessary one. There is a feasible cost in between them, which can be reached by the public policies that aims to improve the access to justice in Brazil. Some measures can be based on changing the procedure legislation, others on increasing of the Judiciary managing and functioning, others on the administrative proceedings. Traditionally, Brazil has been insisting on the first one, which has not been efficient enough in its task.

Some other outcomes of the research reveal that the tax foreclosure proceeding is basically composed by administrative activities, performed by the judicial clerk registers with punctual acts performed by the judge. The follow table, based on the Delphi survey, shows that the judge normally spends around a hundred minutes of the 10 hours total time proceeding. Its job is restricted to some decisions, while the whole proceeding is based in bureaucratic activities of registering, filing, docketing, numbering, etc. These acts take the most time of the tax foreclosure proceeding, which can be so defined as a “predominantly administrative (or bureaucratic) proceeding” – it’s not a judicial proceeding or a proceeding of justice at all.

**Fig. 4 – Tax foreclosure proceeding acts and the time dedicated by the agents**

Stage	Agent in charge (minutes)			Δ Total time (minutes)
	Judge	Public Servant	Other	
Tax assessment	0,0	17,3	3,5	20,8
Decision	0,3	8,5	0,2	9,0
Summons by registered mail	0,0	8,6	1,5	10,0
Summons by bailiff	0,0	266,9	3,1	269,9
Summons by publication	8,3	37,9	5,5	51,6
Seizure	4,3	396,6	10,8	411,7
Auction	9,5	193,6	6,6	209,8
<i>Pre-foreclosure objection</i>	41,5	71,1	2,6	115,2
<i>Objection</i>	1,3	33,6	4,3	39,1
<i>Interlocutory appeal</i>	0,0	5,9	1,4	7,2
<i>Request for review</i>	0,0	5,9	1,4	7,2
<i>Special or extraordinary appeals</i>	0,0	5,9	1,4	7,2
Sentence	20,6	73,7	2,3	96,6
Retirement	0,0	16,1	1,1	17,2

Source: Authors

As a bureaucratic proceeding, the full accomplishment of its steps presumably reaches out the goal of the lawsuit – which is, in this case, the payment of the tax or any other way of accomplishing the fiscal obligation. That is the law in the books, not the law in action. Actually, just a few part of the lawsuits arrives in the final step of the proceeding, which is a judicial auction. A pattern lawsuit (the PEFM) has one pleading and one initial decision, but the frequencies gradually fall down from this point until a surprising proportion of 0.07 auction per lawsuit. In other terms, about three-fifths of tax foreclosure proceedings move beyond the summons stage. Of these, 25% lead to seizure, but only one sixth of seizures result in judicial auction.

**Fig. 5 – Frequency and weighted time (in days) of the acts of the tax foreclosure proceeding**

Stage	Frequency	Weighted time (days)
Tax assessment	1	183
o <i>from complaint to tax assessment</i>	1	117
o <i>from tax assessment to initial decision</i>	1	66
Summons	1,46	1.920
o <i>from initial decision to summons order</i>	1,46	41
o <i>from summons order to finding the debtor or to lawsuit prescription or lapsing</i>	1,46	1.879
Seizure	0,67	362
Auction	0,07	52
Defenses and appeals	0,087	230
o <i>decision on pre-foreclosure objection</i>	0,05	29
o <i>decision on each objection filed by the debtor or third party</i>	0,07	110
o <i>decision on appeals (interlocutory appeals, requests for review and special and extraordinary appeals)</i>	0,18	91
Retirement	1	243
<b>Total transaction time</b>		<b>2.989</b>

Source: the Authors

Seizure of goods is reported in 15% of cases, but only a third results in voluntary presentation of property by the debtor. Only 2.6% of tax foreclosure lawsuits results in judicial auction, with or without success. Such auctions produce sufficient funds to cover the debt in only 0.2% of cases.

