



## Meeting Immediate Legal Needs Via the Brazilian Public Defender's Office: An Exemplary Case

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### INTRODUCTION

The *Public Defender's Office* (PDO) is an official branch of government entrenched in the Brazilian Federal Constitution. It is responsible for providing full and free legal aid in both civil and criminal affairs enforcing individual and collective rights. The office holds a pivotal role in the advancement of human rights, the furthering of public access to justice and the protection of democracy<sup>1</sup>.

After over a decade of increased public funding aimed at consolidating the PDO (Alves, 2020), Brazil's legal aid model has turned its focus towards the future of Brazilian justice. We must acknowledge that access to justice does not stand solely for the formal accessibility of legal services but is also a relevant social right that forcefully binds government entities to the adoption of concrete measures in order to protect citizens' rights. Therefore, the PDO's roles and actions must extend further than the traditional legal system (Castro & De Vitto, s.d.).

This shall be substantiated by analyzing the case that will be exposed in this paper, from the perspective of a legal needs theory and approach. The outcome of the legal service provided in this example was to secure effective and timely support for the vital needs of the victims of a disaster. This grievous incident occurred in 2017 on one of the busiest Brazilian highways, connecting the city of Rio de Janeiro to the historic city of Petrópolis<sup>3</sup>.

The disaster resulted in the destruction of a number of residencies. After observing the events in this particular case surrounding this tragic episode, the institution's members raised concerns about the role of the PDO and the legal aid system in the country.

The structure of the article is as follows: in the first part of this paper, we will discuss the issue of access to justice and whether it is able to effectively meet the public's legal needs. Furthermore, we will review the existing international literature and research related to this theme. Then, a topic, we will report on the specific case that gave rise to this work. Following, after a brief description of both the Brazilian legal aid model and the roles of the PDO, this work shall discuss the effective activities of such state agency, including its multiple areas of interest based on protecting and safeguarding the access to justice for society's most vulnerable. The case shows the particular feature of out-of-court proceedings inside the justice system. In the final part of this work, it will be shown that the goals of the Public Defenders prove to be essential to securing the victims' needs in the given case. Otherwise, there likely would have been fewer assurances in due time for effective access to justice, that is, their legal needs would probably not have been suitably fulfilled as it was.

## ACCESS TO JUSTICE AND ITS PROBLEMS FROM A LEGAL NEEDS PERSPECTIVE

Cappelletti and Garth (1978) claim that the expression "access to justice" is difficult to define but works to determine two basic purposes of the legal system: the system by which people may vindicate their rights and the way in which they resolve their disputes under the general auspices of the State (p. 6). Therefore, the system must be equally accessible to every individual and must produce results that are both individually and collectively fair. However, it must not be assumed that access to justice merely exists in times of conflict; on the contrary, it is present also in their absence since legal systems are crafted after social rules. Considering this, one concludes that the existence of legal needs unanswered by a formal legal system further widens the lack of access to justice. As noted in the *Guide on Legal Needs Surveys and Access to Justice* (OECD/OSJI, 2019, p. 24) "a legal need is unmet if a justiciable issue is inappropriately dealt with as a consequence of effective legal support not having been available when necessary to make good a deficit of legal capability. If a legal need is unmet, there is no access to justice".

A question proposed by Portuguese sociologist and lecturer, Boaventura de Souza Santos (2007) was whether law could be emancipatory. That question often appears linked to the ideas we discuss and think of when regarding this work. Although it is broadly recognized by legal professionals that promoting access to justice is essential to reach ideal equality in a democratic environment, one has to think even further. One must ask whether it is enough to promote access to justice the way it is currently being carried out or should legal needs be met not only as a redress to occasionally default circumstances but as an emancipating act?

Gradually – as our lives becomes more regulated –, the law occupies a more relevant part of our daily affairs. Bureaucracy stands as a key factor in several studies regarding the mechanics behind legal needs. When the individual chooses not to abide by a formal legal system, one of the factors that interfere in one’s decision to solve a legal problem using an extralegal apparatus is bureaucracy. Then, what would be the role of law in the face of increasing regulation and bureaucratization? Could it have a meaningful contribution towards a fairest society? Then, what is the impact of institutionalized legal aid?

