

"The path is short, the trajectory is long and the road is erudite" — Hédio Silva Júnior

Silvia Souza

| Brazil |

translated by Edmung Ruge

Hédio Silva Junir is a historic defender of African-matrix religions in Brazil. Silva is

a renowned jurist and holds a doctorate in law, with an outsized trajectory in the practice of law in the defense of the rights of Black people and in combating racism. He is also a native of Minas Gerais, and comes from a family that some would call “unstructured.” He traveled to São Paulo at a young age, working as a construction worker at age 17 in the 1970s. At the time, Brazil’s Civil Code was still far from recognizing single parent families under legal precepts. Today, as shameful as it may seem, above all considering the social reality of Brazil, a country in which mothers form the majority of heads of family, and even more so in contexts of accentuated social inequality — a scenario which invariably weighs heaviest upon the Black population — this legal background of nearly half a century demonstrates how law is formulated and establishes itself in the hegemonically white logic as well as that of the “traditional Brazilian family.”

Silva’s trajectory spans this same time and space, despite the recent reformulation of necropolitics against the Black and impoverished population of Brazil. In his law practice, Silva subverts this logic as the first Black lawyer to argue before the Supreme Court, first in defense of racial quotas and later to defend the right to the full exercise of African matrix religions, including the sacrifice of animals for religious ends.

Silva is the founder of and presides over IDAFRO, the Institute for the Defense of the Rights

of Afro-Brazilian Religions.

Silvia Souza: When did you decide to pursue law and how did you turn it into a tool for combating racism in your life?

Hédio Silva Junior: Perhaps my moment of awakening came from the stories that my grandfather on my dad's side, Geraldo João Silva, used to tell. He participated, twice each year, as a juror in a small city in the interior of Minas Gerais called Três Corações. Normally, it was homicide. He would tell me all about the jury, that theatricality, the role of the prosecutor, the judge, the jury, and the role of the lawyer.

He would always tell these stories with a lot of enthusiasm and happiness for having had the opportunity to participate as a Black, illiterate rail worker. And he would have been unable to sit on the jury because he was illiterate, but the Penal Code and the Penal Process Code had already taken effect at that time.

This certainly left its mark on my trajectory. Later, in my activism, I understood that what was missing was an investment in that strategic area of law known as litigation. There were so few Black lawyers in that area. It was at that point that I made the decision to pursue law.

I tried other courses, but they didn't work out and I ended up going into law. I made an academic career out of it, earning a Master's and a PhD from the Pontifical Catholic University (PUC). I published a few books.

In my office, I set up a pro-bono area. At that time, I also had ties to a non-governmental organization, with resources to act in emblematic areas, suits that we assessed would have

the potential to create favorable case law, what the Americans call legal culture.

I am a son of Xangô, who, in the Candomblé religion, is the orixá allied with justice. So perhaps this connection pushed me toward law. I ended up intervening in certain emblematic areas, historic suits in the country's recent history. The Black Movement chose me as their defense in cases involving affirmative action in the Supreme Court in 2012.

I also worked in a historic case, one of the right to collective response for Afro-Brazilian religions, a case they won against a television station. I also worked on a case that may have been more challenging: that of defending, first in Rio Grande do Sul's court of appeals and then before the Supreme Court, the right of religious sacrifice of animals, which is something that the Jews practice, Muslims hold as a rite, a dogma, and a right that had never before been questioned.

They questioned the sacrifice of chickens, or as per the expression I used before the Supreme Court, "macumba chickens." It was a very important moment.

We have dozens of cases in this pro-bono area: cases in which parents can register their children with African names. The first judicial recognition of a wedding held at an Afro-religious terreiro¹ Sacred sites used in the practice of Afro-Brazilian religions in Porto Alegre [Rio Grande do Sul]; the absolving of a priest unjustly accused of mistreatment because of the sacrifice of animals; a reversal of a case in the interior of Minas, in which the police intervened and interrupted an Afro-religious service, seized drums and tried to indict the priest for the crime of disturbing the peace.

There were dozens of cases that, perhaps with the generous help of Xangô, we won the majority of, if not all of them.

