

**INTERNATIONAL LEGAL AID GROUP CONFERENCE  
JUNE 17-19, 2019 - OTTAWA, CANADA**

**NATIONAL REPORT: BRAZIL**

Cleber Francisco Alves<sup>1</sup>

According to the previous report on "Legal Aid in Brazil", presented at the ILAG Conference in 2017, was facing a serious political and economic crisis, which has since seriously compromised the stability and functioning of the constitutional democratic regime and put in check the guarantee of the rights of the most vulnerable citizens in Brazilian society and has also caused setbacks regarding many achievements in the field of social rights that had been reached previously. Even after the general elections held in 2018, in which Mr. Jair Bolsonaro was the winner - he, himself, formerly a politician with no major role in the national scenario, who galvanized popular support and was also supported by the main economic forces of the country, with a radically liberal agenda in economic terms and quite conservative with regard to customs - the frame of political instability and the scenario of economic recession has not dissipated.

In the specific case of the State of Rio de Janeiro, where the violence and criminality has severely compromised public security in recent years, after a period of federal intervention, the 2018 electoral process resulted in the election of Mr. Wilson Witzel - a former federal judge - for the position of Governor. Although, at the beginning of his career, having served as public defender, his agenda and government program has also been favorable to the implementation of conservative, public policies with a low prestige for the protection and defense of human rights, under the argument of the need of greater rigor in the fight against crime.

There remains, as already indicated in the previous 2017 report, a scenario in which it becomes even more important and necessary to

---

<sup>1</sup> PhD, Professor at the Universidade Federal Fluminense (Law and Sociology Doctoral and Master's Degree Program) and Universidade Católica de Petrópolis (Law School), in Brazil. Public Defender at the State of Rio de Janeiro's Public Defenders Office .

guarantee legal aid services to the poor and vulnerable people, which in Brazil, is provided - both in criminal cases as well as in civil matters, family litigation, etc. - by the Public Defender's Office: people lose their jobs, become indebted, disaggregate families, suffer eviction and therefore need free legal assistance. In the criminal area, the increase in urban violence, in crimes related to drug trafficking, and especially in the case of Rio de Janeiro, the increase in police violence in the fight against crime, rendering vulnerable the individual rights of people who are on the margins of the better-off social strata, that is, those living in slums and peripheral regions, also significantly increase the demand for the Public Defender's Office. Brazil currently has 6562 public defenders. To get a sense of this disproportion, it should be considered that the country has more than 11,800 judges and more than 10,800 prosecutors. In other words, the judicial system's two other institutions have double the number of staff as the Public Defender's Office. In 2013, the Institute for Applied Economic Research (IPEA) used statistics from the National Association of Public Defenders (ANADEP) to estimate the number of public defenders needed for every 10,000 people who live with less than three minimum salaries (\$900). That is the criteria the Justice Ministry uses, because in order to receive free assistance, a lack of financial resources must be demonstrated. The study identified a shortage of 10,578 public defenders in all of Brazil. Five years later, while a few additional attorneys have been hired, the shortage is at least 9,000<sup>2</sup>.

---

<sup>2</sup> <https://www.univision.com/noticias/criminalidad-y-justicia/when-justice-falls-short-brazil-needs-10-000-more-public-defenders>.

# Legal Aid in Brazil

## **CLEBER FRANCISCO ALVES**

Professor at Universidade Federal Fluminense (UFF),  
Public Defender in the State of Rio de Janeiro,  
PhD in Law (PUC-Rio)

- According to official projections, the population of Brazil is currently about 209.008.000 people
- In 2018 the Brazilian GDP was R\$ 6.800.000.000.000 (according to the figures of the International Monetary Fund, in US \$ this was equivalent to US \$1.868.184.000.000 - nominal values)
- Almost 55 million Brazilians were living in poverty in 2017, according to data released by IBGE, the official Brazilian statistics institute.

- Brasil 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.

- Brasil 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 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.



- A Federal Constitutional Amendment (approved in 2014) established that 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.

- 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.