Professor Boaventura de Sousa Santos wrote a chapter of the aforementioned book on behalf of PDO’s and added the following comments: “considering the evolution of mechanisms and conceptions regarding access to justice, the proposal of building a PDO as predicted by Brazilian standards accounts for varied potential benefits: universal access through aid provided by certified professionals recruited with the sole purpose to commit to it; specialized legal aid for protection of public and collective rights; diversification of services and legal counseling beyond litigation, through conciliation and extralegal conflicts’ resolution and finally, as tool to foment education concerning the existence of rights” (2007, p. 32).

Therefore, the case analysis – which is the central purpose of this paper – shall demonstrate how the Brazilian PDO may fulfill immediate legal needs as an institutional actor and can shed light on the relevance of this subject. For this purpose, it is pertinent to briefly discuss the studies that have been carried out on the issue of legal needs.

Since the mid-1990’s, at least 55 stand-alone, nationwide, large-scale surveys of public experience of *justiciable*<sup>4</sup> problems were conducted

in more than 30 separate jurisdictions including Australia, Bulgaria, Canada, England and Wales, Northern Ireland, Scotland, Slovakia, Hong Kong, Republic of China, Japan, Moldavia, Netherlands, New Zealand, Ukraine and the United States. Surveys have also been undertaken in 100+ countries as part of the World Justice Project's General Population Poll (OECD/OSJI, 2019).

These studies have their ultimate origin in Clark and Corstvet's (1938) early study of "how community's needs for legal services were being answered" in Connecticut during the 1930's recession in the United States. However (although Clark and Corstvet anticipated that similar studies would become common), only five additional studies took place during the following decades. It was not until the 1990's that the practise of legal needs surveys flourished with the same "considerable impulse" (Coumarelos et al, 2012, p.1) of large-scale surveys in the U.S. (Reese and Eldred, 1994), England and Wales (Genn, 1999), New Zealand (Maxwell et al, 1999) and Scotland (Genn and Paterson, 2001). This impulse has been impacted due to wide-ranging legal aid reforms and rising global interest in universal access to justice, notably civil legal services being introduced in some countries (like Bulgaria and Moldavia), expansions occurring in locations such as the Republic of China, and a substantial reform occurring in accomplished civil legal-assistance structures – such as those featured by England and Wales (Pleasence et al., 2013). The relevance of these global aid reforms to the legal needs surveys is "that they investigate the experience of *justiciable* problems from the perspective of those who face them, rather than the professions and institutions that may play a role in their resolution. Thus, legal needs surveys can identify and explore the full range of responses to problems and, within this, the full range of sources of help and institutions available" (OECD/OSJI, 2019, p. 25).

Legal needs may be defined as problems involving legal issues – regardless of their acknowledgment – by those enduring them, and the measures taken to accommodate these issues into the legal system. Having established this definition, it could be said that two essential elements of the legal needs' notion should be taken into account. The first one is that to be legal, a problem must be about the existence of an administrative, jurisprudential, legal, constitutional or contract-based right (Uprimny, 2013). In other words, any positive right predicted by statutory law is "legal." Furthermore, if there is a safeguarded right beneath a legal text, it is ex-

pected that a conflict – which would jeopardize this right – be solved via the Judiciary. Secondly, it is implied the presence of a conflict (a litigating situation between two or more parties) concerning the entitlement of a certain right or related to a circumstance that should affect its satisfaction by either harming it or putting it in jeopardy. These combined elements allow us to differentiate “legal needs” from ordinary social problems; that is to say that the ensemble of such elements trace the path from a routine issue to a legal need (Uprimny, 2013).

This premise of the existence of a controversy is indispensable, for instance, to distinguish situations demanding the provision of non-specific public services (for the attendance and appeasing of numerous and varied social problems) from the properly legal needs which normally suppose potential intervention by the Judiciary, or other state’s agency, for its equation. Therefore, issues and demands related to the provision of public services, alone, are insufficient to be portrayed as a typical legal need. However, from the moment that the State fails to act or refuses to provide a public service (which proves, for example, to be indispensable for facing social problems), the conflict arises and then a legal need arises.

Similarly, it is also possible to depict a legal needs scenario when there is a rebuff or conflict between private parties. In this case, “conflict” or “disagreement” stands for a meaningful personal experience which affects collective or individual interests and expectations. An extraordinary situation which is considered challenging and undesirable, stressful for daily life, causing pains, discomfort and family suffering<sup>5</sup> is commonly referred to as a “legal problem”. In order to face such “problems”, people tend to resolutely mobilize means and actions to find a solution. When the “problem” derives from a social conflict, it is possible that an erosion of social ties may occur and peaceful coexistence with the guilty or offending party could become unbearable.