Silvia Souza: About your arguments before the Supreme Court, both in the case of the Quotas Law and in relation to the right to animal sacrifice, you have revealed the irony of racism as well as the hypocrisy of those suits. First, I'm referring to the racial quota cases, of ADPF² Arguição de Descumprimento de Preceito Fundamental 186, in a 2012 Supreme Court ruling. Your defense of Black movements was brilliant. You pointed out the irony of the fact that affirmative action was a problem at that time in Brazil, and brought data with you. The University of São Paulo, for example, had more African students than it did Black Brazilian students. The Quotas Law³ Law n 12,711, of August 29, 2012, in article seven, includes a tenet for revision after ten years, which will take place in 2022.

The Quotas Law for public competitive examinations⁴ Law n 12,990 also calls for periodic revision by the Secretary for Policies in the Promotion of Racial Equality (SEPPIR), the responsible organ, currently under the auspices of the Ministry of Women, Family and Human Rights. In an interview, you spoke of "there never having been so many poor whites in university, and how this was also a result of the Quotas Law." In this current political context, how do you evaluate the quota policy as a whole? And what of the possibility of their extension, considering the structure of the Brazilian judiciary and the political moment in which we are living?

Hédio Silva: My assessment is positive, although we may still have problems, given that the federal constitution stipulates the right to access as well as the right to permanence in scholarly education. The fragility is still there in the question of students remaining in school. We have had an exponential increase in access since 2001.

It has already been twenty years since the State University of Rio de Janeiro became a pioneer in the adoption of affirmative action policies. Then the Supreme Court ruled quotas to be constitutional, and finally it was made into law.

The political scenario in 2022, the year in the Quotas Law will be up for assessment, could not be more disheartening, first because we have a president who refers to quilombo

inhabitants as animals, as he said once during his campaign, that “in a quilombo he visited the lightest Afro-descendent weighed seven arrobas.” This word, “arroba,” for us, holds an offensive meaning, one that is degrading, really outrageous, because it is a unit used to weigh animals rather than humans. He would also go on to say that they were unfit to procreate. That is to say, ‘useless animals’ is what he basically said — not in so many words, because he is barely able to articulate two to three at a time. He is a total idiot. A president that uses racist phrases even as he denies that racism exists in Brazil.

The judiciary may end up being a locus, a strategic platform for us to attempt to paralyze any attempt to revoke the law. We need more time. There is still much to be done and much to be invested in terms of permanence in higher education.

There is another issue here, and one that I even have had the honor of litigating recently for an Afro-descendent from Campinas, in São Paulo, who was accepted into the Unicamp medical school. As I understand it, the girl, though she did not have accentuated African phenotypes, was indeed Afro-descendent. And I took on her defense and lost, but the court recognized her as Afro-descendent and determined that Unicamp proceed with her matriculation.

I understand that the racial identification commissions must be improved. Eventually, this may become a major question for the judiciary, and may make it to the Supreme Court and, with this promise in terms of some “awfully evangelical minister”⁵ President Jair Bolsonaro had vowed, in 2019 to appoint an “awfully evangelical” judge to the Supreme Court or whoever makes up the Supreme Court in four to five years from now will have to deal with a similar theme.

The Black Movement will need to mobilize and lawyers will have an important role once again. We need to invest in the education of our youth, of young Black lawyers in the labor market. I always say this: it is not enough for you to be a practitioner of macumba and a lawyer, nor is it enough for you to be Black and a lawyer, because at times there are themes

that mess with our subjectivity, removing that distance that is necessary in order to work technically, and, sadly, there is no repository for case law, no course, nothing in this area.

Part of the problem certainly has to do with institutional racism, which leaves no institution untouched by its deleterious effects, even judicial institutions. But I understand also that we need to improve the judicial path for demands from Black people and the demands of Afro-religious people. So, I'm very worried about this, and also because I am 60 years old. I've started the countdown, and in five years I will be, technically, elderly, and I want to share a bit of what I have learned in these last three decades — that is, democratize information and invest in the training of young lawyers that can take on the cause.

Silvia Souza: At the time that the racial identification commissions were created, there were disagreements even among Black Brazilian movements. And you have mentioned the need to improve the commissions, and that this may make it to the Supreme Court. This also interacts with the subjectivity of the student being examined by the commission. It is a commission that is going to tell him if he is Black or not. And, sometimes, the commission is not as plural as established in ADPF 186 — at times it is composed only of white people. What is your evaluation of these commissions and what sort of improvements need to be made?

