

Legal Aid in Brazil: the role of the Public Defender's Office

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- Brail is a “civil law” country.
- It is a FEDERAL State, with three levels of government (Union, States and Municipal Prefectures: i.e. the cities)
- There are 3 Branches of Government: Executive, Legislative, Judiciary
- Judiciary, established as a separate/ independent Constitutional Power, is organized into federal and state levels.

- Besides the 3 “traditional” government branches, there is a fourth “complex” of institutions, established as “essential” to the Judicial function: the Public Prosecution Service (Public Ministry), the Public Defender’s Office and the Advocacy (Private Lawyers)
- The Public Defender’s Office, organized into federal and state level, is in charge of the delivery of free legal aid to the needy people: that is a right enshrined in the Federal Constitution

- According to the Federal (National) Constitution, and to the Legislation, it is expected that in every city or in every district (specially in those where there is a Court House: being it a federal or a state one) there should be a unity of the PDO (with at least one Public Defender), available to represent poor litigants and/or to give legal advice and preventive advocacy services.

- In all states, at the capital cities, there is an Administrative Headquarter of the State PDO and also a “regional” headquarter of the Federal PDO.
- In many cities (specially the biggest ones) there are branches (operational offices) of the Public Defenders Service, sometimes located at the same buildings where the Judiciary is functioning, and also there are “intake” offices, spread out in different areas of the cities.



**Headquarters of the Rio de Janeiro State
PDO, Downton, Rio de Janeiro City**



**Headquarters of the Rio de Janeiro State
PDO, Downton, Rio de Janeiro City**



**Headquarters of the São Paulo State
PDO, Downton, São Paulo City**

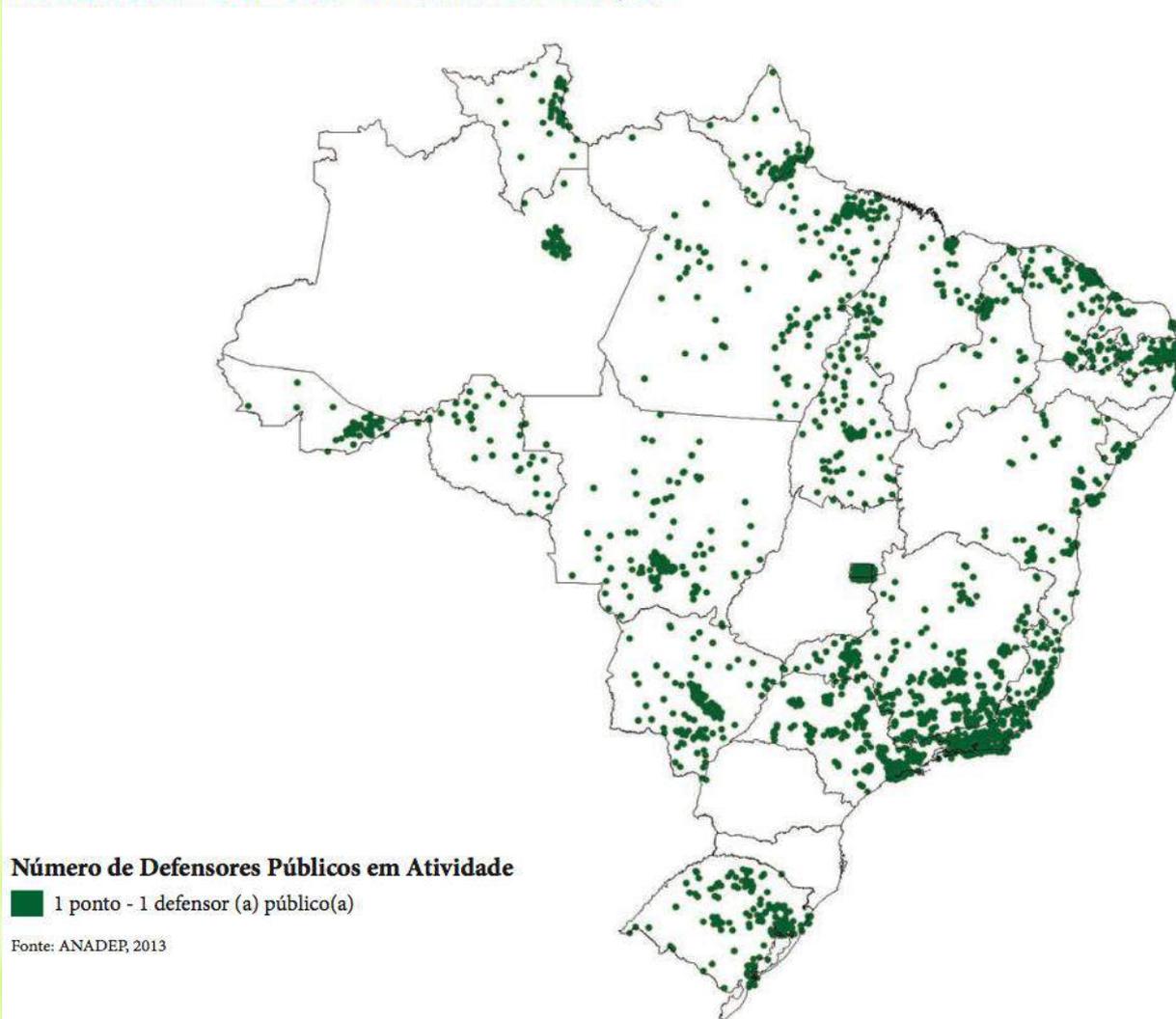


**Headquarters of the Tocantins State
PDO, Palmas (State Capital City)**



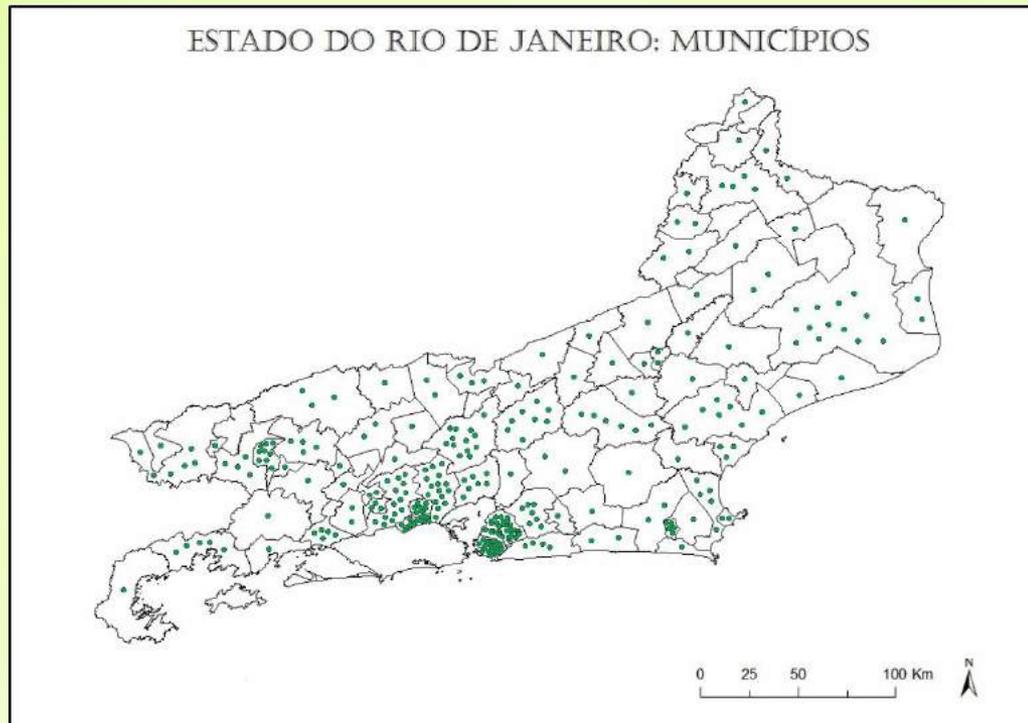
Headquarters of Federal PDO (Defensoria Pública da União), in Brasilia

FIGURA 5. DEFENSORES PÚBLICOS EM ATUAÇÃO



In some States the Public Defenders System is not effectively implemented to ensure full coverage throughout the territorial extension.