Having established the importance of studies on legal needs in order to ensure an effective access to rights and justice, we will now proceed to examine a case to be used as an example of the ideas and proposals contained in this work.

## AN EXAMPLE OF A CASE IN WHICH THE BRAZILIAN PUBLIC DEFENDER'S OFFICE WAS ABLE TO ENSURE THE EFFECTIVE FULFILLMENT OF THE LEGAL NEEDS OF VULNERABLE PEOPLE WHOM IT SERVES

In 2013, construction work began to take place on a 60-kilometer-long highway between Rio de Janeiro and Petrópolis, connecting the former Brazilian capital with the picturesque historic tourist town in the mountainous region of the State of Rio de Janeiro. One of its landmarks would be the construction of a 4.64-km mega tunnel. Construction should have been finished prior to the 2016 Summer Olympic Games in Rio, but work was halted in 2015 and the project subsequently abandoned.

On November 7<sup>th</sup>, 2017, a massive accident<sup>6</sup> took place. Due to the flooding of the tunnel's inner ring, it is likely that its upper vault suffered a breach and that this caused a land subsidence, opening a huge crater (on the surface, tens of meters above the tunnel) which engulfed one house and caused the destruction of dozens of others, leading to ninety-five families finding themselves homeless.

In this scenario, the PDO – the Brazilian institution constitutionally charged with providing assistance, both legal and extralegal, to those who are unable to afford legal counseling – took measures in order to satisfy the immediate needs of those affected by the accident. It was perceived that besides individual needs (housing, food, and clothing), there was a community priority to be met: they considered it essential to ensure the continuity of the activities of the local primary public school, whose building had to be closed because it was in the area at risk.

A day after the accident, the State Public Defender's Office of Rio de Janeiro set a meeting between *representatives of the local government (Mayor and City Council representatives)*, the Federal Prosecutor's Office, the company CONCER (the concessionaire charged with the highway's maintenance), and individuals representing those affected by the accident. The goal of this gathering was to identify the consequent material needs of the victims and to reach a friendly agreement on how best to ensure that these needs are met. The intent was to avoid litigation as a formal legal process would prove lengthy and would not be able to grant the victims quick access to aid.

The PDO took the initiative to represent the victims, and an agreement was signed within 24 hours of the accident taking place. Through this agreement, the Highway Concessionaire (the company CONCERT) pledged to provide them with full and immediate material assistance although CONCERT did not legally acknowledge responsibility for the accident due to the alleged lack of technical proof. Under this agreement, each family was given a choice between two alternatives: temporary stay in hotels, whose accommodation expenses would be borne by the company, or immediate receipt of a sum of money to be used to pay in advance for a month's rent of a place to live, with a further commitment for future monthly payments until their housing situations could be definitively resolved. A kit with groceries ("basic food basket") and toiletries was also included in the immediate compensation. For the new accommodations to be rented, the company had to provide furniture and home appliances to be made available within 72 hours from the signing of the agreement. The extent of this arrangement also included support for the families' pets: it was stipulated that the company was to bear the cost of the animals' daily care, which were provisionally placed in shelter until a permanent families housing situation was solved.

The company also undertook responsibility to rent a building to temporarily hold the local primary school and would provide furniture and supplies for school activities. CONCERT also agreed to take the responsibility for transporting students from their new places of residence to the school's new location. These obligations were effectively fulfilled within a week of the accident, allowing the school's calendar to return to normal.

It seems evident that all the immediate legal needs of these families affected by the accident have been satisfactorily met. And that it would be practically impossible to obtain these practical results, in such a short space of time, if the path to be followed depended on obtaining and implementing court orders, in a lawsuit. We believe that this particular case – as will be detailed in the following part – accurately demonstrates the propensity of this peculiar model of public legal aid services, delivered through the Public Defender's Office, in Brazil – to establish a more effective emergency support for legal needs and a greater access to justice.

## THE IMPACTS OF THE PUBLIC DEFENDER'S OFFICE (PDO) ON THE EXAMINED CASE

The Brazilian 1988 Constitution expressly regulates the competencies of the institution of the PDO in chapter IV. It is an autonomous institution<sup>7</sup> that is separated from other branches of the government<sup>8</sup>.