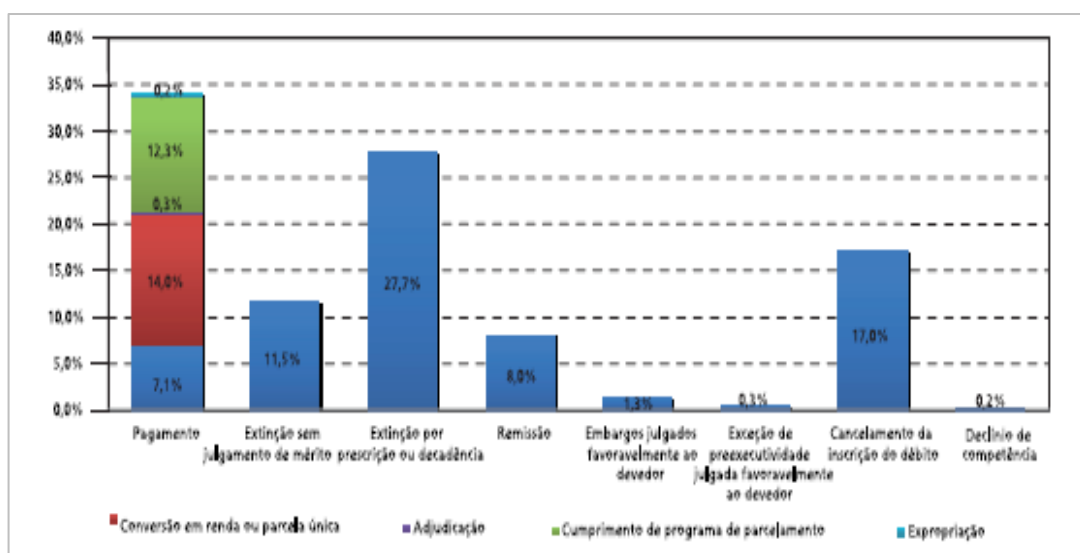
The main reason for that, according to the data gathered, is the scare information about the debtor. Notwithstanding the fact that the State is the creditor and the plaintiff of these lawsuits, he is not capable of providing information neither about where the debtors nor their properties can be found. The major part of the dismissed

lawsuit fails because there was no summon or there was no seizure of properties that could bring into a valid auction.

The research does not support the conclusion that the lack of proceeding success is caused by the debtors using of the legal defenses. Only 4.4% of tax foreclosure proceedings record some kind of pre-foreclosure objection, and only 6.4% of debtors object foreclosure proceedings. It seems not to be a problem of litigation behavior of the defendant nor the plenty of defense opportunities in a lawsuit that should be dedicated to the collection of an unpaid obligation, not a place for discussion of facts and rights.

Despite the probability of complete fail, the tax foreclosure proceeding even get some success. The probability of tax foreclosure proceedings success or fail is nearly the same. The level of successful debt foreclosure is relatively high, as retirement of the lawsuit takes place upon full payment of debts in 33.9% of cases. Statute of limitation or lapsing abatement is the second main cause of dismissal, accounting for 27.7% of cases.

**Fig. 4 - Tax foreclosure proceeding acts and the time dedicated by the agents involved**



Cases that result in payment may be classified as either voluntary or compulsory (i.e., as a result of auction) payment. As the judicial process assumes initial debtor resistance to voluntary payment, compulsory payment is the generally expected end result of tax collection suits. However, according to this research, the rate of

voluntary payment is significantly high (26.3%), while payment as an outcome of judicial action responds for less than 1% of the cases analyzed in this study.

The average collection of fiscal proceedings filed by PGFN and terminated by payment is R\$ 36,057.25 (thirty six thousand and fifty seven reals and twenty five cents; around US\$ 16.7 thousand dollars).

## **5. The analysis and hypothesis created by the research**

### ***5.1.A bureaucratic structure to solve the problems created by the bureaucracy***

Tax foreclosure proceedings are the final stage of a long, complex process to collect unpaid taxes. As the need to file lawsuits is still great, it seems that the initial stage, which is administrative by nature, is not efficient enough to fulfill its goals. In addition, the limited positive results of tax foreclosure proceedings apparently do not derive from juridical activity or completion of a judicial process, but actually from a few administrative steps taken at the onset – such as summons and notification of existing debts.

Judicial proceedings may be understood as unnecessary in cases of voluntary payment which, again according to this research, account for 26.3% of all proceedings. In those cases, legal proceedings might have been used due to inefficiencies in the previous, administrative tax collection stage. Even so, voluntary payment configures an administrative payment that supposedly results from plain notification of an existing debt. This cannot be considered compulsory payment as it is not the expected result of litigation – which in turn characterizes a judicial process.

The fact that a number of cases are closed right at the onset does not mean that proceedings did not require a significant amount of human, material and financial resources. As defined by law, tax foreclosure proceedings are relatively simple, although their concrete operationalization by courts requires a bulky ensemble of staff and documents. The initial phases of the process, particularly summons and notification of the defendant involve numerous steps that are taken by different categories of public services. This takes time and obstructs the judicial system's agenda.

Taking into consideration that the volume of tax collection lawsuits is incredibly large, one may conclude that the entire judiciary structure is dedicated to processing a type of lawsuit that, in case of voluntary payment or early termination,



seems to be unnecessary; or else could be substituted by previous, efficient administrative procedures.

