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AND INTERNATIONAL STUDIES

**Master's degree in  
Human Rights and Multi-level Governance**



THE PUBLIC DEFENDER'S OFFICE IN  
BRAZIL AND THE IMPLEMENTATION OF  
THE EARLY CHILDHOOD RIGHTS

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## ACRONYMS

ABA	Applied Behaviour Analysis
ACLU	American Civil Liberties Union
ACP	Public Civil Action
AJ	Judicial Assistance
ASP	Autism Spectrum Disorder
CL	Complementary Law
CONADE	National Council for the Rights of Persons with Special Needs
CORDE	National Coordination for the Integration of Persons with Special Needs
CRPD	Convention on the Rights of Persons with Disabilities
ECA	Child and Teenager Act
FNCA	National Fund for Children and Adolescents
ICESCR	International Covenant on Economics, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ILO	International Labour Organization
JLAA	Japan Legal Aid Association
NAACP	National Association for the Advancement of Colored People
OAB	Brazilian Bar Association
PETI	Program for Eradication of the Child Work
PM	Public Ministry
PPACA	President Friend of the Child and Teenagers Plan
PPCAAM	Program for the Protection of Children and Adolescents Threatened
SDBs	Sustainable Development Goals
SINASE	National System for Social Educational Assistance
SMA	Spinal Muscular Atrophy
SNPDCA	National Secretariat for the Promotion of the Rights of Children and Adolescents
SUS	Unified Health Service
TAC	Conduct Adjustment Term
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPR	Universal Periodic Review

## ABSTRACT

In Brazil, the defence of those who are unable to hire a lawyer is carried out by the Public Defender's Office. It has a unique format, not seen in other countries globally, and it is one of Brazil's pillars of access to justice. The Federal Constitution of 1988 created this institution in which, like the Prosecution Office (Public Ministry) and the Judiciary, a public career is constituted by those whose entrance depends on approval at a competitive, and public contest. The Public Defender's Office has a wide range of activities, considering that it must reach any instances that may be needed by people without financial resources. Thus, the Public Defender's Office works both in individual cases, in which only the person claiming the right will benefit, and in collective protection, through which a collectivity of individuals can benefit. The Public Defender's Office works in judicial proceedings and also in the extrajudicial ones in order to avoid litigation and submission for long years in Brazilian courts, admittedly slow and full of demands. As an important institution in realising human rights and in the supervision of government spheres, the Public Defender's Office plays an essential role in the realisation of early childhood rights. Early childhood is the first years of an individual's life when brain plasticity is enormous. The child who receives the right stimuli, including adequate nutrition, protection from abuse and stress, and love, develops high cognitive abilities whose consequences reach adulthood. The Public Defender's Office plays a vital role in overseeing public policies, discussing with government bodies the importance of investing in the implementation of early childhood rights. It is also acting judicially when the state cannot respond to the concrete situations of poor children who do not have their rights guaranteed.

**Keywords:** Public Defence, Early Childhood, Human Rights.

## INTRODUCTION

The Universal Declaration of Human Rights, adopted and proclaimed by the United Nations General Assembly on December 10, 1948, recognises access to justice as a right to be guaranteed to individuals. A similar provision is in the International Covenant on Civil and Political Rights proclaiming access to justice as a right to be guaranteed by all members to their correspondent population.

Therefore, access to justice is an instrument for achieving human rights. It depends on different means and institutions to be implemented. It is important to mention that the out-of-Court resolution of a case is also considered access to justice. Mauro Cappelletti and Bryant Garth (1988)<sup>1</sup> see access to justice through three waves. The first one deals with access to justice for the poor. The second one suggests the proper use of mechanisms to defend collective rights, so countless people could benefit. The third one seeks ways to improve the resolution of conflicts, aiming to speed up the procedures through the adoption of debureaucratising means, focusing on the extrajudicial solution of conflicts.

In this scenario, the Public Defender's Office emerges as a model of access to justice in Brazil's Federal Constitution of 1988. Its objective is to ensure that people with no financial conditions to hire a lawyer can claim their rights, judicially or extrajudicially, individually or collectively. Besides, it is a permanent institution, essential to the jurisdictional function of the state, being responsible, as an expression and instrument of the democratic regime, for the legal guidance and the promotion of human rights in Brazil<sup>2</sup>.

The Public Defender's Office acts in the inspection and implementation of human rights, which includes the rights of early childhood. Early childhood is the time period of the first years of a child's life. This phase is fundamental for cognitive, social, physical, and emotional development, and the brain is highly plastic. The correct stimuli and orders expand the child's knowledge in different spheres with consequences for adult life. At this term, fundamental rights must be observed, such as health, education, adequate nutrition, and respect for the condition of a person in development. Although not expressly listed as rights, affection and love are also essential in a healthy childhood.

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<sup>1</sup> Mauro Cappelletti & Bryant Garth, (2018). *Acesso à justiça*.

<sup>2</sup> Art. 134. A Defensoria Pública é instituição permanente, essencial à função jurisdicional do Estado, incumbindo-lhe, como expressão e instrumento do regime democrático, fundamentalmente, a orientação jurídica, a promoção dos direitos humanos e a defesa, em todos os graus, judicial e extrajudicial, dos direitos individuais e coletivos, de forma integral e gratuita, aos necessitados, na forma do inciso LXXIV do art. 5º desta Constituição Federal. (Redação dada pela Emenda Constitucional nº 80, de 2014)

In the Brazilian context, the Public Defender's Office has a crucial role in monitoring the spheres of power and the implemented public policies. Although it has structural difficulties since its foundation, a little over 30 years ago (foreseen in the Federal Constitution of 1988), the Public Defender's Office is a very close to the population institution, following their needs. Whether in the individual or collective sphere, it plays a vital role in realising early childhood rights and seeking to resolve issues both in and out-of-Court.

This thesis aims to analyse the contribution of the Public Defender's Office in Brazil to the implementation and advancement of early childhood rights. Further, in order to delimit the field of research, it is essential to define the Public Defender's Office and its function in Brazil, investigating how the institution works and its difference from the legal assistance worldwide. The study of children's rights also deserves attention. The analysis of the Convention on the Rights of the Child, the Brazilian Constitution, and domestic legislation is essential to understanding the rights guaranteed to the early child.

The thesis will begin with an introduction to the topic and an explanation of its purpose. We intend to answer the central question: Does the Public Defender's Office in Brazil significantly contribute to the implementation of early child rights? (How can this Brazilian institution contribute to implementing and disseminating public policies that have this objective? Which are the available tools, and in what ways can this be useful to society?).

In the first chapter, the right to defence in Brazil is analysed. Laws linked to the right to defence at the international and national levels will be studied, especially the International Covenant on Civil and Political Rights and its monitoring body regarding the observations made on this topic to Brazil. The suggestions made to Brazil by the Universal Periodic Review (UPR) will also be analysed.

In the second chapter, the Public Defender's Office analysis in Brazil is an essential topic to understand the function, aims, way of work and structure, investigating its work and the differences between the Brazilian way of providing legal assistance and other ways worldwide.

In the third chapter the subject is the analysis of children's rights, especially the Convention on the Rights of the Child in general, but also the monitoring reports from the Committee on the Rights of the Child. These will help us understand how this monitoring body sees this aspect in Brazil. The reports from the Universal Periodic Review (UPR) regarding the child's rights in Brazil are, indeed, examined, followed by how the Brazilian constitution and legal structure provide the rights of the Convention. In summary, the main goal is to understand how children are protected and their rights.



The fourth chapter aims to define early childhood and it analyses its prediction in international and Brazilian legislation. Understanding the importance of this time period and delimiting the difficulties encountered in implementing these rights is fundamental for the analysis carried out in the following chapter.

Finally, the last chapter will analyse whether the Public Defender's Office in Brazil should work in implementing early childhood rights and how and with what tools it could do it. To illustrate, an interesting study case is brought: the acting Public Defender's Office on implementing the health rights of autistic children in Cachoeiro de Itapemirim, Espírito Santo, Brazil.

## CHAPTER I - THE ANALYSIS OF THE RIGHT TO DEFENCE IN BRAZIL ACCORDING TO INTERNATIONAL AND DOMESTIC LEGISLATION

*“Et par le pouvoir d'un mot  
Je recommence ma vie  
Je suis né pour te connaître  
Pour te nommer*

*Liberté.”<sup>3</sup>*

### 1. International legislation and the right to defence: the UDHR and ICCPR

After the World War II and all the atrocities, some countries came together intending to recognise and protect human rights. Hence the creation of the United Nations<sup>4</sup> in 1945, the primary global entity entitled to promote and protect human rights within its subsidiary organs and specialised agencies. Besides protecting human rights, the central objective was to avoid a third world war and all the disastrous consequences of large-scale conflicts. Therefore, countries came together to protect international peace and security, human rights, and international law.

The organization of all these objectives occurred with the creation of the Universal Declaration of Human Rights<sup>5</sup> in 1948, the first document that conferred international protection status on fundamental rights. The Declaration introduced a contemporary conception of human rights, marked by the breadth, universality, and indivisibility of these rights. The UDHR proves to be an important document because, for the first time, individuals

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<sup>3</sup> Eluard, P. 1942. *Liberté*.

<sup>4</sup> “As World War II was about to end in 1945, nations were in ruins, and the world wanted peace. Representatives of 50 countries gathered at the United Nations Conference on International Organization in San Francisco, California from 25 April to 26 June 1945. For the next two months, they proceeded to draft and then sign the UN Charter, which created a new international organization, the United Nations, which, it was hoped, would prevent another world war like the one they had just lived through”. Source: <https://www.un.org/en/about-us/history-of-the-un>

<sup>5</sup> “The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages. The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles)”. Source: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

from different categories, and therefore, with different demands, are seen in their individuality<sup>6</sup>.

The thirty articles of the Universal Declaration of Human Rights list the minimum rights, so their observance and protection are morally mandatory for all signatory states. Morally because no mechanism was created to monitor the Declaration in a way that states could not be compelled to follow the articles. In addition, member states can guarantee even more rights in their domestic laws if they do not conflict with those provided in the Declaration<sup>7</sup>.

The document reveals two categories: civil and political rights and economic, social and cultural rights. The first category is provided in the articles I to XV. Equality of all in dignity and rights is foreseen, with the obligation of fraternity among human beings. The prohibition of discriminatory treatment. Life, liberty and personal security are guaranteed, and slavery and servitude are forbidden. Therefore, civil and political rights generally demand a non-action by the state. Economic, social and cultural rights are provided for in articles 16 to 23. The principle of solidarity is at the heart of these rights, with the requirement to protect the weakest or neediest social classes or groups. This group of rights demands state action to their exercise rights.

One of the most important political rights recognized in UDHR was the right of defence<sup>8</sup>. The right of defence has numerous consequences and wide application, not only in the judicial

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<sup>6</sup>Mourgeon, J. *Les droits de l'homme*, p. 46: "Révéléateur est le fait que les récentes déclarations de droits, internes ou internationales, ne visent pas l'homme dans son essence et sa totalité, mais des catégories d'êtres humains: la femme, l'enfant, l'étranger, le réfugié, l'apatride, le travailleur, le chômeur, le croyant, l'objecteur de conscience, l'étudiant, le militaire, l'agent public, le contribuable, le consommateur, le vieillard...".