Hélio Silva: They impede a certain amount of subjectivity that, every time that the Supreme Court has ruled on collegiate bodies with the power to defer or not defer rights based on rigorously subjective criteria, the Court has ruled against this degree of subjectivity, although the Supreme Court itself has already pronounced in respect to the legitimacy of a correction among racial identification commissions. Only that, the Supreme Court rules on the commissions in a context of other suits, as reasons for deciding, as a predominant element, as a predominant thesis, but not as a partial provision of some ruling. So it is different when the topic is the grounds for the decision without a binding effect, isn't it? The grounds for a decision have no such effects. It may even allow you to manage certain

measures, but it does not set binding rules.

I wrote a report for the Federal University of São Carlos, and I still don't know if the university has adopted this criteria, but I said that we have a series of documents on this and I would like to cite just one: today, in February 2021, any boy that enlists in the Armed Forces is racially classified. So, regardless of whether or not the boy has reached 18 or not, he has this information. Even if he has no father or mother, he has it, because he has been classified. Up until 1975, all Brazilians were racially identified by information on their birth certificates.

Criminal law forms, even, for the purpose of releasing ID documents, have information about color. So, if the college candidate's document — or that of his father or mother — says anything other than white or indigenous, he should be considered Black for the purposes of affirmative action. I was bombarded. It was as though I was being canceled nowadays. "Hédio wants to end racial identification etc etc."

"Up until 1975, all Brazilians were racially identified by information on their birth certificates"

Then came that terrible phase in which they wanted anyone submitting fraudulent racial information to be criminalized, punished for the crime of ideological falsity. That is to say, **if there is a people that knows that prison is not a solution for any social problem, it is the Black people. And we're going to ask for more arrests to take place?**

So I sounded the alarm. Because I think that we know Brazilian racism well. In fact, we do. And I understand that these racial identification commissions... and I hope that this does not take place, but today they can give rise to a movement within the judiciary, which would shift the discussion, now specifically on the degree of subjectivity, and I have recommended that we exercise caution with this. Luckily, I ended up working on this case, sponsoring a suit that was born of a rejection by a commission at Unicamp and the court ruled in my favor.

The path is short, but the road is erudite. Look, the Federal Constitution uses four criteria to demarcate Brazilian racial diversity: color, race, ethnicity, and the legal adjective “Afro-Brazilian.” It is the only legal adjective in the constitution: Afro-Brazilian.

Furthermore, in the famous Ellwanger case, the famous editor from Rio Grande do Sul, who edited naziist books, denying naziism existed, and attributing to the Jews all sorts of problems confronted by Germany. In that case, the Supreme Court problematized even further the issue of racial classification. This is because, beyond those four categories set out expressly in the Constitution, the Supreme Court says that race is a social construction.

So you can imagine the array of possibilities that someone has in confronting these commissions and asking which of the five categories — the four constitutional ones and the fifth deliberated by the Supreme Court — they are using to classify you.

So we must be careful. They need improvement, because I am very very afraid — and I talk about this alot with Professor Dr. Ellen Lima Souza, who is Black with light skin — that this will come up one day or another and become a problem. It is not something that you can deal with thinking it’s going to be easy, you see? This is something that, in my judgement, deserves close attention.

Silvia Sousa: Can we talk a bit about religious racism? You mentioned the Supreme Court suit in which you made your oral argument speaking of the macumba chicken, with an irony that, for me, made it one of the most brilliant arguments I have ever witnessed. You also mentioned the suit you represented against TV Record and the Mulheres network, which was a case that lasted more than fifteen years, if I’m not mistaken, until 2009.

Hélio Silva: It was in the lower courts.