- In many states and also at the federal justice system the PDs have to work in a very precarious way, with a number of professionals far below the demand to be met.
- If there is not a PD available to represent a needy person, a private lawyer will be appointed by the judge (and, in this case, he/she is entitled to receive a financial compensation).
- It is also possible that a private lawyer works “pro bono” (if the client is poor, the court fees are also waived in this case).



The State of Rio de Janeiro is one of the few States where the territorial coverage of the Public Defenders Service is complete/full



Local branch office of the PDO in the city of Nova Friburgo (Rio de Janeiro State)

Waiting area for the public



Working office of the PD



Local branch office of the PDO in the city of Nova Friburgo (Rio de Janeiro State)



Local branch office of the PDO in the town of Cachoeira de Macacu (Rio de Janeiro State)



A sample of a typical “working” office of a Public Defender in Brazil



- Downtown**
- Court of appeal**
30 Criminal PD
40 Civil PD
- Civil Court**
70 PD
- Criminal Court**
72 PD
- Specialized Units**
38 PD
- Superior Courts (Brasilia)**
6 PD

This map shows the offices of the Public Defenders Service in the City of Rio de Janeiro (capital city for the State of Rio de Janeiro)

Main PDO Operational office, Downtown, Rio



Main Judicial Courts, in Downtown, Rio





**Call Center (legal information and triage),
located at eh PDO Headquarters in Rio**



**Itinerant office of the R.J. PDO
(outreach services, in a slum)**



**A truck adapted to become an
Itinerant office of the R.J. PDO**

- All public defenders (as well as the members of the other public legal careers: judges and prosecutors) are appointed after being submitted to a public competition (a specific legal examination: normally very strict and competitive, mainly because the average salary is expected to be the same as the payed to judges/ prosecutors).
- After a time of probation, the PD acquire tenure of office, and normally serve for lifelong, until retirement.

- The PDO (Public Defender's Office) is mandatorily runned by one of the members of the career: the Chief Public Defender is appointed by the Executive Power (in the Federal level, after approval of the Senate House), chosen from a list of the three most voted in an election in which all public defenders can participate.
- After this election, all “management positions” in the administrative structure of the PDO are appointed by the Chief Public Defender.

- In order to guarantee the independence of the public defenders, the Brazilian Constitution expressly attribute functional, administrative and financial AUTONOMY to the PDO. It also ensures the possibility to submit, directly to the Legislative Power, the Annual Budget and any propositions of new laws related to the organization of PDO and other legal aid matters (it is not needed previous consent/ agreement of the Executive members).

- The public defenders also have assured - constitutionally and legally - strong/ample technical and ethical independence in order to best serve the interest of their clients, observing the same patterns enjoyed by the private lawyers.
- It is not admitted any kind of interference of the directors of the PDO neither of members of any branch of the Government.

- The number of public defenders has grown significantly over the years:
2004 - 3.154 public defenders
2018 - 6562 public defenders
(national population: 208.777.684)
- In the State of Rio de Janeiro (where the territorial coverage is almost full) this number is more stable along the decade: currently, there are 783 public defenders (for a population of around 16.500.000)

- There is not accurate information about the total number of employees, in all state and federal PDO, at a national level.
- In the State of Rio de Janeiro, there are around 1000 administrative officers and more than 2.500 paralegals (mostly law students that work as interns and receive a monthly allowance from the PDO).

The Annual Budget 2004 - Brazil / RJ

R\$ 282.259.000,00 / R\$ 110.040.430,25

The Annual Budget 2008 - Brazil / RJ

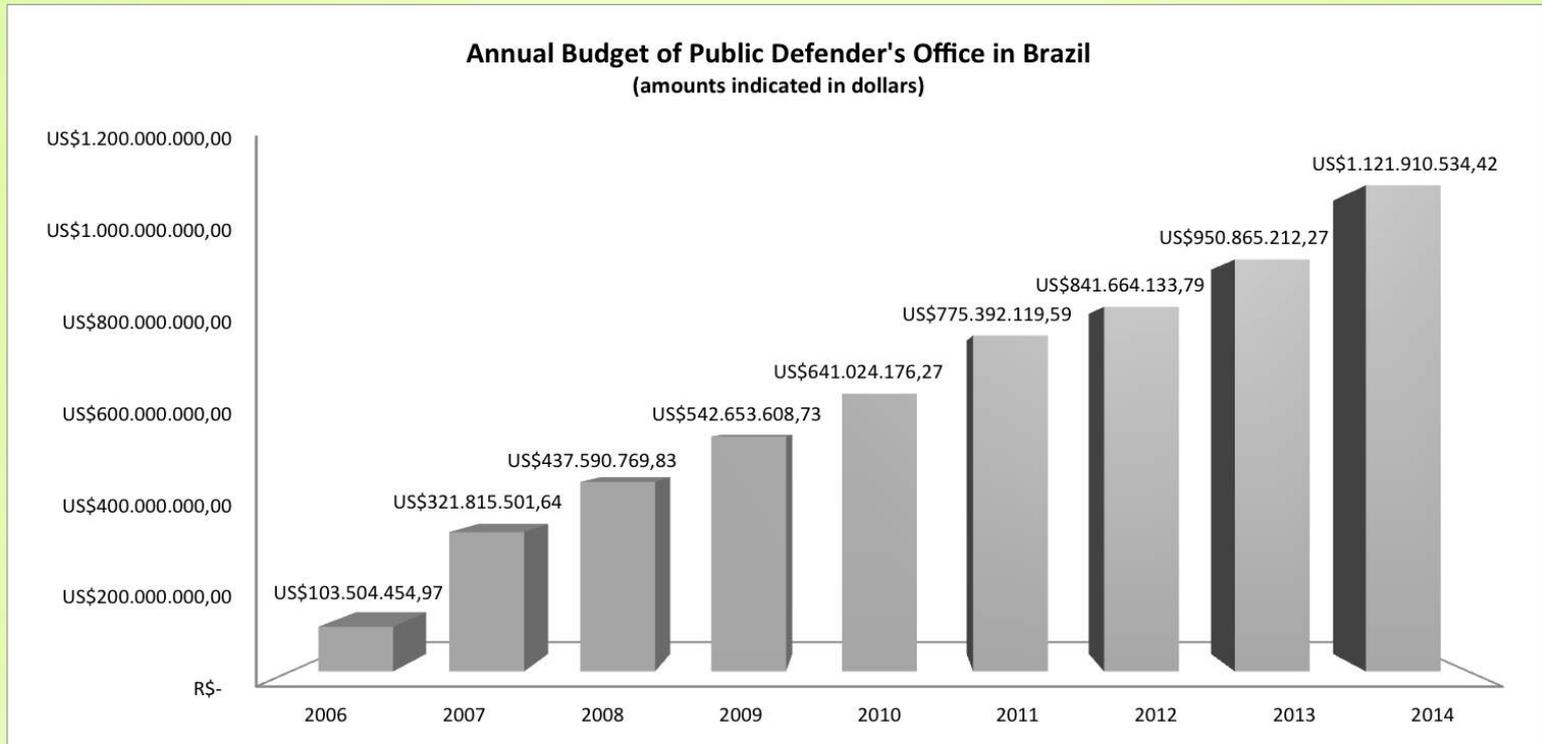
R\$ 1.076.589.915,03 / R\$ 256.918.953,71

The Annual Budget 2014 - Brazil / RJ

R\$ 3.534.018.183,42 / R\$ 521.850.890,88

(±) US \$ 1.121.910.534 / US \$ 165.666.000

/



The annual budgets of all (state and federal) PDO also has increased sharply, along the last years: this scenario of growth probably will not be long lasting (a public policy of budget cuts in diverse sectors is already starting to affect Justice services)

- According to Brazil's Constitution, "integral legal aid", to be delivered by PDO, covers: LEGAL ADVICE and LEGAL REPRESENTATION (as plaintiff or defendant, in any civil or criminal case).
- The legal assistance, provided by a Public Defender, covers also any kind of lawsuits against government decisions or to redress any failure by the government in providing adequate public services (such as welfare benefits, housing, health, education) to the citizen guaranteed by law, and also, if needed, judicial review.