<sup>7</sup> "Preamble: Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, Now, therefore, The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction". Source: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>8</sup> "Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. 2. No one shall be held guilty of any penal offence on account of

sphere but also in the administrative one. It is important to mention that exercising many other rights depends on the ensuring of that one, such as a fair trial and the prohibition of torture and cruel, inhuman, and degrading treatment. Thus, in a juridical point-of-view, the right of defence consists of using all the legally provided tools, in all jurisdictional degrees, with the real possibility of convincing the judge. This right has even greater importance in the criminal sphere, considering that if convicted, the individual may lose their freedom or life (if there is a death penalty).

The Universal Declaration of Human Rights, as previously stated, does not have a legally binding character, which is why the rights it enshrined were effectively made mandatory in 1966, with the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights<sup>9</sup>.

The International Covenant on Civil and Political Rights organised the civil and political rights. The fifty-three articles and the preamble enshrine a wide range of rights whose observance by member states is mandatory and binding. The binding effect arises from creating a supervisory body to verify violations of the rights therein: the Human Rights Committee. Its main objective is to monitor and promote civil and political rights, suggesting to member states mechanisms for promoting, respecting, and implementing these rights.

The right of defence and its consequences are provided in articles 9 to 15 of the International Covenant on Civil and Political Rights. This lists a provision similar to the Universal Declaration of Human Rights. The difference lies in the fact that in the UDHR the forecast is more general, while in the ICCPR the law is more detailed, so the application of the latter becomes safer. In addition, inspection becomes easier to be carried out because the detailed forecast brings precisely what the member state must ensure to individuals.

According to the provision of the ICCPR, the right of defence is more linked to the criminal sphere. This does not mean that right should not be ensured in other spheres, such as civil and administrative, but it is indisputable that the consequences of the offence to the right of defence in the criminal sphere can be disastrous. The freedom of the individual is discussed

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any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed. Source: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>9</sup> Franco Filho, G. de S. *Declaração Universal dos Direitos Humanos de 1948*: “Declaração não obrigatória, de valor estritamente moral, típico direito de soft law, como referido, os direitos que consagrou foram tornados efetivamente obrigatórios a partir de 1966, com os Pactos de Direitos Cívicos e Políticos e de Direitos Econômicos, Sociais e Culturais, que, ao lado das convenções sobre direito das crianças, refugiados, igualdade da mulher, proteção do migrante, eliminação de discriminação racial, dentre outras, formam o sistema internacional de proteção dos direitos humanos, dando desenvolvimento ao Direito Internacional dos Direitos Humanos.”

in the criminal sphere; in some countries, even life (death penalty), so it is essential to protect the right of defence, as the consequences can be harmful.

The reference to courts is broad, contemplating the principle of access to jurisdiction<sup>10</sup>. Not only courts of common justice (civil and criminal) but also specialized justice. Regarding the right to liberty, the ICCPR prohibits arbitrary arrest, detention and exile, guaranteeing everyone a fair and public hearing by an independent and impartial court. This provision should be interpreted more broadly, not just in a court of criminal jurisdiction, but for all matters, covering the right to see the sentence carried out and the inherent remedies, maintaining the double degree of jurisdiction.

The ICCPR guarantees the presumption of innocence within the importance of access to justice. To be accused is not to be guilty<sup>11</sup>. The person must be presumed innocent and guaranteed public trial with the full guarantee of the due process of law. Likewise, respect for the principles of precedence and non-retroactivity of the law is maintained, enshrining the principles *in dubio pro reo* and *nulla poena sine culpa*.

The availability or absence of legal assistance often determines whether a person can access the relevant proceedings or participate in them in a meaningful way. Article 14 explicitly addresses the guarantee of legal assistance in criminal proceedings in paragraph 3 (d). States

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<sup>10</sup> “The notion of a “tribunal” in article 14, paragraph 1 designates a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature. Article 14, paragraph 1, second sentence, guarantees access to such tribunals to all who have criminal charges brought against them. This right cannot be limited, and any criminal conviction by a body not constituting a tribunal is incompatible with this provision. Similarly, whenever rights and obligations in a suit at law are determined, this must be done at least at one stage of the proceedings by a tribunal within the meaning of this sentence. The failure of a State party to establish a competent tribunal to determine such rights and obligations or to allow access to such a tribunal in specific cases would amount to a violation of article 14 if such limitations are not based on domestic legislation, are not necessary to pursue legitimate aims such as the proper administration of justice, or are based on exceptions from jurisdiction deriving from international law such, for example, as immunities, or if the access left to an individual would be limited to an extent that would undermine the very essence of the right.”. Source: <http://hrlibrary.umn.edu/gencomm/hrcom32.html>

<sup>11</sup> “According to article 14, paragraph 2 everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. 56 Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage undermining the presumption of innocence. Furthermore, the length of pre-trial detention should never be taken as an indication of guilt and its degree. 57 The denial of bail 58 or findings of liability in civil proceedings 59 do not affect the presumption of innocence.”. Source: <http://hrlibrary.umn.edu/gencomm/hrcom32.html>

are encouraged to provide free legal aid in other cases for individuals who do not have sufficient means to pay for it.

## 2. The right to defence in Brazil

Brazil actively participated in elaborating the Universal Declaration of Human Rights. Therefore, domestic legislation, except in the dictatorial period between the 60s and the end of the 80s, was prepared strictly within the precepts listed in the Declaration<sup>12</sup>. Brazilian legislation, in some matters, grants more rights than those listed in the UDHR. One example is the double degree of jurisdiction, that is the right of the individual to have the decision reviewed by another court.

In the year of the creation of the International Covenant on Civil and Political Rights (1966), Brazil was part of a military dictatorship after a coup that took place in 1964 with the support of the mainstream media, politicians, and businesspeople. Thus, the ICCPR was only internalized to domestic legislation by Decree No. 592, July 6, 1992<sup>13</sup>. It took almost 30 years for ICCPR to be recognised and its observance mandatory. The Covenant is an internal rule with a supralegal hierarchy, which is directly binding on national courts<sup>14</sup>.

The Federal Constitution of 1988 is considered a milestone in favour of human rights and the definitive internalisation of international treaties. Article 1, in an unprecedented and innovative way, lists citizenship and human dignity as primordial values and foundations of the Federative Republic of Brazil<sup>15</sup>. Based on the supreme law of the country, a review of

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<sup>12</sup> Franco Filho, G. de S. *Declaração Universal dos Direitos Humanos de 1948*: “Três nomes devem ser destacados no contexto histórico da Declaração: Eleanor Roosevelt, René Cassin e Austregésilo de Athayde. Eleanor, viúva do Presidente Roosevelt, foi a Presidente da Comissão responsável pela redação do texto final. René Cassin foi o principal redator da DUDH e recebeu o Prêmio Nobel da Paz de 1968. Austregésilo de Athayde foi o delegado brasileiro na Assembleia Geral da ONU e considerado o mais ativo participante da comissão que redigiu a Declaração.”

<sup>13</sup> “DECRETO Nº 592, DE 6 DE JULHO DE 1992. Art. 1º O Pacto Internacional sobre Direitos Civis e Políticos, apenso por cópia ao presente Decreto, será executado e cumprido tão inteiramente como nele se contém. Art. 2º Este Decreto entra em vigor na data de sua publicação.”. Source: [http://www.planalto.gov.br/ccivil\\_03/decreto/1990-1994/D0592.htm](http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D0592.htm)

<sup>14</sup> Borges, C. B. de P. *A atuação do Brasil no Conselho de Direitos Humanos da ONU à luz do princípio da prevalência dos direitos humanos nas relações internacionais*: “Nesse sentido, o Brasil, além de participar ativamente da construção normativa dos tratados gerais e especiais de direitos humanos, promoveu o reordenamento em sua normativa interna, buscando harmonizá-la com as disposições internacionais, principalmente após o processo de redemocratização. E o marco jurídico de destaque é a Constituição Federal de 1988. Nesta, diversos dispositivos promovem efetiva constitucionalização dos direitos humanos consignados nos tratados internacionais.”.

<sup>15</sup> “Art. 1º A República Federativa do Brasil, formada pela união indissolúvel dos Estados e Municípios e do Distrito Federal, constitui-se em Estado Democrático de Direito e tem como fundamentos: I - a soberania; II - a cidadania; III - a dignidade da pessoa humana; IV - os valores sociais do trabalho e da livre iniciativa; V - o pluralismo político. Parágrafo único. Todo o poder emana do povo, que o exerce por meio de representantes

previous laws was carried out to assess their compatibility with the Constitution and international treaties.

Seven constitutions have already governed Brazil, so the right of defence has had different approaches during each one's period in force. The current legal system is of interest to the study developed in this work, which is why the analysis of the right of defence will be carried out only with a focus on the Federal Constitution of 1988. This Constitution was promulgated after twenty-one years of military rule, which is why it is known as the Citizen's Constitution. It is, without a doubt, the one that most lists the rights of individuals, also recognising them in their specificities and needs. There is protection for women, children, the elderly and indigenous people.

The right to defence has different and important dimensions in Brazilian law. Some dimensions are material, while others are procedural. The most direct provision about the right to defence in the Federal Constitution of 1988 is in article 5. This article lists in its seventy-nine items a series of human rights provided or not in the international legislation. It is important to mention that it is not only in this article that human rights are listed. In item LV, it is provided that the litigants, in the judicial or administrative process, and the accused in general are assured the adversary system and the full defence, with the means and resources inherent to it<sup>16</sup>.

The forecast is quite broad, but from it, the two fundamental principles of the right to defence are drawn: the contradictory and the full defence. Traditional doctrine placed the adversarial principle as a guarantee of participation in the process as a means of allowing the parties to contribute to the formation of the judge's conviction and, thus, to the desired final provision. Modern doctrine, especially from the Italian Elio Fazzalari<sup>17</sup>, defends a new formulation of the institute to include the principle of *par conditio* or parity of arms. The objective is the search for effective procedural equality. The full defence is linked to the means and resources available in the law to influence the judge, including the technical defence. Both are intimately linked and connected all the time. The principles apply to all branches of law but are especially important in the criminal field.

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eleitos ou diretamente, nos termos desta Constituição.”. Source: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)

<sup>16</sup> “Art. 5º Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade, nos termos seguintes: LV - aos litigantes, em processo judicial ou administrativo, e aos acusados em geral são assegurados o contraditório e ampla defesa, com os meios e recursos a ela inerentes;”. Source: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)

<sup>17</sup> Fazzalari, E. (2006). p. 119-120: “A estrutura dialética do procedimento, isto é, justamente, o contraditório.”

Another dimension of the right to defence is the principle of due process of law. It provides that individuals have rights to a process that follows previously existing rights and guarantees. This principle is provided for in article 5, LIV of the Federal Constitution of 1988, which ensures that no one will be deprived of liberty or property without due process of law<sup>18</sup>.