The constitutional principles and guidelines attributed to the PDO include the responsibility of defending the interests of those who are most vulnerable, both inside or outside the courtroom. Public defenders are fully independent in the decision-making process, and prevented from being subordinated to any public or private agent at any time.

Only the PDO's members have the ability to conduct a "means test" and "merits test" when deciding which legal aid cases they will take and which individuals they will represent. Under no circumstances can an outside agent, such as a judge, public prosecutor, or private agent, seize this ability.

According to article 134 of the Brazilian Constitution, the PDO is charged with the legal counseling, the promotion of human rights, and, judicially or extra-judicially, the defense of collective and individual rights in a comprehensive free manner to those in need.

Within the traditional and individual scope of civil cases, the PDO might take action in providing legal aid, crafting contracts, sponsoring cases from multiple arenas, and engaging in extra-legal settlement-oriented interventions and legal procedures of any nature. The sponsorship of individual civil cases only takes place on behalf of economically vulnerable people.

Beyond their involvement in individual cases, the Brazilian PDO also defends the population's collective rights by being able to file collective law suits (class actions), thereby guaranteeing the rights of consumers, citizens with special needs, incarcerated individuals, senior citizens with medical aid issues, public school students, and other vulnerable groups from being subjected to inhumane conditions.

The PDO also has the constitutional ability to promote the human rights' defense *lato sensu* and its array of actions that are not solely restrained to



the economically vulnerable. Whenever a blatant violation of human rights takes place, the PDO – backed by the Brazilian Constitution and international treaties – may act regardless of the economic status of whoever benefits. Accordingly, the PDO also possesses the ability to act alongside international human rights protection agencies who are also taking action against the Brazilian state.

Ultimately, the role of the PDO is to promote human rights' education and to raise awareness among the population regarding proper procedures should these rights be violated.

Because of the institution's considerable workload and structural shortcomings, a supplementary law "80/1994" (named the "Public Defender's Office Organic Law") granted some necessary prerogatives to public defenders in order to achieve their aims. Among them, we can mention the prerogative to force any public authority to provide documents, certificates, surveys, procedures, information, clearances and any other measures required to ensure the success of their efforts. Therefore, should the public defender need any document held by a government branch, its compliance can be requested by the PDO. Likewise, should the PDO ever have the need to execute any due diligence in a specific case, public defenders can request that law enforcement provide them with aid.

In this case, the legal aid system – as it exists in Brazil – was a fundamental and unequivocal element for the immediate effectiveness of access to justice. The Constitutional foundations of the organization, its competencies, and the prerogatives attributed to its personnel all proved to be essential for the PDO's achievements within both the private sector situation and the other government branches.

### THE PERFORMANCE AND STRATEGY OF THE PUBLIC DEFENDER'S OFFICE IN RESOLVING THIS SPECIFIC CASE

As already mentioned, the PDO is considered by the Brazilian Federal Constitution as "a permanent and essential institution for the judicial function of the state, with legal responsibility to promote human rights and the defense, to all judicial and extrajudicial degrees, of individual and collective rights, of to the needy"<sup>9</sup>. Therefore, as told, it has wide abilities to act judicially and extra-judicially in guaranteeing the effectiveness of rights

and access to justice – primarily (but not exclusively) in favor of people who do not have the financial resources to hire private lawyers. Specifically, in the extra-judicial field, it seeks to act strategically in the prevention of litigation – through legal advice and counseling for specific cases, public legal education initiatives, and in the search for consensual solutions – which often prove to be faster and more effective, as would occur if the option were the judicialization of the conflict. In addition to participating in individual cases, Brazilian Law also ensures that the PDO is able to act as a collective guardian of the rights of its target public – either through filing collective law suits (class actions) or through the celebration of the so-called “conduct adjustment agreements” (in Portuguese, it has the acronym TAC – “Termo de Ajustamento de Conduta”).

There are, among all areas of activity of the institution, some specialized divisions – according to the priority areas of interest – inside the PDO of the State of Rio de Janeiro. One of these divisions can be seen in the creation of the Center for Consumer Protection, NUDECON (in Portuguese, “Núcleo de Defesa do Consumidor”), that recently adopted a very proactive position for the resolution of major consumer accident conflicts. This is because accidents usually have a huge impact and evident gravity. Therefore, in order to ensure immediate attention is given to the legal needs of the respective consumers or victims, NUDECON has developed a standard *modus operandi* focusing on extra-judicial and consensual solutions to deal with these kinds of situations.