**Public Defenders talking to prisoners,
delivering legal consultation, after
conviction, in a prison**

- According to a recent Constitutional Amendment (2014) the role of the PDO must go far beyond the “traditional” role of legal aid services (based on the legal representation of individual cases in the area of family and criminal law mainly): it is expected a more proactive vision, to promote human rights in a collective perspective (class actions), with emphasis on preventive policies and on human rights education.

- In the State of Rio de Janeiro, for example, besides the regular offices that deliver “traditional” legal aid, there are specialized/thematic offices (called “Núcleos Especializados”), in charge of a great range of “non traditional” services:

Consumer’s Rights - 08 PD

Protection of Children’s Rights - 12 PD

Possession/Regularization of Lands - 06 PD

Protection of Human Rights - 09 PD

Racial Inequalities/Sexual Diversity/
Disabled People Rights/ - 03 PD



**Homeless people (street population)
being attended by Public Defenders**



**Homeless people (street population)
being attended by Public Defenders**



Outreach services in a slum: focus on providing identification documents and generic legal consultation, and also legal education



Outreach services in a slum: focus on providing identification documents and generic legal consultation, and also legal education



Outreach services in a slum: focus on providing identification documents and generic legal consultation, and also legal education

Thank you!

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CHALLENGES TO LEGAL AID IN BRAZIL: NATIONAL REPORT

Prof. Dr. Cleber Francisco Alves¹
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1. Introductory notes:

Nearly eighty five years have gone by since Brazil first established constitutionally³ the guarantee to free legal aid in favor of the poor subsidized by State entities and over more than one hundred an ten years since the creation of the first public legal aid service in Rio de Janeiro⁴, then the capital of the country.

Under Brazil's current Constitution, approved on October 5, 1988, the Government must provide legal aid to anyone unable to pay for an attorney. This guarantee must cover advice and legal representation by counsel in any criminal or civil case, whatever the scope of jurisdiction. Brazil's Constitution also establishes the "professional staff model" as the main form for legal aid services to be delivered by the State. Thus both the Federal Government⁵ and the States Governments must organize and maintain a specific institution, the Public Defender's Office ("Defensoria Pública", in Portuguese Language), which has a *status* and structure similar to that of another State organization, also established in the same Federal Constitution, i.e. the Public Ministry Office (the Prosecutor's Office) ⁶. It is important to stress that, differently from most other countries, Brazilian Public Defenders represent clients (and deliver legal advice) both in criminal and as well as in any kind of civil case (family cases, tort cases, consumer rights cases, etc) including the possibility of filing lawsuits against governmental agencies.

The purpose, however, of assuring equality in the access to law and justice for all citizens still proves to be almost a "chimera" in Brazil. There has been a historical unbalance between theory, better said, between what has been

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² André Castro is a Public Defender (since 1998) in Rio de Janeiro. Currently he is the Chief Public Defender of the State of Rio de Janeiro - Brazil. He is a former President of the Brazilian National Association of Public Defenders (ANADep), and a former General Coordinator of the Inter-American Association of Public Defenders (AIDeF). He received his Master Degree in Law (2003) from the University of Rio de Janeiro (UERJ)..

³ Cf. Art. 113, Paragraph XXXII, of the 1934 Federal Constitution.

⁴ Cf. Decree N. 2.457, of February 8th, 1897.

⁵ Brazil is a federation consisting of 26 states and the federal district.

⁶ The Brazilian Public Ministry Office - like in most countries - is the State Agency responsible for the crimes prosecutions and, in our country, it has some other functions also in non-criminal area (like, for example, the protection of diffuse and collective rights). It has a juridical status equivalent to the constitutionally established for the Judicial Power. According to Brazilian Constitution, especially after the Amendment 80/2014, it was given almost the same juridical status to the Public Defenders Office.

conceived as a paradigmatic model in the constitutional and infra-constitutional legal system and the real situation, impacting on the everyday life of a big portion of the population.

With the aim of changing this scenario, during the first decade of this XXI Century, Brazil experienced a continuous and significant process of expansion⁷ and consolidation of legal aid services subsidized by the State. This was then considered a remarkable frame, comparatively to what was happening at that moment in other more developed countries (that had once possessed legal aid systems thought to be “advanced”) where the scenario was seen as one of regression, having to face strong cutting of the provision of services, with severe restrictions in terms of funding and support.

Beyond the quantitative growth: the number of “state” public defenders rose from 3154, in 2004, to 4515, in 2009, and currently, in 2018, arrived at 5935; to this figure it should be added more 627, that is the current number of “federal” public defenders. This growth shows an unequivocal effort aimed at instituting a very particular model, in certain respects *sui generis*, of legal aid public service by strengthening the Public Defender System. This is a model that has also been consolidated in various other countries in Latin America⁸, and which has awoken interest in the academic world⁹. Along a decade (from 2004 and 2014), several laws (and even a Constitutional Amendment) were then approved in Brazil by National Congress with the aim at strengthening Public Defenders’ prerogatives and also to extend their scope of action¹⁰. Additionally, an effort was made to improve Public Defenders’ salaries, in an attempt to make this position more inviting to better qualified professionals concerned in offering high quality legal aid services to the poor.

⁷ To illustrate the reality of the effective expansion of investments needed to assure the consolidation of the Public Defender System in Brazil, we can mention statistical data in the Public Defender III Diagnosis in Brazil, published in 2009 by the Ministry of Justice. Among the data shown there, the evolution of financial support (effective budget execution) in 2005-2008 can be highlighted; the volume of funds invested nearly quadrupled: were R\$ 446.058.605,58 in 2005 and reached R\$ 1,415,562,383.56 in 2008 (information available at: <http://www.defensoria.sp.gov.br/dpesp/repositorio/0/III%20Diagn%C3%B3stico%20Defensoria%20P%C3%ABlica%20no%20Brasil.pdf>). According to (unofficial) data collected together with the ANADEP (The National Association of Public Defenders), in 2014 this value reached R\$ 2.985.789.956,00, and this value does not take into account the budget of the Federal Public Defender (that have, in that year, reached the value of R\$ 385.894.098,00).

⁸ See: ALVES, Cleber Francisco and ESTEVES, Diogo. *The Latin American Legal Aid Model*. Available at: https://www.ucl.ac.uk/empirical-legal-studies/sites/empirical-legal-studies/files/diogo_esteves_and_cleber_alves_paper_ucl_conference.doc.

⁹ Regarding the innovative characteristics of the Public Defender model in Brazil, see the paper: “Change and Innovation in Access to Justice: the Public Defender System in Sao Paulo”, written by Elida Lauris dos Santos, presented at the “Congrès Mondial ISA/RCSL. Sociologie du Droit et Action Politique. Organizers: ISA/RCSL, Sciences Po Toulouse e Réseau Européen Droit et Société, Toulouse, 03 a 06 de Setembro de 2103”, available at: http://2013rcslcongress.sciencespo-toulouse.fr/IMG/pdf/Work_in_Progress_-_Justice_Access_to_Justice.pdf. See also: MADEIRA, Ligia Mori. *Institutionalisation, Reform and Independence of the Public Defender’s Office in Brazil*. In: Brazilian Political Science Review. (2014) 8 (2). Available at: <http://www.scielo.br/pdf/bpsr/v8n2/1981-3821-bpsr-8-2-0048.pdf>.

¹⁰ See: ALVES, Cleber Francisco and CAROTTI, Andrea Sepulveda. “Legal Aid Delivery in Brazil: new roles for the office of the Public Defenders”. Available at: http://www.law.tulane.edu/uploadedFiles/Summer_Abroad/Countries/Rio/Documents/Legal%20Aid%20Delivery%20in%20Brazil%20New%20Roles%20for%20the%20office%20of%20Public%20Defenders%202016.pdf.