It is essential to mention the principle of the natural judge, which originates in Anglo-Saxon Law. It was initially built on the prohibition of the court of exception, that is, the prohibition of instituting and constituting an organ of the Judiciary exclusively on a case-by-case basis for the process and judgment of a particular criminal offence. The Brazilian Constitution, also in its article 5, protects individuals in the sense that they must be tried by a court that pre-exists to the occurrence of the crime, saying that there will be no judgment or court of exception<sup>19</sup>.

Closely connected to the principle of legality (*nullum crimen sine lege*), the principle of the natural judge required that only a body previously constituted for the prosecution of crimes, also previously defined, that is, before they were committed, would be competent for the respective trial<sup>20</sup>. It is worth noting that in many ordinances, especially in Europe, it is impossible to go very far in defining the bodies of the jurisdiction. Usually, the determination of jurisdiction is left to the legislator. The guarantee is the legal judge, as defined by law. In Brazil, it was decided to provide for numerous situations in the Constitution itself. It is not difficult to understand this choice, as the Constitution was drawn up in the period of redemocratisation after the dictatorship. For this reason, the constituent power opted, especially regarding guarantees in criminal proceedings, to list them literally in the Citizen's Constitution.

The right to silence, also one of the dimensions of the right to defence, is the guarantee against self-incrimination. Not only does it allow the accused or imprisoned person to remain

<sup>18</sup> “Art. 5º Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade, nos termos seguintes: LIV - ninguém será privado da liberdade ou de seus bens sem o devido processo legal;”. Source: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)

<sup>19</sup> “Art. 5º Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade, nos termos seguintes: XXXVII - não haverá júízo ou tribunal de exceção”. Source: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)

<sup>20</sup> Pacelli, E. (2021). *Direito Processual Penal*. p. 68: “O Direito brasileiro, adotando o juiz natural em suas duas vertentes fundamentais, a da vedação de tribunal de exceção e a do juiz cuja competência seja definida anteriormente à prática do fato, reconhece como juiz natural o órgão do Poder Judiciário cuja competência, previamente estabelecida, derive de fontes constitucionais. E a razão de tal exigência assenta-se na configuração do nosso modelo constitucional republicano, em que as funções do Poder Público e, particularmente, do Judiciário, têm distribuição extensa e minudente.”



silent throughout the investigation and even in court, but it also prevents them from being compelled to produce or contribute to the formation of evidence contrary to their interest. The right to silence derives from the constitutional rule provided for in art. 5, LXIII, of the CF, and implied the immediate revocation (implicit, due to incompatibility) of provisions from the Brazilian Criminal Procedure Code because it was prior to the Constitution.

Interrogation, in Brazilian law, understood essentially as a means of defence, assures the accused one the right to be interviewed by one's defender before the aforementioned procedural act; the right to remain silent and not to answer questions addressed to them (*Nemo Tenetur se Detegere*), without any assessment being able to be extracted from the silence to the detriment of the defence<sup>21</sup>.

Technical defence involves assisting a person with theoretical knowledge of the law. Experts carry out the technical defence in Law. The justification of the technical defence stems from an *esigenza di equilibrio funzionale*<sup>22</sup> between defence and prosecution and also from a correct presumption of hyposufficiency of the taxable person that he does not have the necessary and sufficient knowledge to resist the state's claim, on equal technical conditions with the accuser. This hyposufficiency leads the accused to a situation of inferiority before the power of state authority embodied by the prosecutor, police officer or even judge.

For Foschini<sup>23</sup>, technical defence is a requirement of society because the accused may, at their discretion, defend oneself little or not at all, but this does not exclude the interest of the community from a negative verification if the crime does not constitute a source of criminal liability. The technical defence is considered unavailable because, in addition to being a guarantee of the taxable person, there is a collective interest in correctly verifying the fact. It is still a matter of the true condition of parity of arms: it is essential for the adversary's concrete action.

According to Lopes Júnior<sup>24</sup>, the state must establish a system of "Public Defense Service", as well structured as the Public Ministry (Prosecutor), to promote the defence of poor people who cannot constitute a defender. Just as the state organises a prosecution service, it has this

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<sup>21</sup> Gudjonsson. (2003). p. 619: "The term 'investigative interviewing' is now commonly used in England to refer to both suspect and witness interviews. The term accompanied the introduction of new police training manuals and national training courses on interviewing, where there was a general move away from interviewing suspects primarily for obtaining a confession to obtaining complete and reliable information, using techniques based on the cognitive interview approach (Fisher & Geiselman, 1992). This represents a more ethical and scientific approach to interviewing and should result in fewer wrongful convictions in the future."

<sup>22</sup> Foschini, G. *L'Imputato*. Milano, Dott. A. Giuffrè, 1956. p. 26.

<sup>23</sup> Foschini, G. *L'Imputato*, cit., p. 27 e s.

<sup>24</sup> Lopes Júnior, A. (2021). *Direito Processual Penal*. p. 149.

duty to create a public defence service because protecting the accused's innocence is an individual and social interest.

In this sense, the Constitution guarantees, in art. 5, LXXIV, that the state will provide full and free legal assistance to those who prove insufficient resources. To effect this guarantee, the Brazilian system has a respected institution: the Public Defender's Office - provided for in art. 134 of the CB as an institution essential to the jurisdictional function of the state, incumbent upon it with legal guidance and defence, at all levels, of the needy.

Finally, access to justice crowns all these guarantees from the right to defence and is one of the central elements of the democratisation process in contemporary societies. It is a way to implement human rights. It is vital to understand that access to justice is the possibility of seeking rights before a court and guaranteeing rights without the need for legal action. In fact, in many cases, this is the best way to obtain the rights, as it is faster and better serves the interests of those involved.

The access to justice movement is classically defined by Cappelletti and Garth (1988)<sup>25</sup> and composed of three waves: the first has as its main characteristic the extension of the offer of legal services to the poorest sectors of the population; the second deals with the incorporation of collective and diffuse interests as objects of legal protection; and the third includes informal justice, the expansion of conflict mediation and the simplification of the law.

The right of access to justice does not just mean resorting to the Judiciary whenever a right is threatened. This right involves several state and non-state institutions. As stated in the constitutional text, some mechanisms and institutions can act in searching for peaceful solutions to conflicts and recognising rights.

The effective implementation of rights is not an immediate consequence of the inclusion of the right of access to justice in the Constitution and legal texts. Although legality causes impacts on society, its extension and depth depend fundamentally on variables related to objective situations and the degree of commitment of the members of the institutions responsible for its effectiveness.

In this scenario, the Public Defender's Office emerges as a tool of access to justice in Brazil's Federal Constitution of 1988. Its objective is to ensure that people with no financial conditions to hire a lawyer can claim their rights, in or out of court, individually or collectively. Besides, it is a permanent institution, essential to the jurisdictional function of

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<sup>25</sup> Mauro Cappelletti, Bryant Garth, (1988). *Acesso à justiça*.

the state, being responsible, as an expression and instrument of the democratic regime, for the legal guidance and the promotion of human rights in Brazil<sup>26</sup>.

### 3. The CCPR monitoring reports and the right to defence in Brazil

The Human Rights Committee is linked to the United Nations and is responsible for monitoring the implementation of the International Covenant on Civil and Political Rights. The monitoring body is comprised in article 28<sup>27</sup> and its components must have high moral character and competence in the field of human rights. It comprises eighteen independent members from the countries that signed the Covenant, who analyse reports sent by member states<sup>28</sup>. Committee members follow their own guidance, gained through years of study and experience in the field of human rights, not the guidance of the member state to which they belong. Furthermore, to ensure the impartiality of the analysis, the experts do not analyse the reports of the countries where they are from, nor do they engage in discussions in which their countries of origin are accused of disobeying protocol provisions<sup>29</sup>.

The Committee meets thrice a year, twice in Geneva (United Nations Office) and once in New York (United Nations Headquarters). The meetings last three weeks. One week before,

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<sup>26</sup> Art. 134. A Defensoria Pública é instituição permanente, essencial à função jurisdicional do Estado, incumbendo-lhe, como expressão e instrumento do regime democrático, fundamentalmente, a orientação jurídica, a promoção dos direitos humanos e a defesa, em todos os graus, judicial e extrajudicial, dos direitos individuais e coletivos, de forma integral e gratuita, aos necessitados, na forma do inciso LXXIV do art. 5º desta Constituição Federal. (Redação dada pela Emenda Constitucional nº 80, de 2014)

<sup>27</sup> “Article 28 1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided. 2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience. 3. The members of the Committee shall be elected and shall serve in their personal capacity.”. Source: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>28</sup> “The Human Rights Committee is the body of 18 independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties. All States parties are obliged to submit regular reports to the Committee on how civil and political rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests. In accordance with the Predictable Review Cycle, the Committee requests the submission of the report based on an eight-year calendar. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of ‘concluding observations’.”. Source: <https://www.ohchr.org/en/treaty-bodies/ccpr/introduction-committee>

<sup>29</sup> “Current members: Ms. Tania María ABDO ROCHOLL, Ms. Wafaa Ashraf Moharram BASSIM, Mr. Christopher Arif BULKAN(Vice-Chair), Mr. Mahjoub EL HAIBA, Mr. Shuichi FURUYA (Vice-Chair), Mr. Carlos GÓMEZ MARTÍNEZ, Ms. Marcia V.J. KRAN, Mr. Duncan MUHUMUZA LAKI (Rapporteur), Ms. Photini PAZARTZIS(Chair), Mr. Hernán QUEZADA CABRERA, Ms. Vasilka SANCIN (Vice-Chair), Mr. José Manuel SANTOS PAIS, Mr. Changrok SOH, Ms. Kobauyah TCHAMDJA KPATCHA, Ms. Hélène TIGROUDJA, Mr. Imeru Tamerat YIGEZU, Mr. Gentian ZYBERI.”. Source: <https://www.ohchr.org/en/node/33623/membership>

the working groups meet each other to discuss serious situations. The Human Rights Committee makes every effort to decide cases by consensus. When this is impossible, which is rare, there is a vote, and the majority's understanding prevails.

The Committee is responsible for overseeing the implementation of the ICCPR among the countries that have signed it<sup>30</sup>. The Committee may receive individual claims only if the state party has signed the Optional Protocol<sup>31</sup>. A recent example of the role of the Human Rights Committee in individual claims has occurred in Brazil. The Committee found that the investigation and conviction of former President Luis Inácio Lula da Silva have violated his right to be tried by an impartial court, his right to privacy and his political rights. It is understood, therefore, that the decision of the Brazilian justice, at the time, that had prohibited Lula from running in the elections was arbitrary<sup>32</sup>.

States parties must submit reports within one year of ratification of the ICCPR. After that, reports must be sent every five years. In exceptional situations, reports may be required in an earlier period, when the country is facing a deep crisis, constant human rights violations, and civil wars, as happened in the former Yugoslavia and Rwanda.