Silvia Sousa: Right. In 2009 there was a decision. It was when the television networks began to comply with Afro-matrix religions’ right to response, right? According to data from

the Disque 100 network, in 2019, 59% of complaints that they received at the time had to do with religious intolerance. 213 of them, actually. We have been going through this period in which religions, terreiros, houses of Umbanda and of Candomblé are being attacked, mainly in the peripheries. These groups that are popping up, like the traficantes de Cristo (drug traffickers of Christ), and they have a relationship in most cases with neopentecostal and evangelical religions, especially here in Rio de Janeiro, where drug trafficking, militia groups, and politicians attack African matrix religions in every way they can. At the time, in 2019, when there was this court victory, you were working as a lawyer with the CEERT⁶ Center for the Study of Labor Relations and Inequality. In an interview for the magazine JusDH, you said that the winning of this case marked the beginning of a long battle against religious racism. Against this backdrop, with all of these implications above, how do you think that we are doing in this confrontation with religious racism, within the judiciary, in politics, and in society as a whole?

Hédio Silva: First, it is lamentable that we see these growing ties between the public sphere and religious factions. And I'll cite an example here, or two, rather. The first is of the Guardianship Council (Conselho Tutelar). In 2007, I was working on a case. A nine-year-old girl, accompanied by her mother the entire time, on the day of her coming-of-age ceremony, in which the girl was being initiated, the police arrived at dusk with dozens of cars and detained 40 people, all of them participating in the ceremony, and arrested five of them. They indicted and arrested five, including the Babalorixá⁷ Priest responsible for leading the ceremony, the girl's mother, and look, the Child and Adolescent Statute states that a family has a right to pass down its beliefs to its children.

This is not an issue of the State, of belief or disbelief. The Federal Constitution, in the same provision that protects the right to belief, protects the right to disbelief, and this is not an issue in which the State should get involved.

Six months or so ago, there was a case in Araçatuba, involving the Guardianship Council and the military police. The guardianship councillor on duty struck down the mother's custody over her daughter, who was being initiated. She was 13 years old and accompanied

by her mother. This is not a child, it is an adolescent. And you know that there is a difference between adolescent and child. The opinion of an adolescent must be taken into consideration, or, that is, legal precedent says that, as long as there is a substantiation that the child has the condition to evaluate her own situation, she must be heard even at 8, 9, or 10. But, in this case, she was 13.

The councillor suspended the mother's custody, and we got the news that there had been a mother who had lost custody of her two sons in an injunction that has been in effect for one year and two months, despite the Child and Adolescent Statute stating that the maximum period that parental custody can be suspended for is 120 days. And this precarious, provisory decision has been in effect for 14 months, determining that the child stay with her aunt, her mother's sister, who, coincidentally, is neopentecostal. All of the reports undertaken by the technical sector of the Public Prosecutor's Office were in favor of the mother.

A psychologist and a social assistant visited the house and came out in the mother's favor. But all of the reports presented by the Guardianship Council were unfavorable to the mother. The judicial pronouncement considered the speculation made by the Guardianship Council to be in detriment of the investigation done by the technical sector of the Public Prosecutor's Office, and on top of suspending the mother's custody, they prohibited any contact whatsoever. It has been a year and two months that this mother has had no contact with these two children. When you read the case record, you see that the underlying context is what? Religious intolerance.

In public schools, how many cases never make it to us? From teachers that want to turn public schools into an extension of their own little religious temple, who humiliate, offend, traumatize children who are only eight, nine, or ten years old because they are atheist or they are part of an African religion or because of whatever macumba symbol they may be wearing.

I saw a case of two catholic girls, in which there had been dessert and candy left over from their birthday, and they brought it to school. But it was September, and the teacher wouldn't let them, because those sweets supposedly would have been of some demon. So, we are living through a worrying increase in the effects of daily propagation of religious hate. All of the planet's ills are attributed to macumba. Global warming, that's macumba. A whole in the ozone layer, that's macumba. Arctic melting, that's macumba. Cold weather, that's macumba. Male impotence, that's macumba. Chipped your teeth? That's macumba. Unemployment, macumba. You can't get your own house? Macumba. What is the reasonable result of all this? You induce violence, like in the case of the girl in Rio de Janeiro, who was stoned.

It is barbarous, revolting, base that you would stone a girl in the street. Twelve years old, Kailane. And it was because she was wearing religious clothing. I'm pessimistic, and I'll go further in saying that, soon, we will have violence in the street because of religious racism. Why? Because each individual holds a deep sentiment, even for those who don't believe, and that is religious conviction. In this case, it's not the precept we need to consider, that which is set out in the constitution, as religious sentiment is something dear to each individual. No one has the right to offend another, to demean, to cause outrage, to attack another.