Nevertheless, among the States of the Brazilian Federation, some of them cannot effectively claim that the Public Defenders Offices are set up according to the model established by the Constitution. Rio de Janeiro State is one of those where the Legal Aid System can be considered as fully implemented and where it is operating according to the Constitutional provisions. Rio de Janeiro State has a ratio of 1(one) public defender for each 1.3 (one point three) judges; the ratio nationwide is 1(one) public defender for each 3 (three) judges: to meet the needs of an effective access to Justice, and by a parity criterion, researchers estimate that the ideal would be to ensure at least the proportion of one public defender for each judge. São Paulo, the most populous and industrialized State, has only implemented its Public Defenders Office in 2006: before that, legal aid relied on a limited and deficient scheme of *judicare*, and on *pro bono* services, incompatible with the Federal Constitutional model for this service. Currently São Paulo State has an average of 1 (one) public defender for each 3.3 (three point three) judges.

At the level of the federal legal system, the lack of sufficient personnel in the legal aid service to those in need of legal assistance is also a problem. But we can see a significant progress in this service, during the latest years: the number of federal public defenders increased from 96 in May 2004, to a number of 627 in May 2018 (an expansion of more than 500% in 14 years!). There was a proportion of less than 1 (one) public defender for 10 (ten) federal judges in 2004 and now the proportion is about 6 (six) federal public defender for 10 (ten) federal judges.

In order to better understand the importance/essentiality of the public legal aid in Brazil, it should be borne in mind that, except in rare cases, a litigant may only appear before the court through counsel. In other words, a poor person who lacks the economic resources to pay a lawyer may, if he cannot obtain a lawyer to represent him from the public authorities, be effectively prevented from litigating (be it as a plaintiff or a defendant), i.e. he will be denied the effective right of access to justice. Nevertheless, it should be recognized that, even if this situation would legally conflict with the model established in the Constitution of 1988 (according to which the State expressly assumes the responsibility of providing legal representation for the poor person in litigation), unfortunately this is a reality still very common in the day-to-day of the most poor Brazilian citizens, when they need to appear before a Court of Justice.

It is correct to say that in Brazil, according to the Law, it is no longer permissible to impose the burden of representation upon individual lawyers as a matter of charity (*pro bono* service), as used to occur in the past. In fact, according to Law No. 8906/94 (Article 22, Paragraph 1), the Statute of the Legal Profession in Brazil, any time a private lawyer is named by a Judge to represent a poor party, if that nomination becomes necessary by reason of the failure of Government to provide an adequate Public Defender service, the lawyer named by the Judge has the right to charge fees against the State/Federal Government that would be responsible for rendering legal aid. Even so, we have to recognize that this rule very often is not fulfilled, so this is not enough to supply the lack of Public Defenders in many areas of the country, so the right to free legal aid, guaranteed in Brazilian Law, still remains sometimes only a theoretical and illusory guarantee.

2. Table of General Information:

BRAZIL				
Country	Population	GDP	Poverty Line & Percentage of Population in Poverty	Total No. of Practicing Lawyers in the Country
BRASIL	208.777.684	2,055,505.50 (Million US\$) Source: worldbank.org	3.4% (IPL = 1.90 \$ /per day) or 25% (upper middle-income countries poverty line = 5.50\$ / per day)	1.048.189 are formally enrolled with the Brazilian Bar Association (but only part of this are effectively practicing lawyers)
BRAZILIAN PUBLIC DEFENDER'S OFFICE				
Name of Legal Aid Organization(s)	Date of Establishment	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Rejected in the Past Year
PUBLIC DEFENDER'S OFFICE	RIO DE JANEIRO PDO: 1954 OTHER STATES: VARIABLE YEARS	data not available	data not available	data not available
Total No. of Legal Aid Lawyers (including staff and private lawyers)	Total No. of Non-Legal Professionals (e.g. social workers, counselors, community/culture workers)	Government Budget for the Legal Aid Organisation in the Past Year	Total Legal Aid Expenses in the Past Year	Proportion of Legal Aid Budget Funded by the Government
6.562	data not available	1.121.910.534, (US \$ - 2014)	data not available	data not available

Note: due to the characteristics of the Brazilian State (especially to the federative regime, in which the member states have a wide margin of autonomy for the fulfillment of their competencies) and also due to the relatively recent implementation of Public Defenders in Brazil, without existence of a nationwide body/organ that could have the attribution to centralize the information and statistics related to the service of legal aid by all the State Public Defender's Office, **it is very difficult the access to information and quantitative data regarding the service effectively rendered by the diverse units existing in the country.**

3. The Public Defender's Office and its "status" in the Brazilian Constitutional: autonomy and independence

The Brazilian legal aid model, under the responsibility of the Public Defender's Office, presents some interesting constitutional particularities, which distinguishes it from many other models existing around the world.

Following the traditional State Powers/Government Branches division, originally proposed by Montesquieu, the 1988 Brazilian Constitution regulates the State Functions Organization (Title IV - "The Government Branches Organization"), dividing it into Legislature Power (Chapter I), Executive Power (Chapter II) and Judiciary Power (Chapter III).

Besides these elementary (and traditional) Government Branches, inside the same "Title IV", the Brazilian Constitution established a fourth organic complex, titled "Essential Functions to Justice" (Chapter IV), that comprehends the Public Ministry (responsible for the Public Prosecution Service and for many other legal competences not linked strictly to criminal cases) and Public Defense (responsible for legal aid in a broad sense).

So, according to these rules, in the Brazilian Constitutional System, the Public Defender's Office (as well as the Public Prosecution Office) is **not** connected to any of the other Government Branches at all: it is not under a subordinated link neither to the Executive Branch, to the Legislature Branch or to the Judicial Branch.

As a natural consequence of this not entailment, the Brazilian Constitution attributes expressly to the Public Defender's Office a functional, administrative and financial autonomy (article 134, 2° e 3° of the Constitution), besides of ensuring the possibility of autonomous legislative initiative in matters related to its organization.

The functional autonomy is a guarantee to the Public Defender's Office of an ample freedom to perform its legal role, subordinated only by the Constitution, by the laws and by the own discretion of its members. Towards this functional autonomy, the Public Defenders are protected from all and any external interference, ensuring them the possibility to act freely in defense to their clients, even against the interest of the Government.

On the other hand, the administrative autonomy assures the Public Defender's Office wide margin of freedom in its administrative and organizational management. Lastly, the financial and budgetary autonomy ensures the agency be able to establish its own annual budgeted proposal, which is submitted to the Parliament (without any interference of the Executive Branch) to the final approval, in exactly the same way that happens with the Judiciary and to the Public Prosecution Service/Public Ministry.

Another important feature of the Public Defender's Office, which contributes strongly to its autonomy, is the legal procedure established to admit new members: there is not any kind of political interference. The selection of the members of the Public Defender's Office in Brazil takes place through a rigorous public competition, in which the candidate is submitted to various tests of theoretical and practical knowledge. In addition, the academic and professional *curriculum* of the candidates are considered, in order to guarantee the selection of the best professionals.

Due to the high degree of difficulty of these competitions to enter the career, many candidates are not able to reach the minimum approval score and because of this not all positions are normally filled. In the last contest for entry into the Public Defender's Office of the State of Rio de Janeiro, for example, about 5.000 candidates registered to compete for only 40 career positions. At the end of the competition, however, only 37 candidates were considered sufficiently qualified to be admitted as Public Defender. Another feature that gives stability and contributes to independence and autonomy is that, after three years of "probation", the Public Defenders have tenure of office, and because of this they conserve the position for lifetime: they can only be dismissed in case of serious misconduct, after a formal procedure to check the allegations of professional misbehaviour.

Due to the very well paid remuneration of the position, in comparison with that of the other professions in the market, the competitions for admission to the Public Defender's Office are extremely crowded, attracting the attention of a huge range of law professionals.