As mentioned, Brazil ratified the International Covenant on Civil and Political Rights in 1992, and the first report, which should have been sent a year later, was sent only in 1996. The analysis of the report by the Committee (Concluding Observations of the Human Rights

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<sup>30</sup> “The Human Rights Committee’s task is to supervise and monitor the implementation of Covenant obligations by States parties. One of the great strengths of the Committee is the moral authority it derives from the fact that its membership represents all parts of the world. Accordingly, far from representing a single geographical or national perspective, the Committee speaks with a global voice. In carrying out its monitoring and supervisory functions, the Committee has four major responsibilities. First, the Committee receives and examines reports from the States parties on the steps they have taken to give effect to the rights spelled out in the Covenant. Second, the Committee elaborates so-called general comments, which are designed to assist States parties to give effect to the provisions of the Covenant by providing greater detail regarding the substantive and procedural obligations of States parties. Third, the Committee receives and considers individual complaints, also known as “communications”, under the Optional Protocol made by individuals who claim violations of their Covenant rights by a State party. Fourth, the Committee has jurisdiction to consider certain complaints made by a State party that another State party is not abiding by the obligations assumed under the Covenant.”. Source: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet15rev.1en.pdf>

<sup>31</sup> “Article 1: A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.”. Source: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political>

<sup>32</sup> “The Committee issued its findings after considering a complaint filed by Luiz Inácio Lula da Silva, the former President of Brazil from 2003 to 2010, regarding how he was brought to the trial in the country’s biggest corruption investigation. ‘While States have a duty to investigate and prosecute acts of corruption and to keep the population informed, especially when a former head of State is concerned, such actions must be conducted fairly and respect due process guarantees,’ said Committee member Arif Bulkan.”. Source: <https://www.ohchr.org/en/press-releases/2022/04/brazil-criminal-proceedings-against-former-president-lula-da-silva-violated>

Committee) highlighted that the most significant difficulty in applying the ICCPR is social inequality.

Regarding the right to defence, the Committee expressed great concern with summary and arbitrary executions committed by security forces and death squads. These executions mainly involve vulnerable groups such as children, landless peasants, indigenous people and trade-union leaders. The Committee also pointed out that in addition to executions, torture, death threats, arbitrary and illegal arrests, violence against detainees and prisoners occurs. The big issue is that such facts are not investigated and those responsible are not punished. It also highlights that those members of the security forces are major human rights violators, but even so, they enjoy great impunity, which is incompatible with the ICCPR. The conclusive report also points out concern about threats against members of the Judiciary, which compromises their impartiality and independence. This aspect of the right to defence is an essential point in article 14 of the Covenant<sup>33</sup>.

The Committee suggests that Brazil take immediate and urgent measures to prevent and combat human rights violations committed by members of the armed forces, particularly regarding summary and arbitrary executions, torture, arbitrary use of force and illegal arrests. The Committee suggests as necessary measures the education in rights and the sensitisation of the official forces, especially the military police. Campaigns and programs should also be developed, and human rights education implemented in courses. The Committee also suggested that means be developed to improve the effectiveness of the processes. The delay of cases under the analysis of justice is a situation that affects those who need it. Therefore, thinking of new ways to simplify access to justice is essential. Regarding the prison issue, Brazil needs ways of commuting the custodial sentences for restrictive rights ones and improving the prison structure.

The second periodic report was sent in 2004<sup>34</sup>, almost ten years after the first one. This fact did not go unnoticed by the Human Rights Committee, which regretted the situation. Regarding the defence, the Committee noted concerns about the excessive use of force by state officials, torture as a means of obtaining a confession from suspects, the inappropriate treatment of those in police custody and the unofficial execution of suspects. Thus, the

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<sup>33</sup> CCPR/C/79/Add. 66:  
[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f79%2fAdd.66&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f79%2fAdd.66&Lang=en)

<sup>34</sup> CCPR/C/BR/CO/2:  
[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBRA%2fCO%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBRA%2fCO%2f2&Lang=en)

Committee stressed that such human rights violations by state security forces should be investigated appropriately. Victims are also not compensated. All this creates a climate of impunity. The Committee urges that appropriate measures should be taken to eradicate extrajudicial killings, torture, other forms of degrading treatment and abuses committed by security forces. Furthermore, those alleged human rights violations must be seriously investigated. Independent bodies not linked to the security forces must carry out these investigations. Once guilt is proven, state agents must be exemplarily punished.

The Committee also expressed concern about prison overcrowding and subhuman conditions in federal and state prisons. In addition, there is the long period of detention without the end of the trial and the arbitrary confinement of prisoners. The Committee suggested that Brazil adopt measures to improve the general situation of persons deprived of their liberty. Furthermore, it suggested that people should not be kept in police stations, which is still a prevalent practice.

Brazil presented the third periodic report in 2020 with at least ten years of delay, as it should have been presented in 2009, five years after the last report. To date, there has been no analysis by the Human Rights Committee. Regarding the right to defence and its dimensions, Brazil accepts the existence of death squads involved in summary executions, in which the police participate. It emphasizes that the confrontation is being carried out to face these severe human rights violations. Brazil highlights several operations that would have dismantled the performance of death squads<sup>35</sup>.

According to information from Brazil, deaths in police actions do not have exact data. In order to consolidate the numbers, some state bodies were created to unify information. Also noteworthy was the enactment of laws to regulate the use by military police of instruments with less harmful potential. Human rights education is also an adopted strategy, as agents

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<sup>35</sup> “In order to fight against the actions of those groups, several operations were initiated by the Federal Police. Among them, the Sixth Commandment Operation (Goiás, 2011 and 2016) resulted in 19 military police officers arrests, in addition to the execution of search and seizure warrants for participation in murders in death squads in 2011. It also resulted in 140 federal police officers serving three temporary arrest warrants, 19 search and seizure warrants, and 17 bench warrants against persons investigated in the second phase of the operations in 2016. Operation Squadre (Paraíba, 2012) resulted in the execution of 45 arrest warrants, 11 bench warrants, and 19 search and seizure warrants, amounting to 75 legal actions aiming at dismantling militias composed of members of local and private police forces that, among other crimes, formed a death squad. Operation Hecatomb (Rio Grande do Norte, 2013) dismantled a death squad composed of members of police forces and resulted in the execution of 21 arrest warrants, 9 bench warrants, and 32 search and seizure warrants. Evidence of the death squad’s involvement in 22 completed murders and 5 other attempted murders were found during the investigation.”. Source: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBRA%2f3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBRA%2f3&Lang=en)

take courses in this area. Brazil understands that training public security agents in human rights is a way to reduce violations of these rights. It highlights that civil police, military police, military firefighters and municipal guards have been participating in courses.

Regarding alternative measures to imprisonment, Brazil highlights the implementation of custody hearings. When the person is arrested, a judge who analyzes the legality of the prison must be heard within a maximum period of twenty-four hours and may grant freedom with the establishment of precautionary measures other than imprisonment. Brazil also highlights the creation of a system to consolidate information on the prison situation in the country and try to control over-incarceration.

#### **4. The Universal Periodic Review (UPR) reports and the right to defence in Brazil**

The Universal Periodic Review (UPR) is a project created by the United Nations to monitor human rights internationally. The UPR is a unique process and innovative mechanism established by the Human Rights Council<sup>36</sup> in 2006 to protect and promote human rights within the United Nations. This mechanism involves a periodic review carried out by the countries themselves on the human rights situation of all 193 Member States of the United Nations<sup>37</sup>.

The UPR is based on the universality of coverage and equal treatment for all countries. The mechanism assesses the fulfilment of human rights obligations by each State, where each country can declare what actions are taken to develop human rights in their territory. In addition, each State can recommend others to overcome challenges in the enjoyment of human rights. Besides, the UPR can provide countries with "technical assistance and increase their capacity to effectively deal with human rights challenges and share best practices in the field of human rights among States and other stakeholders"<sup>38</sup>.

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<sup>36</sup> "The Human Rights Council is an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them. It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year (...) the Council is made up of 47 United Nations Member States which are elected by the UN General Assembly". Source: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>

<sup>37</sup> "The Universal Periodic Review (UPR) is a unique process which involves a periodic review of the human rights records of all 193 UN Member States. The UPR is a significant innovation of the Human Rights Council which is based on equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.". Source: <https://www.ohchr.org/en/hr-bodies/upr/basic-facts>

<sup>38</sup> Source: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

The UPR provides for the advancement of the promotion of Human Rights in each State, since "the UPR is not exclusively an intergovernmental process, but based on reliable information from different sources"<sup>39</sup>. Thus, there is no other mechanism of this nature in the international system of rights.

Therefore, the Human Rights Council outlined the objectives that the UPR should pursue to expedite, support, and expand the promotion and protection of the human rights situation in all countries. Consequently, it influences the lives of people all over the world. Furthermore, the mechanism must follow the principles of universality, interdependence, indivisibility, and interrelationship of all human rights. It is worth noting that the UPR process allows for a broader approach, as it involves reports prepared by the OHCHR based on the compilation of United Nations documentation and a summary of stakeholder reports. Thus, enhancing the State's capacity, sharing good practices, and fostering cooperation between States.

Brazil praises the importance of the Universal Periodic Review and participated in three cycles. Brazil was first reviewed by the UPR working group on April 11, 2008, during the first UPR session. Later, the second cycle occurred on May 25, 2012, in UPR's 13th session. Moreover, the last and third cycle happened on May 5, 2017, in the 27th session<sup>40</sup>.

Brazil participated in the first cycle in 2008, and most of the recommendations were directed at women's rights. Some state parties sought information about effective policies to reduce gender inequality and domestic violence. As for the right to defence and its dimensions, Azerbaijan sought more information about the relevance of reforming the criminal justice system<sup>41</sup>. Also, Ghana recommended the continued commitment of Brazil to resolving the

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<sup>39</sup> E. D. Redondo, 'The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session', *Chinese Journal of International Law* 7, no. 3 (1 October 2008), 725.

<sup>40</sup> "Instrumento que objetiva melhorar a situação dos direitos humanos nos Estados Membros da Organização das Nações Unidas (ONU). O Governo brasileiro considera a adoção do mecanismo uma conquista histórica para a proteção dos direitos fundamentais por possibilitar, pela primeira vez na esfera internacional, que todos os Estados Membros da ONU sejam examinados, a cada quatro anos e meio, quanto à situação dos direitos humanos no plano interno. O Brasil já passou por três ciclos de RPU. No último deles recebeu 246 recomendações das quais acatou 242 e tomou nota de quatro." Source: <https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/relatorios-internacionais-1/revisao-periodica-universal>

<sup>41</sup> "28. Azerbaijan welcomed the 2005 constitutional amendment and noted the adoption of a National Human Rights Programme. It appreciated the involvement of civil society in that process and the good practice in organizing National Human Rights Councils. Azerbaijan also commended on the steps made by the Government towards ensuring the rights of women and eliminating gender inequality and domestic violence. The delegation asked Brazil to elaborate more on the effectiveness and the obstacles faced during the creation of the Special Secretariats in various fields of human rights. Azerbaijan also enquired about steps to be taken to accelerate the reduction of gender inequality. Noting with appreciation the interaction of Brazil with special procedures mandates holders; Azerbaijan requested further information on the relevance of criminal justice systems reforms." Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/68/PDF/G0813668.pdf?OpenElement>



issue of abuse of power and excessive use of force<sup>42</sup>. The Netherlands praised the Brazilian report but demanded specific and concrete measures intending to reduce the occurrence of torture<sup>43</sup>. The United States of America, Russia Federation, Germany, and United Kingdom asked information about the extrajudicial killings by the security forces and torture. Indonesia, besides that, asked about which measures had been undertaken to combat police violence, especially in favelas.