Now, in Rio de Janeiro, this seems to have become normal. Each week there appears some new group like traffickers for Jesus, or the Jesus clan. Years go by and you hear of no investigation, no identification of perpetrators, of arrests of anyone.

I've even spoken of federalization in this case, because it is something that has to do with the federal justice system. Even today, with doubts surrounding the impartiality of the federal police, I believe in the technical quality of the work of the majority of federal judges and prosecutors.

We have arrived at a completely unacceptable point. They have destroyed and set on fire buildings here and there. There are areas you can't have a terreiro, streets where you can't wear all white.

This is barbarousness in its cruelest form. And this is the result of the hate that appears on a daily basis in TV and radio programs. Ancine, the National Film Agency, has said that the largest category of content on open television channels today in Brazil is religious programming. Not soap operas, not Big Brother Brazil, not the news — they all lose out to religious shows. That in itself would not be a problem, I would say, although the idea is that social communication in Brazil forms a public service. So, it is already questionable if the medium of social communication can be used for religious proselytization. But what that's not what we are seeing — rather it is the propagation of religious hate. And what's more, don't try to tell me that this is more of a critique of religions themselves, because the only one that gets criticized is macumba. And we have a name for that: religious racism.

Silvia Souza: Professor, the federalization of crimes motivated by religious hate, religious intolerance, would that be a reasonable alternative, for example, for reducing the incidence of such crimes?

Hélio Silva: I think that there is another alternative, Silvia. For how many years have we been hearing of the depredation and invasion of terreiros in the Baixada Santista area? And now there is the case of the Complexo do Israel, in Rio de Janeiro. There has been no news of any investigation.

Years go by and no investigation, no indications of who the perpetrators are. And another thing, they often record the act itself: a priest being threatened with a gun, or some priest being forced to destroy a religious artefact — and they put that out in the media. This is called terrorism. Not racism. Racism holds a penalty of three to five years. Terrorism is twelve to thirty.

The crime must be qualified as terrorism. In my humble point of view, the Racial Equality Statute, though parts of it serve absolutely no function whatsoever, contains some useful elements. And I understand that it classifies religious temples as cultural spaces, so

damages done to a temple are not damages done to private property. Rather, it is damage done to cultural heritage, and it is an environmental crime, because in the case of damages to private real estate, the punishment is six months of detention. Now, in the case of an environmental crime, in which damage is done to cultural heritage, it's three to five years. So, it's terrorism and environmental crime, which demand an increase in the sentence. It's impossible to coexist with this sort of normalization, which is getting worse and worse each day. It is deplorable.

Silvia Souza: It really is. And you mentioned the amount of space that neopentecostal religions have in the media, and how this reverberates in politics. There is an expressive evangelical caucus in the National Congress, with strong positions, even, on the bills related to punitivism and gun ownership. I have closely watched the evangelical caucus through 2019 and 2020 in Congress, primarily as the bills related to gun ownership made their way through Congress in 2019 — it was part of the federal government's priorities, and one that had massive support in the evangelical caucus. This is in contradiction of Christianity, which holds life and the human being in God's image. This discourse of hate is justified and so easily accepted by the Brazilian population — and I'll go further and say that is accepted by the Black, poor, and peripheral population, which has seen the rise of an enormous number of neopentecostal churches of various denominations in the peripheries of Brazil, whose members come from, in large part, the Black, poor, and peripheral population. How do we turn back this scenario?

Hédio Silva: Well look, though I'm no statistician, I ended up coordinating research done by the City Government of Sao Paulo, at the request of then-secretary Mauricio Pestana, together with a very competent and proficient sociologist, professor Lena Garcia. We took a closer look at the 2000 and 2010 censuses, and the data are really interesting.