The expertise and methodology developed by NUDECON includes the following: it starts with on-site inspection, with the objective of making direct contact with people whose rights have been damaged or harmed<sup>10</sup> and the immediate collection of data (for example, a dispatch of letters or other measures to collect data that is not available locally). Then there is the immediate scheduling of meetings with people who hold “decision-making power” for the case – which has the purpose of obtaining immediate concrete results, primarily needed to meet the most urgent demands of the victims. The next step is the mobilization of the media – the press in general as they are an important tool in publicizing and mobilizing public opinion – in order to broadcast that the PDO has taken on the case, and to exert “pressure” to reach a quick response to effectively solve the case. Finally, TAC (the “conduct adjustment agreements” as explained above) proposals are provided. These are formal documents in which the obliga-

tions assumed by the parties involved are definitively established. This is considered an appropriate, quick, and efficient way to solve a case through an extra-judicial and cooperative solution.

The performance by NUDECON was an essential facilitator in the resolution of the case at hand. In the example of the accident mentioned above, although the victimized persons cannot be categorized as proper “consumers” of the services provided by the company that manages Highway BR-040, there is a clear link between the accident – the sinking of the ground, with the opening of the crater that caused the interdiction of the houses – and the tunnel construction under the highway. Therefore, the PDO considered adopting the same strategy described above – at least in concerns of meeting the immediate legal needs of the victims –, seeking to sensitize the company to give, extrajudicially, without a formal lawsuit, the needed support to the victims.

On the very night of the accident, the Public Defenders in Petropolis contacted the responsible authorities and was given the information that the municipal authorities were on the scene, providing emergency assistance to the victims. They all were able to sleep in relatives’ houses, so, there was no need to use temporary shelters at that moment. Early the next morning, the same public defenders, aware of NUDECON’s experience in similar cases, called on it for support to deal with the tragedy and to meet the immediate needs of the families.

One of the Public Defenders in Petrópolis who was working on this case, was informed of the filing of a class action lawsuit by the attorney-general for the city, the day after the accident. In such a class action, the municipality was in court asking for a preliminary decision to order the CONCERT company to provide emergency assistance to the families affected by the tragedy, including payment of the amount necessary to cover the cost of renting temporary housing. The intention was to avoid the cost falling on the shoulders of the municipality, which would place a great burden on them in a moment of serious, national financial crisis. Therefore, – sensing that the bureaucracy of the formal system would not allow the necessary support to be delivered with the required urgency – direct contact was established with the city’s mayor so efforts could be combined to solve the problem with expediency.

Although there was doubt as to which court<sup>11</sup> would be used to adjudicate this class action, the judge did not deliver the injunction submitted by the municipality, opting instead to schedule a special hearing for November 10<sup>th</sup>, with the presence of all those involved, and with the verdict to be declared afterwards. However, even if a court decision had been made at that initial moment, this did not mean that it would necessarily be put in place immediately. The controversy over jurisdiction and other technical issues could justify a possible appeal made by the CONCER company to a higher court – which would lead to a delay in getting aid to the victims.

Faced with this situation, the local public defender decided to intervene in the case with the intent to discover an immediate solution, following the *modus operandi* described above, which had been previously used in similar cases by the NUDECON. On the morning of November 8<sup>th</sup>, the public defenders appeared in the locality and met with representatives of the families that were gathered to define the agenda of their claims (see the photo attached below). In addition to the need for immediate assistance in paying for expenses that would arise as a result of the embargo on their homes, such as short-term housing, the cost of hotel accommodations, and food expenses, it was noticed that an important concern/priority was related to the local primary school. There was fear within the community that, with the school building being closed, students would be redirected by the Municipal Education Department to other schools, which would not be open full-time<sup>12</sup>. At the meeting, a “commission of representatives” from the affected community was assembled to take part in the upcoming negotiation.

Once the complaints were established and the immediate needs of the victims were identified, the public defenders started to arrange a meeting with the representatives of the concessionaire company (CONCER), the victims, and the local authorities, to take place on the afternoon of November 8<sup>th</sup>, in order to establish an immediate agreement with all parties, with regard to meet the emergency needs of the victims.