“In response to Azerbaijan, the Republic of Korea and Norway regarding legal and penal affairs, Brazil agreed that it had witnessed a large increase in the prison population. However, following a new law on criminal procedure adopted in 2007 the increase of the prison population has been reduced by half. A new reform had also been approved this year to ensure guarantees for defence.”<sup>44</sup>.

The second cycle of the UPR took place in 2012, and some amendments regarding the right to defence were made. Cape Verde suggested that policies regarding access to justice and combating impunity, extrajudicial executions and torture in detention should be implemented in Brazil<sup>45</sup>. Denmark and Spain also asked for measures to reduce the extrajudicial executions by the police. Republic of Korea and Holy See suggested that Brazil should take vigorous actions to counter death squads. Uzbekistan and Indonesia recommended practical measures to combat and prevent torture. Spain also suggested strengthening the Judiciary by combating slowness and corruption. The Netherlands recommended to “Increase the total number of Public Defenders and to secure a constant presence of Public Defenders in all detention institutions.”<sup>46</sup>. Also, Canada suggested to Brazil to ensure the presence of public defenders in all detention locations to enhance the guarantee of due process of law. Germany recommended creating a solid framework for an impartial investigation of police killings.

The third cycle of the UPR took place in 2012, and Brazil received 246 recommendations, of which 242 were accepted, and four were noted. On the right to defence and its dimensions,

<sup>42</sup> “32. Finally, Ghana wished to recommend the continued commitment by the Government to the programme of land reforms and to resolving the issue of abuse of power and excessive use of force.2. Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/68/PDF/G0813668.pdf?OpenElement>

<sup>43</sup> “35. The Netherlands appreciated Brazil’s initiative to bring serious human rights abuses under Federal Law and requested an update on the initiative’s progress. The Netherlands referred to the national report and reiterated the challenges Brazil faces in the eradication of torture. It enquired about practical measures that have been taken in this regard and whether a witness protection programme has been considered.”. Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/68/PDF/G0813668.pdf?OpenElement>

<sup>44</sup> Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/68/PDF/G0813668.pdf?OpenElement>

<sup>45</sup> “Pay particular attention to seek even more effective results in the implementation of policies addressing the following issues: protection of the rights and promotion of the socio-economic situation of indigenous peoples and Afro-descendent Quilombo communities; access to justice and combating impunity; extra-judicial executions, torture in detention and; protection of human rights defenders (Cape Verde)”. Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/151/15/PDF/G1215115.pdf?OpenElement>

<sup>46</sup> Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/151/15/PDF/G1215115.pdf?OpenElement>

the United Kingdom of Great Britain and Northern Ireland recommended that Brazil take measures to reduce deaths from police action by 10 per cent over the universal periodic review cycle. Czechia recommended “Strengthen prevention and effectiveness of investigation of cases of police violence through improved supervision and human rights training of law enforcement personnel, namely the military police, and ensure accountability for any acts of police violence.”<sup>47</sup>. France suggested that acts of violence against the population committed by members of security forces must be punished to combat the impunity. Venezuela also asked Brazil to refrain from resorting to violence and extrajudicial executions by the security forces, sometimes named the “war on drugs”. Germany recommended “End extrajudicial killings and associated impunity, including by passing draft bill No. 4471/2012, by abolishing the classification 'resistance to arrest followed by death' and by ensuring that all deaths following police interventions are impartially investigated.”<sup>48</sup>. Algeria and Georgia suggested that Brazil take all necessary measures to combat torture and ill-treatment. Serbia and Germany recommended expanding the custody hearings and making it feasible before all State courts. Haiti asked Brazil to accelerate the organisation and implementation of a solid public defence system in all states, in agreement with recommendations from the second cycle. United States of America suggested Brazil “Improve judicial processes to minimize the length of pre-trial detention and speed up trials and consider alternatives to detention to address prison overcrowding.”<sup>49</sup>. Slovenia recommended that Brazil plan and take concrete measures to reduce the pre-trial time and the overall number of prisoners awaiting trial.

The analysis of the recommendations in the three cycles in which Brazil participated shows it received a total of 443 recommendations, where five recommendations were noted, and five were partially accepted. It is possible to note that little progress has been made concerning the right to defence and its dimensions. Although the country demonstrates that measures have been taken, especially in the legal sphere, it is known that this is not enough if the legislation is not applied and enforced. It is interesting to notice that from the second cycle onwards, there are mentions of the Public Defender's Office, which demonstrates that the institution is known among the participating countries and recognised as an instrument for realising the rights to defence.

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<sup>47</sup> Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/194/15/PDF/G1719415.pdf?OpenElement>

<sup>48</sup> Idem

<sup>49</sup> Idem

## CHAPTER II - THE PUBLIC DEFENDER'S OFFICE IN BRAZIL

*“Los nadies: los ningunos, los ninguneados,  
 corriendo la liebre, muriendo la vida, jodidos, rejodidos:  
 Que no son, aunque sean.  
 Que no hablan idiomas, sino dialectos.  
 Que no hacen arte, sino artesanía.  
 Que no practican cultura, sino folklore.  
 Que no son seres humanos, sino recursos humanos.  
 Que no tienen cara, sino brazos.  
 Que no tienen nombre, sino número.  
 Que no figuran en la historia universal,  
 sino en la crónica roja de la prensa local.  
 Los nadies, que cuestan menos que la bala que los mata.”*

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### 1. What is the Public Defender's Office in Brazil?

According to the definition by article 134 of the Federal Constitution of 1988, the Public Defender's Office is a permanent institution essential to the jurisdictional function of the State being responsible, as an expression and instrument of the democratic regime, fundamentally, for the legal orientation, the promotion of human rights, and the defence, in all degrees, judicial and extrajudicial, of individual and collective rights, complete and free of charge, to the needy, according to item LXXIV of article 5 of the Brazilian Constitution<sup>51</sup>.

The Public Defender's Office dialogues with fundamental values that emerge from the Democratic State of Law: the promotion of access to justice; the defence of fundamental rights of process, corollary of the full defence, contradictory and due process of law; the prevalence of human rights; material equality; the defence of under-represented social groups; the defence of the person in a situation of vulnerability; the primacy of human dignity; the defence of full citizenship; the out-of-court solution of conflicts and the promotion of social peace. The Public Defender's Office directly contacts the vulnerable population, so it closely learns their wishes and needs. At the same time, the public defender must recognise that proximity to this reality does not make them the holder of the truth: more than speaking for the needy, the Public Defender's Office must allow their voices to reach those who have the power to make political decisions.

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<sup>50</sup> Galeano, E. 1989. *Los Nadies*.

<sup>51</sup> “Art. 134. A Defensoria Pública é instituição permanente, essencial à função jurisdicional do Estado, incumbendo-lhe, como expressão e instrumento do regime democrático, fundamentalmente, a orientação jurídica, a promoção dos direitos humanos e a defesa, em todos os graus, judicial e extrajudicial, dos direitos individuais e coletivos, de forma integral e gratuita, aos necessitados, na forma do inciso LXXIV do art. 5º desta Constituição Federal.” Source: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm)

There is no way to make sure that the poorest part of the population, which usually does not have the minimum legal knowledge, has their rights guaranteed other than through an institution that actively acts to achieve this objective. It is not intended here to omit the great importance of the other bodies in the effectiveness of access to justice; however, the institution has this role in a fundamental and priority way<sup>52</sup>.

It is essential to point out that the Public Defender's Office has encountered significant resistance to installing itself in the justice system and that, to a large extent, the role of public defenders was essential to include the Public Defender's Office in the Constitution<sup>53</sup>. Resistance has come from several sides. The Brazilian Bar Association (OAB) saw the creation of an institution dedicated exclusively to serving the needy as a way to lose space and customers. The Public Ministry did not see with favour that the same institutional principles, prerogatives, rights and guarantees governed another career. On this front of resistance, some prosecutors were reluctant to accept the existence of another institution of the justice system on an equal footing with the Public Ministry. This could mean a dispute over features or roles in the future.

State governments had already been using other modalities of providing legal assistance and have not seen any sense in accepting the constitutional obligation to create the Public Defender's Office. Such resistance sometimes configures a way to protect the interests of expressive legal careers within the State<sup>54</sup>. However, it stands out for defending, mainly, the autonomy of the federative entity in the formulation of its legal assistance policy, according to its available circumstances. In the view of politicians from states that already had another

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<sup>52</sup> “A igualdade democrática efetiva-se na atuação da Defensoria Pública. A assistência jurídica àqueles que não tem condições de pagar um advogado rompe as barreiras impostas pela estrutura econômica. Ou, em outras palavras, impede que a igualdade de todos perante a lei seja contaminada pelas desigualdades econômica e social. Por outro lado, a prestação de assistência jurídica integral e gratuita aos que não possuem recursos é condição básica para a solução de controvérsias de forma pacífica. Desta forma, o papel das Defensorias é absolutamente essencial para a realização de um Estado Democrático de Direito, assentado em princípios igualitários.”. Source: [https://www.anadep.org.br/wtksite/downloads/Diag\\_defensoria.pdf](https://www.anadep.org.br/wtksite/downloads/Diag_defensoria.pdf) >. Acesso em: 15 jul. 2015.

<sup>53</sup> “A previsão constitucional da instituição foi uma vitória dos defensores. Delegações de defensores e assistentes judiciários acompanharam de perto os trabalhos da ANC (Assembleia Nacional Constituinte) e ‘não se afastaram de Brasília por um só instante’ (Neder, 2008, p. 223), atuando junto aos deputados e senadores constituintes para que a Defensoria fosse inserida na nova Constituição, nos termos pretendidos pela categoria. Essa pretensão dos defensores encontrou, contudo, forte resistência de outros operadores do direito e alguns membros da Constituinte.”. Source: <https://www.scielo.br/j/op/a/rMvxvccB5ZNV6ZTNhJddDWz/?lang=pt>

<sup>54</sup> “Não há dúvida de que é dever inarredável do Estado possibilitar aos necessitados o acesso gratuito e eficiente à Justiça. Se esse serviço deve ser cometido a um órgão específico, como, por exemplo, uma Defensoria Pública, ou às Procuradorias de Estado é matéria que pertence ao particular interesse do Estado membro que, dentro de suas peculiaridades, deve equacionar e definir a questão. A experiência de muitos Estados (como por exemplo São Paulo, Alagoas, Rio Grande do Sul, etc.) tem demonstrado a perfeita harmonia no desempenho pelas Procuradorias Gerais das funções típicas de advogado do Estado e do cidadão pobre.”. Source: <http://www2.camara.leg.br>

model of legal assistance in place, creating the Public Defender's Office meant adopting a more expensive structure with a new legal bureaucracy to carry out an already existing public policy.