First, as we know, the neopentecostal base is Black. Around 70%. On the other hand, 70% of macumba practitioners are white. Macumba's base is white. And it is interesting to look at the profile of the typical Black neopentecostal and typical Black macumba practitioner. The neopentecostal one earns less than three times the national minimum salary and has a very low level of education. And the Black macumba practitioner has a college education, for the

most part, and earns more than ten times the national minimum salary. That is to say that the more empowered he is, the freer he feels in identifying as a macumba practitioner. On the other hand, the more humble and less schooled — you can even see the usual suit and Bible in hand as a form of social acceptance, because, as I always say, the guy is already Black and you want him to be a macumba practitioner too? That is a heavy burden for him to carry, is it not?

So, we are talking about empowerment. It's education, information — because the more empowered he is, the more he will feel free to profess the religion of his people. And, the less educated he is, the more he assesses that, [in pursuing neopentecostalism] there may be a path to social acceptance, and this is a very grave and paradoxical issue. This is not to say that all Black people need to practice macumba. We are a people; we are 120 million Brazilians. We are not cockroaches. It's not about everyone being of the same religion, but it is alarming that 70% of neopentecostals are Black, but you won't see them on TV.

The day that macumba practitioners from around the country, on the day of the census, declare their real racial background, then we will see that macumba is the second or third most common religion in the country. To cite Rio Grande do Sul alone, where there are some 60,000 terreiros, and it is one of the whitest states in the country. If you calculate that each terreiro has around fifty practitioners, then we are talking about 3 million macumba practitioners in Rio Grande do Sul alone. If you were to add the Umbanda of São Paulo, Rio de Janeiro, Paraná, Minas Gerais...

Silvia Souza: That's 3 million that aren't in the census. They didn't declare themselves.

Hélio Silva: We need visibility and we need organization. Because, I'll say it: they have more pyrotechnics than they have numbers. And these elections demonstrated this well. Rio's last mayor left through the back door with an electronic ankle bracelet on, and soon he'll be headed for prison. The day that we have both organization and numbers, I have no

doubt that we will have our own caucus in the House of Representatives and in the state assemblies.

Silvia Souza: The Macumba Caucus.

Hélio Silva: In Congress! And we will elect a macumba president. And this is because we have this characteristic: instead of being a sinister religion, our spaces are spaces of inclusion. We never use this space to harm, to diminish, or to speak ill of any other religion. We are an inclusive religion and not a hegemonic religion, or one of exclusion, or one that attacks any other religion.

Silvia Souza: Let's talk about the Brazilian judiciary, since this edition's theme is *Race, Racism, Territory, and Institutions*. The last census of the judiciary showed that it is 80.34% white, 78.9% Christian, and 62% male. Predominantly male, or that is, the judiciary is white, Christian, and heteronormative.

On the other hand, the incarcerated population is predominantly Black. According to data from DEPEN, 63% of the prison population is Black or brown. The racism in the justice system is indisputable. Do you believe in the power of the Brazilian justice system in taking on racism?

I published a study for the PNUD about best practices in confronting racism in the justice system. I looked at criminal courts in the Southeast. The intention of the study was to find best practices to guide future policies in national criminal courts. In the study, I looked for legal precedents and theses. I analyzed 1336 judgements and found 12, out of 15 rulings, considered positive within the established criteria. From there, I generated a catalogue of legal precedents and theses. The central problem is that the majority of judges do not even analyze the theses in their rulings. They don't even address them. And they end up repeating those ruling that do not recognize the existence of racism in the criminal justice system.

How do you see the justice system in terms of criminal justice, punitivism, desincarceration, and anti-punitivist policies? That is, speaking of desincarceration is not necessarily the same as speaking of an absence of punishment, as there are other types of resocialization. Do you believe in the Brazilian justice system?

Hédio Silva: I do believe in the judiciary because, as a lawyer, I never competed for a public service position, I never wanted to do anything else, and I have a passion for private practice. So, if I don't believe, if I didn't believe in the judiciary, I would abdicate my position and I would do something else. Is it a reflection of the problems society has? Yes. Is it contradictory? Yes. Is it, among the three powers, the one with the greatest conservative propensity? Yes. But it also has the power to make decisions that cause lasting change.

In the area of penal law, there is no doubt. I was reading these days of a pioneering decision on the judiciary's use of photographs from social media as proof of identification. Who brings this up and who questions it?