- 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:

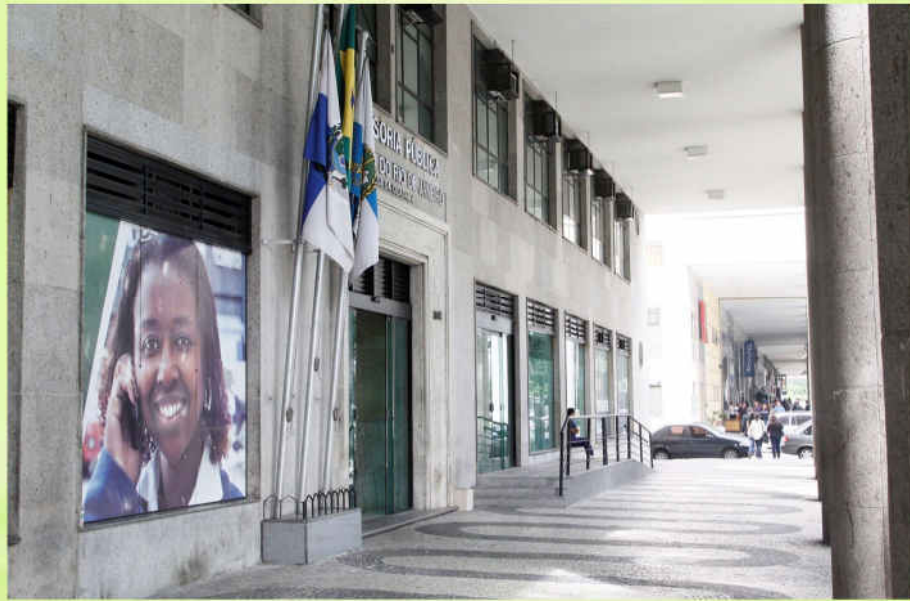
Consumer´s Rights - 08 PD

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



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)

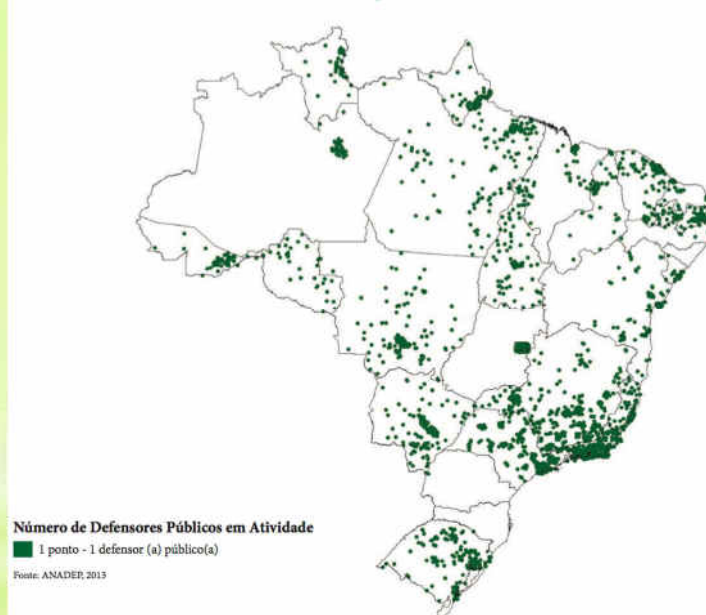


**Headquarters of Federal PDO (Defensoria Pública da União), in Brasília**

- 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).

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).

- 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.

- 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 Annual Budget 2004 - Brazil / RJ State**

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

**The Annual Budget 2008 - Brazil / RJ State**

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

**The Annual Budget 2014 - Brazil / RJ State**

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

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

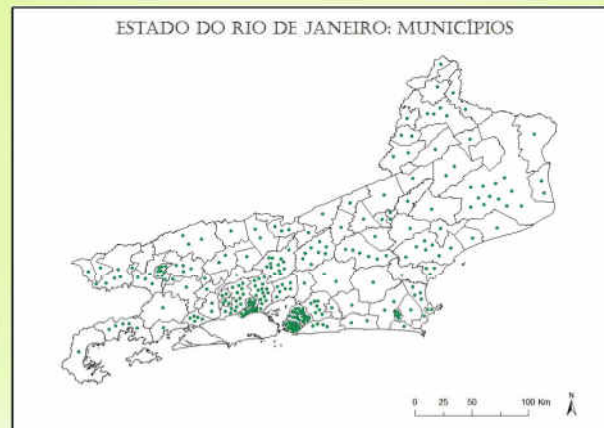
**The Annual Budget 2018 - Brazil / RJ State**

**(National - Data not available for 2018 /**

**State of Rio de Janeiro - R\$ 686.575.940,00**

**(±) US \$ 180.725.500)**

**Note: Given that each of the State, PDO among all the federative units, has financial and budgetary autonomy, and because there is no central national body in charge of controlling their budgets, it was not possible to obtain updated data for the year 2018, with the total sum of their respective budgets, in order to compare with the figures of 2014 budgets. Specifically in the case of the State of Rio de Janeiro, it was noticed a 30% increase in the budget in absolute terms (in local currency: Reais), although if the conversion was made in US dollars due to the exchange rate fluctuation, this increase has been of about 10%**



**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  
(country side of 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 (country side of Rio de  
Janeiro State)**



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





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



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)



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



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



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



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





**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