According to the Paris Principles, States must create institutions for protecting human rights of a public nature, competent to promote and protect human rights, provided for the Constitution or the law, acting with independence and autonomy. The Paris Principles were created in 1991 at the I International Workshop of National Institutions for the Promotion and Protection of Human Rights by UN Human Rights Council. The recommendations and conclusions drawn up at the event were approved by the UN Human Rights Council, following Resolution n° 1992/54, and by the UN General Assembly in Resolution n° 48/134 of 1993.

Following the provisions of the Paris Principles, the Brazilian Constitution mentions the Public Defender's Office as an autonomous institution<sup>55</sup>. This autonomy is functional, administrative, and budgetary or financial. Functional autonomy concerns the functions, which can be created according to the institution's interests, evaluating convenience and opportunity to best serve its beneficiaries. It should be noted that both the institution and its members have functional autonomy as a prerogative. Administrative autonomy allows the institution to organise itself in how it sees fit. The installation of new service stations and the distribution of members must be the exclusive responsibility of the institution. Finally, budgetary, or financial autonomy ensures that the Public Defender's Office has its budget and the law's initiative to request it. This guarantee allows for the distribution of resources in the most effective way. An external agent cannot demand or impose how resources will be invested<sup>56</sup>.

In Brazil, unfortunately, there is the problem of absolute poverty – absolute material deprivation, which prevents the affected people from accessing the necessary goods for subsistence. There is also, to a greater extent, relative poverty (or extreme inequity) – excessive socioeconomic differences among the social strata of the nation. Like other Latin American countries, Brazil is no exception to this rule. Society is meticulously scrutinised in

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<sup>55</sup> “2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.”. Source: <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>

<sup>56</sup> Brazilian Constitution: “Art. 134. § 2º Às Defensorias Públicas Estaduais são asseguradas autonomia funcional e administrativa e a iniciativa de sua proposta orçamentária dentro dos limites estabelecidos na lei de diretrizes orçamentárias e subordinação ao disposto no art. 99, § 2º.”. Source: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)

classes whose pyramid symbol reflects the unequal division of wealth. Thus, the generic statement in the Brazilian Constitution that Brazil is based, among others, on citizenship and the dignity of the human person does not present itself as an effective solution to the problem of poverty and substantial deprivation of rights. Therefore, the Public Defender's Office must be strengthened as an institution that deals directly with the most vulnerable.

## **2. Who are the beneficiaries of the Public Defender's Office in Brazil?**

The service provided by the Public Defender's Office is for all those in a situation of vulnerability, regardless of the economic situation. The institution's performance in defence of the individuals without a lawyer in the criminal area, even if they can pay for it, is a practical example. In other words, the institution's performance has already consolidated the difference between legal and economic necessity. So this vision has as its central point the new conformation of the institution and its positioning in the Democratic State of Law.

The constitutional concepts of "need" and "insufficiency of resources" do not promote a conceptual restriction to the economic dimension of the individual. Thus, the work of the Public Defender's Office contemplates and implements comprehensive legal assistance, which is not restricted only to the protection of the economically disadvantaged<sup>57</sup>. It is important to mention that the institution is legally and institutionally committed to protecting human rights. The correct hermeneutic meaning of expressions must be reached through an existential analysis (factual, concrete and situated) of the human person and his sociocultural existence.

It is relevant to point out that the Federal Constitution, at no time, when it regulates the terms "need" and "insufficient resources", restricts them to an economic bias. Thus, the Brazilian Constitution never mentions that the Public Defender's Office's performance is conditioned

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<sup>57</sup> Kettermann, P. *Defensoria Pública*, p.48 e 49: "Nos dias atuais é indispensável que todo raciocínio exigido para a completude da indeterminação dos conceitos de 'necessitado' ou 'insuficiência de recursos' seja feito com base no objetivo primordial da criação da Instituição: garantir igualdade. A existência da Defensoria Pública se justifica a partir da ideia de garantir acesso isonômico à justiça e tratamento igualitário para todos os que tiverem seus direitos violados ou em vias de sê-lo, não apenas como meio, como processo, como instrumento, mas, fundamentalmente, como forma de atingir um objetivo, uma meta final que garanta um resultado eficiente (sob o ponto de vista de igualdade e também da efetividade). A Defensoria Pública é um instrumento de proteção aos direitos das classes não dominantes, dos 'necessitados de proteção', e estes são muito mais numerosos do que aqueles que estão enfrentando dificuldades na luta pelos recursos econômicos, já que abrangem e incluem as pessoas e grupos que não obtêm – ou fazem de forma precária – também os recursos que garantem o pleno exercício de seus direitos sociais. Necessitados, pois, não são apenas os financeiramente hipossuficientes, mas todos aqueles que estão em desvantagem na equação econômico-social, todos aqueles a quem foi determinado um local de hipossuficiência e/ou vulnerabilidades; são os atores sociais cujo papel é a 'sobra' nas estruturas sociais. (...) Há vários tipos de 'necessidade' que desequilibram o direito à isonomia plena e que devem ser suplantados justamente porque tal desequilíbrio leva, inexoravelmente, a várias violações de direitos."

to the orientation of the “economically needy” or of those who present “insufficient economic resources”, and the absence of an express limitation to the economic bias is unequivocal from the point of view of hermeneutic view. If the Federal Constitution did not expressly restrict it, it is not up to the interpreter to do so.

However, the fact that the Federal Constitution does not expressly restrict the concepts of “need” and “insufficient resources” to the economic plan does not derive from forgetfulness or omission by the constituent legislator. It is a deliberate demonstration that such concepts have reached the need derived from the material, cultural, social, technical, and ethnic insufficiency of resources. That is, the Constitution unequivocally determines the application of the notion of organizational hyposufficiency<sup>58</sup>.

Regarding the international system, it is worth mentioning the creation of the document “100 Brasilia Rules on Access to Justice for Vulnerable Persons”, formulated by the Judiciary during the XIV edition of the Ibero-American Judicial Conference. Items 3 and 4 of the document bring the concept of people in a situation of vulnerability and point out that it is not only the economic issue that determines this fact<sup>59</sup>.

Thus, it is easily perceptible that, in the consensual understanding of the Ibero-American Courts, the concept of hyposufficiency is not restricted to the economic bias, reaching the social, ethnic and cultural conditions of individuals, and encompassing peculiarities factors such as age, disability, minority membership, gender and deprivation of liberty. Besides, the poverty situation of the individual or the collectivity is just one of the causes of vulnerability. Perhaps nowadays, in a society of mass risks, it is not even the most important one. Without an exhaustive bias, a picture of vulnerable groups recognised by the national legal system could be presented as:

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<sup>58</sup> Esteves, D. *Princípios institucionais da Defensoria Pública*, p. 300 e 301: “No caso da assistência jurídica gratuita, entretanto, a barreira econômica constitui apenas um dos obstáculos a serem superados; mas existem muitos outros. Por essa razão, modernamente o conceito de ‘necessitado’ (art. 134, caput, da CRFB), para fins de reconhecimento do direito à assistência jurídica gratuita, tem sido associado à ideia de vulnerabilidade. Diante das múltiplas vulnerabilidades que atingem o indivíduo, também são múltiplas as espécies de vulnerabilidade que precisam ser contornadas por meio da assistência jurídica gratuita.”

<sup>59</sup> “1 – Concepto de las personas en situación de vulnerabilidad: (3) Se consideran en condición de vulnerabilidad aquellas personas que, por razón de su edad, género, estado físico o mental, o por circunstancias sociales, económicas, étnicas y/o culturales, encuentran especiales dificultades para ejercitar con plenitud ante el sistema de justicia los derechos reconocidos por el ordenamiento jurídico. (4) Podrán constituir causas de vulnerabilidad, entre otras, las siguientes: la edad, la discapacidad, la pertenencia a comunidades indígenas o a minorías, la victimización, la migración y el desplazamiento interno, la pobreza, el género y la privación de libertad. La concreta determinación de las personas en condición de vulnerabilidad en cada país dependerá de sus características específicas, o incluso de su nivel de desarrollo social y económico.”. Source: <https://www.acnur.org/fileadmin/Documentos/BDL/2009/7037.pdf>

- a) economic vulnerability: the existential fragility caused by poverty generates social, political and cultural marginalisation insofar as it prevents the individual from maintaining their social and legal relationships on an equal footing with other people and with state entities. According to the 100 Rules of Brasilia, "(15) La pobreza constituye una causa de exclusión social, tanto en el plano económico como en los planos social y cultural, y supone un serio obstáculo para el acceso a la justicia especialmente en aquellas personas en las que también concurre alguna otra causa de vulnerabilidad."<sup>60</sup>
- b) organisational vulnerability: "são carentes organizacionais as pessoas que apresentam uma particular vulnerabilidade em face das relações sociojurídicas existentes na sociedade contemporânea", that is, everyone "que no intenso quadro de complexas interações sociais hoje reinante, são isoladamente frágeis perante adversários poderosos do ponto de vista econômico, social, cultural ou organizativo, merecendo, por isso mesmo, maior atenção com relação a seu acesso à ordem jurídica justa e à participação por intermédio do processo"<sup>61</sup>. Although organizational vulnerability is traditionally associated with the collective action of the Public Defender's Office, nothing prevents this kind of fragility from also occurring on an individual basis.
- c) age vulnerability: during the two extremes of human life, the individual faces difficulty accessing the justice system. Due to their condition as people in development, children and adolescents occupy a prominent position of fragility, especially when at risk. In the same way the 100 Rules of Brasilia express "(6) El envejecimiento también puede constituir una causa de vulnerabilidad cuando la *persona adulta mayor* encuentre especiales dificultades, atendiendo a sus capacidades funcionales, para ejercitar sus derechos ante el sistema de justicia."<sup>62</sup>.
- d) physical, mental and sensorial vulnerability: the legal protection of people with physical, mental or sensorial disabilities constitutes protection to human dignity and finds moral, legal, political and human support. According to the 100 Rules of Brasilia "(7) Se entiende por discapacidad la deficiencia física, mental o sensorial, ya sea de naturaleza permanente o temporal, que limita la capacidad de ejercer una o más

<sup>60</sup> Source: <https://www.acnur.org/fileadmin/Documentos/BDL/2009/7037.pdf>

<sup>61</sup> Grinover, A. P. (1996). *Acesso à Justiça e o Código de Defesa do Consumidor*. P. 117.