It was decided that the meeting involving all relevant authorities and the offending party would take place in the community itself, and not in the operational headquarters of the PDO, where routine cases involving its activities usually are handled. This decision was made to ensure that vic-

tims – through the committee of representatives – were able to closely follow the negotiations and more effectively participate in defining the terms of the agreement. This proximity of the residents (see the photo that is attached below) gave a greater transparency to the case and made it possible for the press to cover the whole process. The meeting took place as simply and informally as possible, on the terrace of a community resident's house, near the location of the accident. Among those present were the mayor and his staff of advisors, the city councilor, and the CONCERT attorneys. The representative of the Federal Public Prosecutor's Office in Petropolis also participated, which proved to be of great importance, given legitimacy to all the procedure, mainly because of controversy over if the case was under federal or state jurisdiction.



Photo: Larissa Eira do Amaral

Meeting held on the morning of November 8, with public defenders and representatives of the families affected by the accident, who met to define the next steps in relation to their claims.

Once all parties had been heard, it was possible to come to a consensual settlement in which the concessionaire responsible for the highway, although never formally assuming legal responsibility for the disaster,<sup>13</sup> agreed to sign a T.A.C. ("conduct adjustment agreement") in which they promised to fulfill a number of demands, expressly ensuring that all immediate legal needs of the individuals and community raised at that time were met, including the community's demand for their full-time primary school to be resumed in a rented building with expenses borne by the company.



Photo: Larissa Eira do Amaral

Meeting with representatives of the concessionaire company (CONCER), victims and local authorities, held on the afternoon of November 8, on the terrace of a community resident's house, close to the accident site.

Among the commitments made by the CONCER concessionaire are the following:

- 1) A monthly monetary grant in the amount of R\$ 1,000.00 (one thousand Brazilian reais)<sup>14</sup> – intended for covering the cost of rental expenses – to be paid to each of the 96 families whose home had been foreclosed. The first payment had already been made when the agreement was finalized.
- 2) Reimbursement of all expenses towards accommodation and food for families who indicated the need for immediate accommodations in hotels (while searching for long-term housing).
- 3) A monthly supply of a “basic food basket”, with basic foodstuffs and hygiene products, the total amounting to R\$ 130.00 (one hundred and thirty Brazilian Reais) for a family unit comprising four people.
- 4) Supply of basic furnishings<sup>15</sup> for rental houses acting as temporary housing for families (according to a list agreed upon by all parties).
- 5) Coverage of expenses relating to the care and accommodation of domestic animals of homeless families (including their vaccinations and the application of anti-flea and vermifuge medications) until the time the respective owners can reclaim them.

- 6) Coverage of rental expenses for the temporary operation of the community primary school, which should be located in a place to be defined by a parent-teacher commission. This also included the purchase of furniture and school supplies according to a list supplied by the school board. The city's mayor also made a commitment to ensure the return of the school's regular, full-time operations, as requested by the community, as soon as the company arranged to lease the new location.
- 7) Coverage of school transportation expenses for both the students and school employees to the temporary location of the school. This commitment must be honoured until a permanent location can be found.

Finally, it seems logical to conclude – by examining the above list of commitments made by the company that manages the highway in the T.A.C. – (agreed upon only one day after the accident) unequivocally demonstrates that the immediate needs of the victims of the episode have been successfully met.

This outcome could hardly have been achieved were it not for the intervention of the PDO, which exemplarily fulfilled its mission by guaranteeing full access to rights and to justice for those impacted by disaster. It is clear that this outcome would be practically impossible if the model of legal aid service adopted in Brazil was one of "judicare"<sup>16</sup>, which relies on private lawyers who act only in individual cases and do not have the freedom and guarantees granted to public defenders in their roles as state agents who are invested with legal and constitutional powers.

## FINAL REMARKS

This case serves as an important example of the institutional role of the PDO within Brazil and their ability to use different tools and actions to manage and promote access to justice. It is also integral in ensuring civil society's participation in the establishment of the goals and responsibilities of public defenders.