Another rule of great relevance for the autonomy of the Public Defender's Office is the one regarding the procedure for choosing the chief of the Public Defender's Office. In the past, he or she used to be freely appointed by the Chief of the Executive Branch of the government. Today, a process of internal direct election takes place, where each Public Defender can vote to form a list of three candidates that, by this mechanism will have the approval of the members of the career to become the Chief. The Chief of the Executive branch (President of the Republic or Governor of the State) must necessarily choose one of these three names to be the new Chief of the Public Defender's Office. This mechanism clearly contributes to the increased autonomy of the institution, by reducing the possibility of political interference by the Executive Power. At the Federal Level, the name appointed by the President has also to be approved by the Federal Senate House (same procedure to name the members of the Supreme Court)

4. Accountability and Quality control: protection of the rights of the clients¹¹

The mechanisms and guarantees to secure greater autonomy to the Public Defender's Office in Brazil necessarily demand the establishment of mechanisms of greater accountability, indispensable in a democratic regime. Following the model of the other "Essential Functions to Justice" (referred in the previous topic), the original mechanism provided in the Law and in the Constitution only established the existence of internal organs mandated to exert control over the conduct and activities of Public Defenders and administrative personnel.

Nevertheless, with the increased administrative, financial and budgetary autonomy, and with the granting of free power to the Public Defender's Office to define its priorities and annual plans, it has been deemed essential that mechanisms of social and thus external control were put in place. Thus express

¹¹ See: ALVES, Cleber Francisco and CAROTTI, Andrea Sepulveda. "Legal Aid Delivery in Brazil: new roles for the office of the Public Defenders". Available at: [http://www.law.tulane.edu/uploadedFiles/Summer Abroad/Countries/Rio/Documents/Legal%20Aid%20Delivery%20in%20Brazil%20New%20Roles%20for%20the%20office%20of%20Public%20Defenders%202016.pdf](http://www.law.tulane.edu/uploadedFiles/Summer%20Abroad/Countries/Rio/Documents/Legal%20Aid%20Delivery%20in%20Brazil%20New%20Roles%20for%20the%20office%20of%20Public%20Defenders%202016.pdf)

rights of clients, to be enforced against the Public Defender's Office, were recognized. In this vein, a new Law approved in 2009 determined the implementation of "External Ombudsmen", to be integrated by citizens who are not Public Defenders. Another mechanism of accountability are the "Public consultations" regarding matters affecting the agency's obligations and purposes, that might also be called, as established by article 4^o (XXII) of Complementary Law 132/2009. The latter are particularly important to confer legitimacy to the institutional priorities contained in the annual plans designed by the Chief Public Defender.

Finally, the explicit recognition of 'rights of clients' allow them to demand quality and efficiency in the delivery of legal aid services. This is established by the new article 4-A of Complementary Law 132/2009, which enshrines rights such as the right to information and the right to a service of quality and efficiently delivered. Effective compliance with the obligations derived from these rights might be one of the greatest challenges to be faced by the organization. Moreover, despite the increased financial autonomy conferred to the institution, it is a fact that financial resources are still scarce (particularly in the regions with a lower Human Development Index). This has an impact both on the quality and on the coverage of services, as a result of lack of professionals and structure. The workload of a Public Defender in Brazil can be extremely high: studies recommend an average of at least 1 (one) Public Defender for a group of 15 thousands eligible clients in Brazil. But in some states this number is of 1 (one) for a group of 65 thousands eligible clients (this is the case of Paraná State, for example).

5. The budget of the Brazilian Public Defender's Office

Annually, the Public Defender's Office must prepare its budget proposal, obeying the rules and limits imposed by national legislation. Next, the proposal must be sent to the Chief Executive, who has the role to consolidate all annual budget proposals (received from the other Government Branches and "Essential Funcions of Justice") and directs it to the Legislative Branch to vote.

It is important to note that the Chief of Executive Power cannot modify the budget proposal submitted by the Public Defender's Office: his expected role is solely to forward the proposal to the Legislative Branch.

According to a decision issued by the Supreme Court of Brazil (Supremo Tribunal Federal - STF), "the head of the Executive Branch is not allowed to reduce the budget proposal of the Public Defender when this is compatible with national legislation. All measures that result in the subordination of the Public Defender's Office to the Executive Power must be considered unconstitutional, as they imply in violation of its functional, administrative and financial autonomy"¹².

In this way, any cuts in the budget can only be made during the annual budget vote session, at the parliamentary level, as part of the Constitutional competences of the Legislative Branch.

After forwarding the budget proposal to the Legislative Branch, parliamentarians conduct the analysis and voting of all proposals, editing the

¹² STF - Full Court – ADPF n^o 307 MC/DF – Minister Dias Toffoli, decision: 19-12-2013.

Annual Budget Law - which contains the government's annual collection estimate and how the financial resources shall be distributed.

Following the guidelines of the Annual Budget Law, every month the Executive Branch must pass on the equivalent of 1/12 (literally called in the legal jargon as “the twelfth”) of the yearly budget to the other Government Branches: this comprises the Legislative, Judiciary, Public Ministry and also do the Public Defender’s Office. So, this monthly money (the twelfth part of the budget) is managed in an autonomous way by each these Branches.

In 2016, due to the economic crisis affecting Brazil, the Executive Branch of the State of Rio de Janeiro failed to carry out the regular transfer of the amounts necessary for the monthly execution of the March budget by the Public Defender's Office. Due to this fact, the Public Defender filed a lawsuit to force the Executive Branch to pass on the money, obtaining a favorable decision that immediately blocked in government bank accounts the amounts correspondent to the “twelfth”, that should be delivered to the Public Defender's Office in accordance with the Annual Budget Law¹³.

Through this system of budget elaboration and execution, the Brazilian Constitution intends to give the Public Defender's Office the security and autonomy it needs to exercise freely its broad range of activities related to legal aid services, which often runs against to the interests of the Government itself (or of the political interest/priorities of the Party that is in charge of the Government in a specific moment) or against the interests of those who dominate the economic power, that is, the large private companies for example.

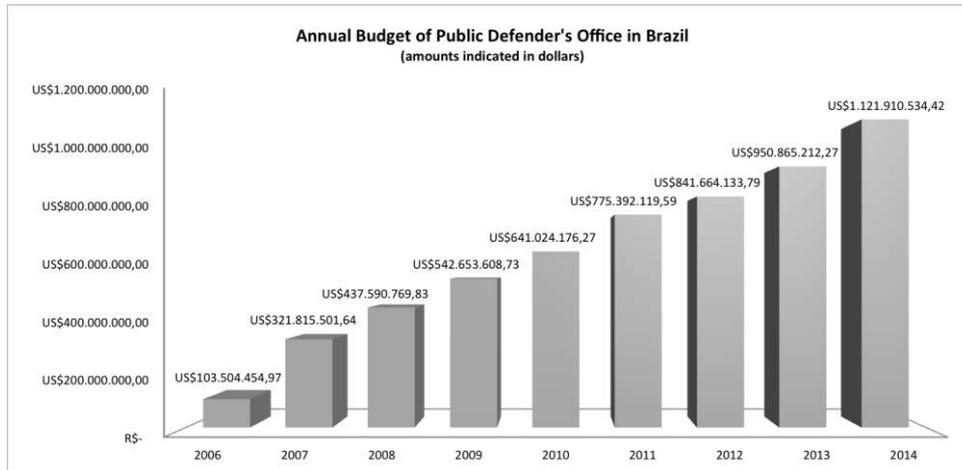
In addition to the resources coming from the Public Treasury, the Public Defender’s Office also has two others sources of revenue:

(i) succumbential fees: according to Article 85 of the Brazilian New Civil Procedure Code of 2015, the unsuccessful party in civil proceedings must pay fees to the lawyer of the winning party, which are set by the judge at least 10% and a maximum of 20% on the cause value. When the winning party is sponsored by the Public Defender, the amounts paid by the unsuccessful party are destined to specific/appropriate accounts managed by the Public Defender's Office and should be used exclusively in the structuring of Public Defender's Office and in the professional training of its members (Article 4, XXI of the Complementary Law No. 80/1994).