<sup>62</sup> Source: <https://www.acnur.org/fileadmin/Documentos/BDL/2009/7037.pdf>



actividades esenciales de la vida diaria, que puede ser causada o agravada por el entorno económico y social."<sup>63</sup>

- e) vulnerability due to homelessness: homeless people are considered a heterogeneous group with extreme poverty in common, broken or weakened family ties and a lack of stable housing. Thus, people in this condition live on the streets or in public places and sometimes use night shelter services<sup>64</sup>.
- f) vulnerability due to sexual orientation and gender identity: despite the millenary existence of homosexuality, this is still a phenomenon poorly understood by society, and queer people are victims of crimes and prejudiced treatment.
- g) minority vulnerability: belonging to a national, ethnic, racial, religious or linguistic minority can cause vulnerability, making access to justice difficult. The term minority is linked not only to the numerical quantitative but to a group that is inferior and dominated by another prevalent group with political and economic power.
- h) procedural vulnerability: arises from the fact that the individual is incapable of performing procedural acts resulting from a health, economic, informational, technical or organizational condition of a permanent or transitory nature.
- i) circumstantial or transitory vulnerability: it is common for such a situation to occur on night shifts when the Public Defender's Office is contacted by people who, although they have money, are in an emergency (family member who needs a hospital procurement or emergency surgery, during the dawn). Thus, the institution can act in this exceptional situation.
- j) vulnerability due to deprivation of liberty: this fact can create difficulties in exercising other rights, especially respectful and humane treatment in the prison system.

Finally, the status of foreigner, resident or not in Brazil, qualifies the person to use the services of the Public Defender's Office. The controversy exists concerning the non-resident alien. However, the Federal Supreme Court ruled in habeas corpus n° 94.016/SP that this fact does not disqualify him or her as a subject of rights and holder of fundamental guarantees, preventing the adoption of arbitrary or discriminatory treatment.

A recent example of this is the Public Defender's Office of the Union working in the defence, both extrajudicially and judicially, in favour of migrants from Venezuela since the

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<sup>63</sup> Source: <https://www.acnur.org/fileadmin/Documentos/BDL/2009/7037.pdf>

<sup>64</sup> Oliveira, R. V. S. M. *Defensoria Pública e População em situação de rua: uma abordagem interdisciplinar*. P. 97: "a população em situação de rua é um grupo que possui como características centrais a heterogeneidade e a hipervulnerabilidade."

intensification of the flow in 2016. The right to education was the target of the first action carried out by the Migration, Statelessness and Refugee Working Group. After the provocation, the Ministry of Education stated that there should be no discrimination against children from other countries concerning school education, understanding that translated documentation is not required for effective enrollment in public elementary and high schools<sup>65</sup>.

### 3. When was the Public Defender's Office created in Brazil?

An outline of what it would be the Public Defender's Office was developed in Rio de Janeiro among the different arrangements established in the Brazilian states. In December 1954, the first six positions of state public defenders were created, in charge of providing legal assistance to needy people who, until then, depended on the benevolence of dative lawyers who did not receive payment for these services. In 1965, there were already about fifty defenders in Rio de Janeiro. At that time, the Judicial Assistance (AJ), the public department composed of defenders from Rio de Janeiro, was linked to the state Public Ministry (PM). Although linked to the PM, the AJ constituted its own cadre of professionals<sup>66</sup>, different from what happened in the state of Guanabara, where the function of providing legal services to the poor was the responsibility of PM members at the beginning of their careers<sup>67</sup>. In Rio de Janeiro, PM and AJ were distinct careers, not a hierarchical succession within the same occupation.

The initial formation of the Judicial Assistance linked to the PM was important for the defenders from Rio de Janeiro, as it strengthened the claims of the category as claims associated with the Public Ministry. In addition, the contact with the PM at the origin of the Defender's Office exerted a significant influence, as it made the institutional model of the PM, as well as the trajectory of autonomy that this institution sought at the time, reach the

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<sup>65</sup> Alvim, R. P. (2018). *O trabalho da DPU na defesa dos direitos dos migrantes venezuelanos*. Source: <https://www.conjur.com.br/2018-nov-06/tribuna-defensoria-trabalho-dpu-defesa-direitos-migrantes-venezuelanos>

<sup>66</sup> Esteves, D. *Princípios institucionais da Defensoria Pública*, p. 64: “Dessa forma, a defesa dos juridicamente necessitados deixou de ser atribuição do Ministério Público e passou a ser incumbência dos integrantes da Assistência Judiciária, órgão com existência distinta do MP, mas igualmente subordinado ao Procurador-Geral de Justiça.”

<sup>67</sup> Esteves, D. *Princípios institucionais da Defensoria Pública*, p. 63: “Nessa época, a carreira do Ministério Público era formada pelos cargos de Defensor Público, Promotor Substituto, Promotor Público, Curador e Procurador de Justiça. O ingresso na carreira se dava por intermédio de concurso público de provas e títulos, sendo o candidato nomeado inicialmente para o cargo de Defensor Público. Posteriormente, por força da antiguidade e do merecimento, os integrantes eram gradualmente promovidos, podendo chegar ao cargo de Procurador de Justiça.”

public defenders. Their objective during the following decades would be to constitute an institutionally strong and autonomous Public Defender's Office, similar to what the Public Ministry was becoming. During the Constituent Assembly, this was the institutional project presented by the defenders to standardise legal assistance in Brazil.

The experience of institutionalizing the Public Defender's Office in Rio de Janeiro influenced actors in other states. Public servants responsible for legal assistance in other locations began to defend a model similar to the Rio de Janeiro's, which structured the career within an autonomous institution specifically designated for legal assistance. This model would generate the necessary conditions to provide full legal assistance to the needy independently. The defenders from Rio de Janeiro also worked to expand the Public Defender's Office model throughout the country. At the beginning of the 1980s, they began to claim that legal assistance should be the responsibility of public bodies specialised in this function throughout Brazil.

Thus, a campaign began, led mainly by the defenders and judicial assistants from some of the states, which aimed to implement the entire project of the Public Defender's Office in Brazil. As a result, still in the 1980s, new legal aid institutions were started in certain states, such as Minas Gerais and Mato Grosso, adopting an organizational structure like the one in Rio de Janeiro.

The National Constituent Assembly met for the first time in 1985<sup>68</sup>. It started the process of redemocratisation in the country after more than two decades of military dictatorship. In order to meet the democratic aspirations of the time and not have its legitimacy questioned, the Constituent Assembly was organised in a decentralised structure of work and was open to the participation of various actors. The result was a long constitutional text that includes almost all aspects of political life (Elkins, Ginsburg Melton, 2009), containing some articles with absurdly detailed clauses and constitutionalising several provisions that discipline public policies<sup>69</sup>.

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<sup>68</sup> “A Constituição Cidadã, promulgada em 5 de outubro de 1988, tornou-se o principal símbolo do processo de redemocratização nacional. Após 21 anos de regime militar, a sociedade brasileira recebia uma Constituição que assegurava a liberdade de pensamento. Foram criados mecanismos para evitar abusos de poder do Estado. A Assembleia Nacional Constituinte, convocada em 1985 pelo presidente José Sarney, trabalhou durante 20 meses. Participaram 559 parlamentares (72 senadores e 487 deputados federais), com intensa participação da sociedade.”. Source: <https://www.camara.leg.br/internet/agencia/infograficos-html5/constituente/index.html>

<sup>69</sup> Esteves, D. *Princípios institucionais da Defensoria Pública*, p. 69: “Trata-se de moderna disposição organizacional, decorrente da Evolução do Direito Político e da necessidade de criação de mecanismos de controle das funções estatais, garantindo-se o respeito irrestrito aos direitos fundamentais e a perpetuidade incondicional do Estado Democrático de direito.”

The Federal Constitution of 1988 was not limited to structural issues of the organisation of the State and political issues. Legal assistance to needy people is an example of a public service that received a greater degree of detail in the constitutional text<sup>70</sup>. The constituents, in addition to establishing that access to justice as a fundamental right that the State must guarantee, also defined that the defence and legal guidance of needy people must be carried out by a new institution, composed of public servants with certain characteristics: the Public Defender's Office. The institution's constitutional provision was a victory for the defenders. Delegations of defenders and judicial assistants closely followed the work of the National Constituent Assembly and "did not leave Brasília for a single moment" (Neder, 2008), working together with constituent deputies and senators so that the Public Defender's Office was included in the new Constitution, in the terms intended by the category. However, this claim by the defenders met with strong resistance from other legal practitioners and some members of the Constituent Assembly.

The defenders aspired to create a constitutional obligation determining the states to implement the Public Defender's Office as an institution that was: structured in its career, with initial entry through a public contest; nationally organised, based on institutional principles that guarantee unity, independence and financial and administrative autonomy; and whose members had the same prerogatives, rights and guarantees as members of the Public Ministry<sup>71</sup>. Without these attributes, the defenders argued that the legal defence of the needy population would only be fictitious. The public contest would guarantee the entry of trained and dedicated people. At the same time, the institution's autonomy and the prerogative of its members would ensure the independence that the function demands, as it is often necessary to defend the rights of the poor against the rich or even against the State itself. In summary, the objective was to achieve an institutional advance similar to what was being pursued by the Public Ministry. If the Public Ministry is responsible for the prosecution in the criminal process, the Public Defender's Office assumes the role of the defence. To balance the parties

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<sup>70</sup> Esteves, D. *Princípios institucionais da Defensoria Pública*, p. 69: "Note-se, portanto, que a Defensoria Pública não se encontra vinculada a nenhum dos poderes Estatais, revelando-se errônea a afirmação de que a Instituição estaria integrada ao poder executivo, ao Poder Legislativo ou ao Poder Judiciário. Em verdade, a Defensoria Pública caracteriza-se como uma *instituição extrapoder*, não dependendo de nenhum dos Poderes do Estado e não podendo nenhum de seus membros receber instruções vinculantes de qualquer autoridade pública."

<sup>71</sup> "A nossa proposta, portanto, é no sentido de que fique constando do texto constitucional, em capítulo próprio, a institucionalização da assistência judiciária como órgão do Estado, obrigação do Estado, que é atividade, a nível extrajudicial e judicial, na defesa dos direitos dos juridicamente necessitados, inclusive contra o próprio Estado. Que sejam assegurados aos membros da assistência judiciária os direitos, garantias e prerrogativas que são assegurados aos membros dos demais órgãos que integram a administração da Justiça. E que haja uma organização da assistência judiciária a nível nacional, em carreira própria, integrada por cargos providos, inicialmente, em caráter de exclusividade, por concurso público de provas e títulos" (Brasil, 1987a, p. 72).

within the process and ensure the efficient defence of the needy, it was, therefore, necessary to equalise the institutions<sup>72</sup>.

The prediction of the Public Defender's Office in the Federal Constitution of 1988 came through hard associative work and on several fronts. Faced with various interests, including powerful institutions, the Public Defender's Office launched itself at the constitutional level and achieved the desired constitutionalisation for the defence of the vulnerable. This victory proved to be important in a country where social inequality reaches shameful levels. Many challenges, however, would arise in the following decades for the complete implementation of the public defender's office in the Brazilian states.

#### **4. What is the role of the Public Defender's Office in Brazil and what is its area of action?**

The Public Defender's Office is an institution responsible for providing a fundamental guarantee (legal assistance) that ensures the application of fundamental rights. Affirmative justice consists of a unique legal system for those historically marginalised and excluded groups, which are the focus of action of the Public Defender's Office. It is characterized by the easy access with reduced bureaucracy and varied forms of participation and cognition. The institution implements a public right designed for the masses and free from dogmas and social prejudices. For many (in a broad sense) needy people who already disbelieve in the role of the State, in sociability in private relations, in the honesty in criminal prosecution, in the rehabilitation of prisons, the Public Defender's Office becomes a part of the arduous and inhospitable path in defence of human rights<sup>73</sup>.