It is also pertinent to mention that the initiatives undertaken by the State Public Defender's Office of Rio de Janeiro (PDO) to safeguard victims' rights was possible only due to the features of the Brazilian legal aid model concerning legal assistance and access to justice carried through public

defenders established as civil servants who are dedicated exclusively to legal aid services for those in a situation of vulnerability. Aside from this, the autonomous and independent status ensured by the Brazilian Constitution for public defenders also proved indispensable because their actions frequently confront the interests emanating from government authorities. This does not mean, however, that the legal aid system in Brazil is a flawless one. On the contrary, there are numerous difficulties and limitations to be overcome. It is important to discuss the frailties<sup>17</sup> embedded in the institutional system. Representatives of the PDO's acknowledge that much still needs to be done and are deeply conscious that the legal aid model must go through some adaptations in order to achieve progress.

It is also important not to forget the PDO's role in times of economic crisis. During such times, it is essential to ensure legal aid to those who cannot afford it. It is undeniable that the demand for the PDO tends to increase by a significant amount during economic uncertainty. An obvious example is the social division of labor. When there is a crisis, many citizens become unemployed, and the pursuit of legal assistance as a means to alleviate the decrease in average living standards is increased. Finally, in a more proactive and extrajudicial way, PDO's activity leads to the satisfaction of immediate legal needs and creates a closer relationship with the public opinion, which facilitates the resolution of conflicts.

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## ENDNOTES

- 1 For a more specific study of the role of the Brazilian Public Defender in the protection of the democratic regime see: González (2019).
- 2 To better assess the impact of this accident, it is recommended that the reader of this paper watch the following video, available on Youtube: <https://youtu.be/r7EKW8PJp5E>
- 3 According to Prof. Hazel Genn (1999, p. 12), those are “problems raising legal issues, whether or not these are recognised as such by individuals facing them, and whether or not action taken to deal with them involves lawyers or legal process”.
- 4 It is most commonly referred that there are two dimensions of the “problems” or “juridical problems” faced by individuals: The latter refers to the objective dimension, when there is a concrete damage, palpable in one’s life such as income reduction, to one’s property, body damage etc. The former regards the subjective dimension of the problem people claim

to suffer, like stress, anxiety, disturbance and every sort of issue that somehow has an intimate and psychological damage.

- 5 See footnote number 3, above.
- 6 “Although public defenders are civil servants, the PDO is not hierarchically subordinate to the Executive branch. Public defenders are selected via a competitive public examination, after which they gain permanent tenure, facing dismissals only in the most exceptional situations, and are prohibited from practicing law outside these institutional parameters. In this way, the Constitution aimed to create a stable and reliable network of public defenders, composed of qualified legal professionals who devote themselves exclusively to the provision of legal aid to the poor and are empowered to act even against the interests of other government agencies or the government if necessary. The autonomy of the PDO has been further strengthened by Constitutional Amendment 45, enacted in 2004” (Weis, 2012).
- 7 For a more comprehensive understanding of the profile of the Brazilian Public Defender, see: Esteves and Silva, 2017. See also: Castro et al., 2017.
- 8 Brazilian Federal Constitution, Art. 134.
- 9 Soon after learning about the occurrence of an accident with a great collective impact, a team of “Defensores” (public defenders) went to the place to inspect and evaluate the situation with the intention of also identifying and establishing direct contact with the people whose rights have been harmed.
- 10 The Highway where the accident occurred is under federal responsibility, but the lawsuit was filed before the State Judiciary.
- 11 This possibility would bring great harm to their parents who, for the most part, have to work all day and have no one with whom to leave their children.
- 12 Legal liability would only be discussed in the future, after carrying out relevant geological technical studies.
- 13 This amount is a little bit higher than the minimum monthly wage established by the Brazilian Government at that time.
- 14 This list was composed of the following items: a cooker, a gas cooker, a refrigerator, a washing machine, a blender, a table with chairs, a kitchen cupboard, a set of pans, a set of cutlery, a set of dishes, a set of glasses, a double / single bed and/or crib, a bedroom cupboard, a set of sheets, a blanket, a set of towels, a shower, a sofa, and a 32-inch television.
- 15 A delivery system for legal aid through instructing private legal practitioners to represent individual legal aid clients: specifically, a system of this kind which arranges for payment to be made to private legal professionals, rather than employing them directly.
- 16 In comparison to other government branches of the judicial system, the PDO still lacks a nationwide structure. The total number of public defenders in the country is merely one-third of the number of judges and half the number of prosecutors. This poses a question of considerable relevance that should be examined. In 2017, the number of eligible potential clients for legal aid service delivered by the PDO was 170 million people.



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