(ii) fixed percentage of the collection obtained by the courts: according to Article 82 of the Brazilian New Civil Procedure Code of 2015, whenever the party intends to file a lawsuit or wishes to perform some act in the proceeding, it must pay the correspondent court fees in advance. This amount is destined to the costing and administration of the jurisdictional activity, being a portion of this amount separated and remitted to own accounts managed exclusively by the Public Defender's Office. Generally, the amount allocated to the Public Defender's Office corresponds to 5% of the collection obtained by the courts¹⁴.

¹³ TJ/RJ - Special Court – Writ of Mandamus nº 0016267-86.2016.8.19.0000 - Des. Caetano E. da Fonseca Costa, decision: 03-30-2016.

¹⁴ The Supreme Court of Brazil (Supremo Tribunal Federal - STF) considered it fully constitutional to allocate a portion of the judicial rate to the Public Defender's Office, as a way to strengthen its economic structure. (STF – Full Court - ADI No. 4163/SP – Minister Carlos Britto, decision: 8-11-2006).



6. Scope and types of legal aid services provided by the Public Defender's Office:

The Brazilian Constitution of 1988 establishes that “the State shall provide **comprehensive/integral and free legal aid** to those who prove insufficient resources” (Article 5, LXXIV).

The Article 5, LXXIV of the Brazilian Constitution of 1988 contains a normative imposition: the Brazilian government has the constitutional duty to provide legal aid to those in need and must adopt concrete public policies to guarantee compliance with the constitutional imposition. Any governmental omission to comply with the constitutional order gives rise to the possibility of filing a lawsuit in order to oblige the Government to carry out in practice the right guaranteed by the Constitution.

The expression “comprehensive/integral and free legal aid” has broad connotations, covering all and any assistance activities related to the legal field. Thus, the Brazilian Constitution assured the needy people the right to legal representation in Court in any kind of case, whether civil or criminal. In addition, it assured the needy the right to any kind of extrajudicial legal advice or legal assistance.

As already said, in order to ensure that the right to free legal aid was effectively materialized in practice, the Brazilian Constitution determined that the Government should organize and maintain an agency specifically designed to provide legal aid services to those in need, named Public Defender's Office (Defensoria Pública) – Article 134 of the Brazilian Constitution.

According to this Article 134, the Public Defender's Office is charged with providing “legal guidance, promotion of human rights and judicial and extrajudicial defense of individual and collective rights, in a comprehensive and free manner, to those in need”. So, it is clear that this must comprise legal advice and legal representation, when needed.

The extension of the right to legal aid delivered by the Public Defenders is the most ample possible. The underlying idea is to grant total effectiveness to the principle of legal isonomy, as established by the Federal Constitution, in such a

way that social and economic inequalities may not be an impediment to the full exercise of the rights assured by the legal system to all Brazilians.

In the traditional individual scope of cases of “civil” nature (not criminal!), the Public Defender can act in the same capacity of a private lawyer: by providing legal guidance, assisting in the drafting of contracts, intervening to enable the settlement of extrajudicial agreements, filing any kind of lawsuits representing plaintiffs and carrying out the defense of defendants in any kind of judicial proceedings. This individual action in cases of civil nature occurs fundamentally for the benefit of financially needy persons.

According to a survey carried out by the Association of Official Public Defenders of Mercosur (Bloque de Defensores Públicos Oficiales del Mercosur), about 50% of the cases in which the Brazilian Public Defenders act are related to Family Law. Within the scope of civil law matters in general, the action totals about 30% of the cases, with emphasis on the defense of consumer rights and action against the Public Power (especially in matters related to public health, such as obtaining free of charge and medical treatment). Finally, the criminal activity totals about 20% of the cases in which the Brazilian Public Defender Office operates¹⁵.

In the individual scope of criminal cases, the Public Defender’s Office acts by promoting the defense of defendants in judicial proceedings, whenever the accused do not appoint a private attorney to represent him (be it due to lack of financial resources or due to any other possible reason). It is important to note that in Brazilian law, those accused in criminal proceedings are not allowed to carry out their defense alone before the Court, being mandatory the assistance of private attorney or Public Defender in all criminal cases. Thus, in criminal cases, the assistance of the Public Defender does not depend on any assessment of the economic condition of the accused. Whether he is rich or poor, and not being hired a private lawyer to represent the defendant and promote judicial defense, the assistance of a Public Defender is mandatory.

During the phase of police investigations, which precedes the initiation of the criminal judicial procedure, the accused also has the right to be assisted/represented by the Public Defender's Office. However, due to the lack of structure and the small number of Public Defenders, this defensive assistance during the police investigation phase almost never occur in the daily reality of Brazil. In fact, the role of the Public Defender in the individual scope of criminal cases occurs mainly during the judicial phase.

It is also a routine activity of the Public Defender's Office to carry out the monitoring of prisoners rights during the period of deprivation of liberty, with periodic visits to prisons. With this, the Public Defender’s Office carries out constant monitoring of the prison conditions and the continuous monitoring of the execution of the sentence, guaranteeing to the prisoners the correct application of the various benefits provided for in criminal law (for example,

¹⁵ “En Brasil cerca del 50% de los casos son relativos a materias de Derecho de Familia, 30% de los casos son relativos a materia civil en general y 20% relativos a materia Penal. Dentro de la materia civil en general, merecen ser destacadas las materias de Defensa del Consumidor y Hacienda Pública (acciones contra el Poder Público).” (BURGER, Adriana Fagundes. ROCHA, Amélia Soares da. *Cartografía del acceso a la justicia en el Mercosur*, Porto Alegre: ADPERGS, 2012, p.163).

progression of sentences, temporary visit to the home, grant of conditional release).

Also in the criminal sphere, the Public Defender's Office acts in the preservation and reparation of the rights of victims of torture, sexual abuse, discrimination or any other form of oppression or violence, providing the assistance and care of victims.

In addition to the traditional action in the individual cases (civil and criminal), the Public Defender's Office also act in the defense of the collective rights of the population: the Public Defenders have "*locus standi*" legally to initiate public interest litigation (or *class actions*, named by the Brazilian legislation as "Ação Civil Pública"). As an example of this collective action, we can mention the role of the Public Defender in protecting the rights of consumers, people with special needs, people incarcerated in inhuman conditions, victims of climate catastrophes, elderly people with health insurance problems, students of public schools who need free public transportation, among others.

The Public Defender's Office has the constitutional function of promoting the defense of human rights in a broad sense, and this action is not restricted to the poor people. Whenever the occurrence of a serious violation of human rights is identified (be it provided for in the Brazilian Constitution or in international treaties), the Public Defender's Office may act without any restriction or concern related to the economic condition of the one who shall be directly benefited by the action. In addition, the Public Defender's Office has an attribution to act along with the international systems of protection of human rights, by postulating sanctioning measures, even against the Brazilian Federal State itself.

Lastly, the Public Defender's Office can act by carrying out initiatives regarding public legal education, promoting the population's awareness of the rights they have and how they should proceed if their rights are violated.