This situation reveals potential misuse of the justice system by the Executive branch, thus configuring a roadblock for other citizens to access justice. This arises first because the Judiciary branch has been largely dedicated to collecting taxes from citizens to benefit the State, while this latter should be working to ward citizen's rights before other citizens and the State itself. In other words, should the Judiciary Power serve the State or society? Second, because this collection, which is important to generate the revenue required by State to benefit society could be conducted in administrative instances with equal chances of success given that tax foreclosure proceedings involve activities that are rather bureaucratic than jurisdictional. In addition, actual judge time dedicated to these proceedings is short, while time allocated by public servants is rather long. Furthermore, the level of voluntary payment – which assumes that there is no litigation – is considerably high.

In sum, tax foreclosure proceedings are basically made up of administrative activities that have only become necessary because the Executive branch was unable to notify the debtor and to collect undisputed taxes under its responsibility. Considering that each of these activities is thoroughly regulated in complex procedures that involve a bulk of public servants, judicial tax collection in Brazil can be defined as a case of administrative inefficiency of the State bureaucracy that is transferred to the judicial bureaucratic apparatus with a lower rate of success. Caught in the middle of this clash between inefficient bureaucratic structures, the ordinary citizen is unable to find ways to claim their rights in the Brazilian justice system.

### ***5.2.A proceeding built to proceed itself - circular function of judicial proceedings***

The high numbers of foreclosure proceedings that are extinct without effective collection of unpaid taxes after years of processing – and that have been found at surprisingly high rates in this study – reveal that this process has had little functionality in the rights' enforcement system.

In fact, the judicial process seems not to contribute to positive results achieved. As there is no relation between results and conclusion of the judicial process, it is possible to assume that tax foreclosure proceedings only serve the purpose of processing their own procedures. The process advances to complete the steps provided

by law for the procedure itself. There is no correspondence with achievement of the end result it pursues (fulfillment of an unfulfilled tax obligation). Apparently, results achieved derive from reasons beyond foreclosure processing and the lawsuit itself, meaning that the process as a threat seems to be more effective than proceedings that lead to seizure of debtor assets.

This research allows hypothesizing a typical case of endogenous pathology: a judicial process that only exists to fulfill its own steps, with no impact *per se* in the material world.

### ***5.3. Justice sector and access to justice policy reform in the absence of inter-institutional dialogue***

Since 2004, Brazil has been implementing policies to reform the Justice sector and to promote access to justice. This policy is based upon process-related legislative reform, creation of new bureaucratic structures and expansion of existing ones. As such, it fails to address – unless if at a secondary level – issues that relate to organizational culture, improved models, and management training and capacity building for judicial agents. This perpetuates court practices that are clearly inefficient and ineffective.

Likewise, the policy focuses on localized reform of one or another body of the justice system, and not on the system as whole. As a result, these reforms do not tackle systemic problems that relate to the organization of relations between different agents in the system. Basically, problems are shifted from one justice agent to another while not being satisfactorily addressed by any of them.

Little has been done to identify and to address the *causes* of inefficiency and ineffectiveness of the justice system. In the particular case of federal tax collection lawsuits, empowering the Executive branch by expanding self-custody administrative tools could improve the State's performance in enforcing rights by non-judicial means. One of this research's relevant findings indicates that when the Executive branch delegates merely administrative tasks to the Judiciary it an excessive workload on courts, this diverting them from other relevant court-inherent tasks for enforcement of citizens' rights. Those administrative activities could have been performed by the Executive branch itself.

## **6. A research agenda**

Empirical research about the Brazilian justice system is riddled with difficulties. Due to a lack of reliable secondary data bases in a continental-sized country that operates a highly decentralized judicial network, studies depend upon extensive, lengthy and expensive data collection exercises in the field.

Coupled with a judicial culture that emphasizes law in the books to the detriment of law in action, these difficulties result in low production of empirical legal studies. As such, judiciary policies and justice sector reforms lack an empirical basis. This lead to solutions that are exclusively based on large theoretical frameworks.

The path followed in this analysis of tax collection proceedings in Federal Courts demonstrates the importance and utility of empirical studies to effectively improve Brazil's justice system. As an example, based upon results presented in this research the General Attorney's Office recently proposed a series of reforms of the State's methods and procedures, among which a minimum value for judicial collection of unpaid taxes. Beyond simply reducing internal costs, this provision is expected to reduce the volume of tax foreclosure lawsuits by 52% within the next 10 years (Cunha, Klin & Pessoa, 2011). It's most evident external effect, which is cleaning the work schedule of judges will benefit the ordinary citizen, who will have better access to justice.

In order to encourage production of empirical legal studies in Brazil, research institutions have been coordinating the establishment of a research network funded by the Institute for Applied Economic Research. Hopefully, these efforts will trigger a research agenda capable of producing information needed to improve the quality of the State's decision-making as it relates to justice sector reform.

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