The lawyer has a role of supreme importance in making sure that theses that denounce racism in the criminal justice system are considered in the decisions of judges. We, lawyers, are the ones that have to make sure that the accused is not convicted based on a single piece of evidence. I had a brilliant professor in college who would say "work on each case as it was the only case ever." So, who has this obligation, this responsibility, this zeal? And even more so because he is held accountable by society, by the Public Prosecutor's Office, by the judiciary, by the registry, by the bailiff, by the client. The lawyer. Public defenders, less so. Lawyers, more so.

If the lawyer doesn't go and say that it is absurd that someone can be convicted based on a single piece of weak evidence, like recognition of a photograph pulled from Facebook — and this harkens back to the issue of the importance of improving litigation — that becomes normalized. And the court approves it, the Supreme Court approves it, and it may be that the Supreme court, depending on the way it arrives there, it could be that the Supreme

Court had already struck that down long ago.

The judiciary is an institution that reflects the values of society. It is an institution that has a ruling like this one, of removing a mother's custody over her children because she drank wine and smoked inside her home. Well, if that is grounds for suspending custody, then you'll be hard-pressed to find a substitute family that will be able to take the child in.

Despite all of this in the criminal area, we have not had, during the quota period, prior to the Supreme Court's pronouncement, a single decision that has been able to paralyze the implantation of the affirmative action system. It's for this reason that I don't like to generalize.

I understand the judiciary as an institution with a white and conservative lean. On the other hand, today, we have quotas for Black people among judges, in the Public Prosecutor's Office, in the Public Defender's Office. In December, I even had the honor to deliver an argument when the Federal Council of the Bar Association approved quotas for Black people in elective offices. We are going to bring Black youth together and prepare them to be judges, prepare them for the Public Prosecutor's Office, for the police force, for the Federal Police.

There has to be Black people there, pushing the debate. We have a prosecutor in Bahia that you likely know, Dr. Livia Santana. She works in the division of racist crimes and offenses of intolerance, and complies rigorously with the legislation.

She is not committed to the cause of macumba, or of Black people, She is committed to the law. Because what is expected of the practitioner of law, and this is something that society can demand, is she makes decisions in accordance with the law. Personal convictions, preferences, beliefs and disbeliefs are left at home.

One of the principles that guides public administration is that of impartiality. There, one

must judge in accordance with the law and not with what they themselves think.

Silvia Souza: About the imprescriptibility of racial slander and the work of the Supreme Court on the case, what do you have to say on this?

Hédio Silva: I have no doubts about this. I wrote about it in 2001. The fifth item of article 42 is: the practice of racism, despite the connection that can be made about the constitutionality of open penal law, the practice of racism is included in whatever conduct, including the offense.

I wrote this in 2001, but as a lawyer, Black and all. Now, an appeals court justice, a respected figure, with a free life etc, wrote that the practice of racism is an indefeasible crime, a felony.

I am working on this case with the dear Paulo Iotti. We are qualified, and we have already given our oral argument. Since the vote was 5-0, just one vote is missing for us to ratify once and for all that there is no ontological difference between racial slander and the crime of racism.

Silvia Souza: You spoke of a project to train Black lawyers. What are your plans for the future as a lawyer, but also as a Black subject that lives in this Brazilian society?

Hédio Silva: These days I have a fairly intense workload in the upper courts, in the appeal circuit and in the upper courts, and I want to continue in litigation because I am motivated by the challenge. I am passionate about litigation. But I will begin dedicating more time to education and training. The project is already well on its way. We are going to try to establish a series of connections. We should be able to launch in March.

Silvia Souza: Professor, have you ever thought about holding a seat on the Supreme Court, if you were invited some years from now? Have you ever imagined yourself in that position?

Hédio Silva: You know, when President Lula named the excellent Joaquim Barbosa to the Supreme Court, the second name on the list was mine. But the distance between his resume and mine was massive. He did his Doctorate in France, his Master's in Germany, he has been a federal attorney. But, the second name was mine. And, any Brazilian, whatever Black lawyer, feels flattered when he or she has her name indicated for a seat on the Supreme Court bench, but I know longer see myself in that position.

I want to dedicate myself to training youth. I want to dedicate myself to the production of content, articles, books, case law — because there is an alarming growth in the number of cases dealing with racism, and unfortunately, in the majority of them, we're unsuccessful.