7. Eligibility Criteria and Merits Test:

Traditionally, according to the Brazilian Law, the "benefit" of legal aid (that includes not only the legal assistance by a Public Defender, but also the benefit of "*in forma pauperis*" litigation, or in other words, the exemption from payment of Court fees and procedural expenses), always was legally granted to those people who found themselves in a situation of economic need which prevented them from meeting the expenses normally required for access to Justice. Initially, only those considered poor, totally deprived of financial means, could legally qualify to benefit from this State assistance. However, Brazilian legislation, in a rather precocious manner, assumed a vanguard position in this specific respect, in the sense that the text of Decree N. 2.457 of February 8th, 1897, presented quite an open and flexible definition of the concept of "poor",¹⁶ not defining, in a strict way, the parameters or pre-established limits of

¹⁶ This text, consecrated over one hundred years ago in a provision of Decree N. 2.457, of 1897, which considered poor, "every person who, having rights to assert those rights in court, is unable to pay or anticipate the costs or expenses of the lawsuit without depriving themselves of the pecuniary means indispensable for the ordinary needs of their own maintenance or their family's."

pecuniary resources as a requisite to have such benefit (of the exemption of Court fees and to receive legal aid). This became a tradition in Brazilian law with the same idea maintained in the 1939 Code of Civil Procedure¹⁷ and currently in the 2015 Code of Civil Procedure which establishes the following:

“A natural or legal person, Brazilian or foreign, who cannot afford to pay court costs, procedural expenses and counsel fees is entitled to free legal aid, in accordance with the law.”¹⁸

In this sense, the characterization of the condition of “needy” or “hyposufficient” which prevails is a consecrated idea for over a century in the Brazilian legal system: the universe of possible “beneficiaries” of the assistance which must be provided by the state in order to grant the access to Justice is not defined by fixed tables based on the standard of a citizen’s earnings.¹⁹ There is embodied in the legal concept which defines the conditions for admission to the “benefit” of legal aid, both judicial and extra-judicial, an ample margin of flexibility which allows for the consideration of all of the person’s and their family’s economic circumstances, who intends being granted the “benefit” (*rectius*, who intends to see their right recognized). This is, as already mentioned, an important feature of the Brazilian model of legal aid. Thus, though there is information that some Public Defender’s Offices, in certain States of the Federation, have adopted criteria for eligibility for the service based on the number of minimum salaries of family income, this fixed criterion, pre-established in a general way, does not find any support in the present Brazilian legal constitutional and infra-constitutional system.

Likewise, there is not, in principle, in Brazilian law, no peremptory prohibition regarding the granting of legal aid to persons that are holders of assets, especially when it may be unproductive capital. This does not mean that the possession of assets is not an important factor in a global vision to set up, or not, the legal condition to meet the classification of “needy.” Nevertheless, there is not, beforehand, any legal prohibition for the granting of legal aid by the state in favor of a person who have assets, even if such patrimony is considered of high value, especially when in concrete circumstances it is not reasonable (or, sometimes, not even possible) to demand that the person disposes of all or part of his assets in order to safeguard the person’s rights or those of their family.

According to Article 99, paragraph 3, of the New Civil Procedure Code, when a person states that he does not have the financial condition to pay the costs of the proceedings and the lawyer’s fees, without prejudice to his own or family’s support, **this formal declaration is presumed to be true**, and this is enough to be granted free legal aid and the exemption of Courts fees. In other words, once this assertion was made, the party would be presumed to be poor,

¹⁷ The following is the provision found in the 1939 Code of Civil Procedure: “Art. 68 – The party who does not have conditions to pay for the costs of the lawsuit without harm to their own maintenance or of their family’s, will be granted the benefit of gratuitousness...”.

¹⁸Art. 98.

¹⁹ According to Hélio Márcio Campo, “it matters little for the sake of receiving the benefit the amount of the person’s income for there are requirements with very high costs, irrespective of the value sought in a lawsuit because the law does not establish any limit.” (Cf. CAMPO, Helio Marcio. “*Assistência Jurídica Gratuita, Assistência Judiciária e Gratuidade de Justiça*.” São Paulo, Editora Juarez de Oliveira, 2002, p. 59).

but this presumption could be undone by the submission of evidence by the opposing party that demonstrates economic capacity and, consequently, the falsity of the assertion of hypo-sufficiency.

Therefore, the Brazilian legal system determined the same legal requirement be it for the recognition of the rights to exemption of Courts fees or to receive free legal aid from the Public Defender's Office: the economic incapacity to pay the procedural costs and legal fees, without prejudice of the own sustenance or of the family.

However, given the complexity of the contemporary world, it is understood that the right to free legal aid can not be limited by the narrow notion of economic hypo-sufficiency. In this sense, in Brazil, the concept of "needy" (Article 134 of the Brazilian Constitution), for purposes of recognizing **the right to free legal aid provided by the Public Defender's Office, has been also associated with the idea of "vulnerability"**. The term "needy" should be interpreted more broadly, not restricted exclusively to economically disadvantaged persons, who do not have the resources to litigate in court without prejudice to personal and family support, but to all those who are socially vulnerable. The notion of vulnerable people includes those persons who, because of their age, gender, physical or mental state, or social, economic, ethnic and/or cultural circumstances, find it difficult to exercise fully before the system of justice the rights recognized by the legal system. The difficulty in accessing the justice system may derive from multiple types of vulnerability, such as age, disability, the fact of belonging to indigenous or minority communities, victimization, migration and internal displacement, poverty, gender and deprivation of liberty.

According to this new notion, Complementary Law 132 of 2009 brought about important innovations which might be interpreted as aiming to expand even further the scope of protection of 'integral legal aid'²⁰. The very definition – and the role – of the organization of the Public Defender's Office (or PDO henceforth) has been amended in order to reflect such changes, as provided by Article 1 of Complementary Law 80 of 1994, amended by the 2009 reform, which reads:

Article 1. The Office of Public Defenders is a permanent agency, essential to the judicial function of the State, authorized, as an expression and instrument of the democratic regime, to provide legal advice, promote human rights and defend in all levels, judicially and extra-judicially, the individual and collective rights of all needy, in a comprehensive manner and free of charge [...].

Some of the functions of the PDO have been essentially maintained by the new law: one can identify the general 'duty to provide advice and to defend the needy in all levels' (paragraph I); the correlate duty to guarantee the

²⁰ The following comments are mostly reproduced from another paper published by one of the authors of this report. See: ALVES, Cleber Francisco and CAROTTI, Andrea Sepulveda. "Legal Aid Delivery in Brazil: new roles for the office of the Public Defenders". Available at: [http://www.law.tulane.edu/uploadedFiles/Summer Abroad/Countries/Rio/Documents/Legal%20Aid%20Delivery%20in%20Brazil%20New%20Roles%20for%20the%20office%20of%20Public%20Defenders%202016.pdf](http://www.law.tulane.edu/uploadedFiles/Summer%20Abroad/Countries/Rio/Documents/Legal%20Aid%20Delivery%20in%20Brazil%20New%20Roles%20for%20the%20office%20of%20Public%20Defenders%202016.pdf)

effectiveness of the principle of ample defense in all kinds of organs, all instances and in any lawsuit; the benefit of all needy who are defendants in lawsuits, including organizations (this encompasses commercial firms and their partners), as long as they are considered to be needy (paragraph V); the obligation to monitor criminal investigations when the suspect has not appointed a lawyer (paragraph XIV); the duty to initiate criminal lawsuits on behalf of victims when authorized by law (paragraph XV); the obligation to act as curators ad litem for those unable to respond for themselves (paragraph XVI); the duty to be physically present in prisons and youth detention sites with the purpose to assure prisoners' fundamental rights (paragraph XVII); the task to defend the interests of the needy in small claims courts (paragraph XIX). As can be seen, these aim mainly to guarantee the principle of 'equality of arms' in the legal system. They fall in with the more classical concept of 'integral legal aid' and are more akin with the fourth objective of the PDO, as established by Article 3-A.

The following have been expanded or improved by the new law:

- a.) The duty to promote, as a matter of priority, the extra-judicial solution of conflicts, through mediation, conciliation, arbitration or any other technique (paragraph II). The main significant change - in this case - was the addition of the requirement of priority and the statement that the means for achieving the non-judicial conflict resolution are open;
- b.) The duty to defend consumer's rights and interests, individual or collective (paragraph VIII), the main addition being the direct reference to the possibility of filing collective lawsuits;
- c.) The obligation to promote the most ample defense possible of the fundamental rights of the needy, encompassing individual, collective, social, economic, cultural and environmental rights, all types of lawsuits being allowed (paragraph X). What's new here is the emphasis on the fundamental rights of the needy and the guarantee that public defenders are free to use any kind of legal action to defend fundamental rights;
- d.) The duty to defend the rights and interests, individual and collective, of children and adolescents, of the elderly, of disabled individuals, of women victims of domestic violence and any other vulnerable social group in need of special protection from the State (paragraph XI). Prior to the reform, the only openly mentioned vulnerable group was that of children and adolescents and there was no reference to the collective interests of vulnerable people.

The above mentioned lists indicate a greater concern with the poor's fundamental rights, the defense of vulnerable groups, and with a more effective legal system regarding their problems, either through extra-judicial mechanisms of conflict resolution or by emphasizing public interest and collective litigation. The innovations in the list examined below also maintain these concerns and further additions to the PDO's functions. According to these, the PDO must:

- a.) promote the dissemination and the awareness of human rights, citizenship and the legal order among the poor (paragraph III);
- b.) provide an interdisciplinary service to the needy, through its administrative organs (paragraph IV);
- c.) petition in the international systems for the protection of human rights (paragraph VI);
- d.) begin any type of collective lawsuit, when the expected result of litigation will benefit groups of individuals considered to be needy (paragraph VII);

- e.) file any lawsuit or remedy in defense of the PDO's own functions and public defenders' guarantees (paragraph IX);
- d.) work to preserve and seek reparation for the violation of the rights of persons victim of torture, sexual abuse, discrimination or any other form of violation or oppression, providing support and interdisciplinary service to the victims (paragraph XVIII);
- e.) participate of governmental meetings where the PDO's functions are being discussed (paragraph XX) and receive funds due to the PDO from judicial fees or any other public entity, under the obligation to establish special funds to manage such income. This income must pay only for infrastructure improvements of the institution and the training of public defenders and personnel (paragraph XXI);
- f.) organize public consultations to discuss the PDO's functions and powers (paragraph XXII).

Regarding the, so called, “merit test”, the current Brazilian legislation does not require any prior demonstration of the probability of success of the postulation so as a condition for that the right to exemption of Courts fees and to free legal aid provided by the Public Defender’s Office can be recognized. Contrary to what may be initially imagined, the absence of a preliminary ruling on the prospect of a successful claim does not give the poor litigant an automatic “license/permit” to file unfounded suits or to use the judicial services to harass his potential adversaries. Although the beneficiary of exemption of Courts fees is exempt from the payment of legal costs in the event of defeat, the civil procedural system has mechanisms to inhibit and avoid uncontrolled demands.

According to Article 77, II, of the New Code of Civil Procedure of 2015, the one who formulates pretensions and claims defense aware that they are devoid of foundation violates the duty of probity and procedural loyalty, and is subject to the payment of fine and compensation to the opposing party (Articles 79 to 81 of the CPC/2015).

It is also worth noting that the beneficiary of exemption of Courts fees, in spite of being exempt from the payment of legal costs in case of defeat, is not exempt from the payment of the repressive sanctions imposed by the civil procedural law, and may be sentenced to the payment of fine and compensation in the event of violation of the procedural fairness (Article 98, §4 of the CPC/2015). After all, the attempt to compensate for the inequality arising from the poor litigant can not serve as a justification to generate immunity for the practice of any immoral and abusive procedural conduct.

Moreover, Complementary Law No. 80/1994 prevents the Public Defender from representing the client in reckless or unfounded cases. Therefore, any and all demands sponsored by the Public Defender’s Office must go through the critical filter of the Public Defender responsible for the case. This “filtering” is made under the same “ethical guidelines’ that normally should be considered (and observed) by a private lawyer when deciding to accept a case from a paying client. If the Public Defender in charge of the case found that the pretension of the potential client is manifestly unfounded or even inconvenient to the interests of the party, he shall refrain from representing the client in the case. So, the criteria is not the “cost-benefit” relation, but the fairness of the case.

It is important to make clear, however, that this prerogative to accept or not a case by the Public Defender can not be confused with the analysis of the prospect of success of the demand. The Public Defender can not refuse to sponsor a particular case because he/she understands that the chances of success are reduced or that the cost to be borne by the State with the filing of the action does not justify the modest economic benefit pursued by the party; the Public Defender has the duty to enable the access of the poor people to justice, even if the chances of success are minimal or the ultimate goal of the proceeding is modest.

8. Territorial distribution of the Brazilian Public Defender's Office:

Although the Brazilian Public Defender's Office has a very extensive and somewhat advanced normative basis, everyday reality shows that its practical implementation is still far from satisfactory. Currently, Brazil has 6562 Public Defenders spread throughout the national territory²¹. Studies consider that the ideal number should be around twice of this number²².

In fact, there is still a large number of jurisdictional units without the presence of Public Defender's Office regularly installed. In these places, the right to free legal assistance continues to be improvised through lawyers appointed by the judge to take part in the case, using as an exceptional solution a kind of "judicare mechanism" (in this case, not complying with the legal and Constitutional determination that establishes the "staff model", through the Public Defender's Office, as the mandatory mechanism to provide public funded legal aid). Sometimes, it happens that the solely alternative available is to rely on (the "old fashionable" and inadequate considering the legal tasks committed to modern States²³) charitable possibility provided by a *pro bono* lawyer.

In 2013, the National Association of Public Defenders (Associação Nacional dos Defensores Públicos - ANADEP) and the Institute of Applied Economic Research (Instituto de Pesquisa Econômica Aplicada - IPEA) conducted a survey to determine the actual geographic coverage of the Public Defender's Office in Brazil, in a project called Map of the Public Defender's Office in Brazil (Mapa da Defensoria Pública no Brasil). The research clearly demonstrated the huge disparity in the geographical distribution of Public Defenders in Brazil, as well as the lack of coverage in great part of the Brazilian territory. According to data collected five years ago in the survey, the Public Defender's Office was present in only 28% of the Brazilian districts (in Portuguese, "comarcas")²⁴. Unfortunately, this scenario has very little changed since then.

²¹ Data provided by Associação Nacional dos Defensores Públicos ("Associação Nacional dos Defensores Públicos - ANADEP"), in may 2017.

²² See: <https://noticias.r7.com/sao-paulo/brasil-tem-deficit-de-seis-mil-defensores-publicos-diz-estudo-15062018>

²³ According to the traditional classification proposed by Mauro Cappelletti.

²⁴ CASTRO, André Luis Machado. MOURA, Tatiana Whately de. CUSTÓDIO, Rosier Batista. SILVA, Fábio de Sá e. *Mapa da Defensoria Pública no Brasil*, Brasília: ANADEP, 2013, p. 50.

Distribution of Public Defenders in Brazilian territory



In 2014, Brazilian Legislative Branch approved a new Constitutional Amendment, predicting that within eight years each district (“comarcas”) must have at least one office of the Public Defender's Office regularly installed. This Constitutional Amendment also stipulated that the number of Public Defenders should be proportional to the effective demand for the service and the population potentially eligible to receive free legal assistance in a given area. Finally, this Constitutional Amendment determined that, over the this time of eight years, the criterion for the allocation of the new Offices of the Public Defender should prioritize the locations with the highest levels of social exclusion. Due to the economic and political crises Brazil is facing this last three years, unfortunately almost nothing was done in order to comply with that Constitution Amendment. And because of this scenari of crises, the number of potential clients for the legal aid services delivered by PDO is growing a lot, what makes the existing gap still more deep and dramatic.

9. Conclusion

In a democratic legal regime, integral legal aid has to be accessible to everyone. Without regard to one’s financial situation, he should be able to count on the effective assistance of a professional technically capable and prepared to defend his interests as they may be contested in litigation. It is equally important that everyone have access to a professional capable of giving counsel and orientation in legal matters in order to enjoy the full exercise of rights assured by the Constitution and by the laws of the country. In Brazil, these guarantees are established by the Constitution of 1988, which requires the creation and maintenance of Public Defender Systems in all the States of the Federation and in all the judicial venues linked to the Federal Union. Nevertheless, fulfillment of this constitutional mandate remains a major challenge in Brazil because there are simply not enough Public Defenders to meet the need. Additional resources must be committed in order to recruit and maintain an adequate number of Defenders.