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<sup>72</sup> It is interesting to note that the former President of Brazil Michel Temer (2016-2018), at that time an important representative of the category of state attorneys (who, in some states, defended the poor), took a position contrary to the predictions of the Public Defender's Office in the Constitution. Under the justification that the autonomy of the states was vital, in addition to the fact that the constitutionalisation of the institution was unnecessary, he worked to ensure that inclusion did not occur. It ended up being won by the majority (Moreira, 2017).

<sup>73</sup> RÉ, A.I.M.R. *Manual do Defensor Público*. P. 192: "It is in the Public Defender's Office that the tears flow from the mother who has her son killed in a police approach, classified as 'resistance followed by death', whose causes are not clarified or proven; It is at the Public Defender's Office that families expelled from their homes arrive, after the disastrous fulfillment of a repossession, often in regions suitable for land regularization of social interest, but also object of real estate speculation.

It is in the Public Defender's Office that light will shine on the modest life of those families deprived of access to essential electricity and water services. Here, the credit of those who, for unforeseeable reasons, did not pay their obligations satisfactorily and were excluded from the market breathes weakened. At the Defender's Office, the patient seeks legal support after the resistance of his health plan to cover his urgent medical intervention. Here, a mother frees herself from the anguish of having her teenage son apprehended by the juvenile persecutory system."

Therefore, in the Public Defender's Office, the person to whom everything may lack must find patient ears and effective and satisfactory legal assistance, not merely bureaucratisation. For this reason, one of the institution's functions is the dissemination and realisation of human rights. The Defender's Office is assigned the arduous mission of defending those who have their fundamental rights continually violated, the great mass of the needy, the black population, indigenous peoples, minorities and disorganised groups.

Human rights education is an indispensable prerequisite for realising several other rights. Before a right can be effectively claimed, the holder must know its existence. Only those who are aware of their rights can seek their practical effectiveness. Often, the lack of financial resources is accompanied by a lack of information. Thus, access to justice is impeded to the needy because they do not know their rights or how to fight for them. The access to information is paramount and a priority. Ignorance is the first barrier to be overcome. If this barrier is not overcome, no matter how good the service provided by the Public Defender's Office is, it will be ineffective, as vulnerable people will not seek it out for not acknowledging their rights or even the Public Defender's Office itself. Often the lack of information is the cause of some legal problems. It can also lead the individual to an unfavourable position in a given conflict<sup>74</sup>.

In order to guarantee the legal inclusion of the culturally marginalised portions of society, article 4, III of Complementary Law (CL) No. 80/1994 determines that it is the role of the Public Defender's Office "to promote the diffusion and awareness of human rights, citizenship and the legal system."<sup>75</sup> With this provision, the need to overcome the barrier of misinformation is registered in law and attributed to the Public Defender's Office the function of propagating knowledge about human rights, citizenship and the legal system in general. Education in rights has the fundamental scope of guaranteeing the knowledge, skills and values necessary for the needy individual to learn, understand, affirm and claim their rights, whether established in the internal legal system or emanating from instruments of international legal entities. Therefore, legal learning is not an end but aims to ensure cultural

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<sup>74</sup> Oliveira, M. B. B. de. *A Defensoria Pública como garantia de acesso à justiça*. P. 319: "Há um amplo consenso de que a cidadania não é um estado passivo de gozar os direitos conquistados ou concedidos de cima para baixo. É imprescindível que todos tenham a consciência da cidadania, pois para exercê-la em plenitude, o cidadão precisa conhecer os seus direitos e instrumentos jurídicos colocados à sua disposição como instrumentos de defesa dos mesmos."

<sup>75</sup> "Art. 4º São funções institucionais da Defensoria Pública, dentre outras: III – promover a difusão e a conscientização dos direitos humanos, da cidadania e do ordenamento jurídico;". Source: [http://www.planalto.gov.br/ccivil\\_03/leis/lcp/lcp80.htm](http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp80.htm)

intervention in the reality of the less favoured classes or minorities with the objective of social transformation.

Thus, the Public Defender's Office must adopt educational policies aimed at informing and raising the awareness in the less favoured classes about their fundamental rights, making them capable of identifying situations of violation of the legal order and being able to claim their rights. To this end, this work must be carried out beyond offices and forums, with informational campaigns aimed at needy communities, civil organisations, neighbourhood associations, vulnerable groups, public schools, and institutions for children, adolescents and adults.

The Organization of American States recognises, in Resolution No. 2714, the importance of the Public Defender's Office in the realisation of human rights<sup>76</sup> by:

- a) Affirm[ing] that access to justice, as a fundamental human right, is, at the same time, the means that makes it possible to re-establish the exercise of rights that have been ignored or violated.
- b) Support[ing] the work being carried out by official public defenders in the states of the Hemisphere, which is an essential aspect of strengthening access to justice and consolidating democracy.
- c) Affirm[ing] the fundamental importance of the free legal assistance service provided by official public defenders for the promotion and protection of the right to access to justice for all people, especially those who are in a special situation of vulnerability.
- d) Reiterat[ing] to member states that already have free legal assistance to adopt measures aimed at ensuring that official public defenders enjoy independence and functional autonomy.
- e) Encourag[ing] member states that do not yet have the institution of a public defender's office to consider the possibility of creating it in their legal systems.
- f) Urg[ing] member states to promote opportunities for international cooperation to exchange experiences and good practices in the field.
- g) Encourag[ing] member states and bodies of the inter-American system to promote the signing of agreements to train and train official public defenders.

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<sup>76</sup> Source: <https://w3.defensoria.es.def.br/wp-content/uploads/2020/01/2.-Resolução-AG-RES.-2714-ano-de-2012-A-Defensoria-Pública-oficial-como-garantia-de-acesso-à-justiça.pdf>

The importance of the Public Defender's Office's work is recognised by the Organization of American States so that the strengthening and independence of the institution are encouraged by the regional mechanism.

The Public Defender's Office can act both individually and collectively, judicially or extrajudicially. Thus, the institution has the legitimacy to propose individual actions or to act before filing an action. On the other hand, when dealing with an issue that affects a certain or non-determinable number of vulnerable people, the public defender can act to reach an agreement or even propose a collective action.

### **5. What makes the Public Defender's Office in Brazil different from other forms of access to justice worldwide?**

The legal assistance models of contemporary states arise from the needs and particularities of each state. There are currently five assistance models around the world: the *pro bono* model, the *judicare* model, the salaried staff model, the hybrid system and the socialist model.

In the *pro bono* model, legal assistance is provided through private lawyers who work without receiving any pecuniary consideration for the services provided<sup>77</sup>. This model has three primary subdivisions: liberal *pro bono*, university *pro bono* and associative *pro bono*. In liberal *pro bono*, the activity is carried out by professionals who act imbued with a humanitarian character. Lawyers do not receive any amount from the state or remuneration from the client to act in the process. What usually can happen is that the payments are received at the end of the process, in case of success of the litigation, and are paid by the losing part. Despite being an outdated model, liberal *pro bono* has great importance in countries of the American continent, especially in civil cases. Many countries only consider legal assistance necessary in the criminal sphere, so cases in other branches of law depend exclusively on *pro bono* advocacy<sup>78</sup>.

The university *pro bono* is the model in which legal services are performed by professionals linked to the university through model offices, which enable students to obtain the necessary

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<sup>77</sup> Boson, E. P. *A Defensoria Pública e a Tutela Jurisdicional da Moralidade Administrativa*. P. 20: "It is easy to conclude that the pro bono model is insufficient to meet the need for free legal assistance as a means of adequate access to rights. This is because the inexistence of monetary consideration, in addition to discouraging lawyers from sponsoring cases, relegates to the economically disadvantaged the burden of having to rely on the charity of others to enforce their rights."

<sup>78</sup> Alves, C. F. *Justiça para todos! Justiça para todos! Assistência Jurídica Gratuita nos Estados Unidos, na França e no Brasil* P. 49: "Concerning legal assistance in civil cases, although some programs rely on public funding for certain legal services, it is still crucial in these countries to act on an honorary basis, public pro bono, of liberal professionals who practice law. advocacy."



practice in law. Lawyers manage students' performance both in the service and in the legal guidance passed on, as well as in the preparation of petitions and documents. Although the service is free, the lawyers are salaried and linked to the universities where they teach. In the associative model, legal assistance is provided by lawyers linked to non-governmental associations whose objective is to provide legal assistance to the needy. The National Association for the Advancement of Colored People (NAACP)<sup>79</sup> and the American Civil Liberties Union (ACLU)<sup>80</sup>, both in the United States, and the Japan Legal Aid Association (JLAA) in Japan, are examples of the associative *pro bono* model.

In the *judicare* model, legal assistance is provided by private lawyers paid by the public coffers, according to the case. Thus, the analysis of the financial issue of those seeking assistance is carried out by public bodies or non-state entities. After the end of the process, the state pays the professional. The *judicare* system, until recently, was predominant in Europe, having reached its apogee in the period of the Welfare State, a time when the system encompassed not only the poor but also the middle class. In recent times, especially with the crisis of the Welfare State, European systems have been reformulated both in terms of reducing beneficiaries and implementing models of salaried lawyers.

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<sup>79</sup> "In 1908, a deadly race riot rocked the city of Springfield, eruptions of anti-black violence – particularly lynching – were horrifically commonplace, but the Springfield riot was the final tipping point that led to the creation of the NAACP. Appalled at this rampant violence, a group of white liberals that included Mary White Ovington and Oswald Garrison Villard (both the descendants of famous abolitionists), William English Walling and Dr. Henry Moscowitz issued a call for a meeting to discuss racial justice. Some 60 people, seven of whom were African American (including W. E. B. Du Bois, Ida B. Wells-Barnett, and Mary Church Terrell), signed the call, which was released on the centennial of Lincoln's birth. On February 12, 1909, the nation's largest and most widely recognized civil rights organization was born. Echoing the focus of Du Bois' Niagara Movement for civil rights, which began in 1905, NAACP aimed to secure for all people the rights guaranteed in the 13th, 14th, and 15th Amendments to the United States Constitution, which promised an end to slavery, provide equal protection of the law, and the right for all men to vote, respectively. Accordingly, the NAACP's mission is to ensure the political, educational, equality of minority group citizens of States and eliminate race prejudice. The NAACP works to remove all barriers of racial discrimination through democratic processes. The national office was established in New York City in 1910 as well as a board of directors and president, Moorfield Storey, a white constitutional lawyer and former president of the American Bar Association. Other early members included Joel and Arthur Spingarn, Josephine Ruffin, Mary Talbert, Inez Milholland, Jane Addams, Florence Kelley, Sophonisba Breckinridge, John Haynes Holmes, Mary McLeod Bethune, George Henry White, Charles Edward Russell, John Dewey, William Dean Howells, Lillian Wald, Charles Darrow, Lincoln Steffens, Ray Stannard Baker, Fanny Garrison Villard, and Walter Sachs. Despite a foundational commitment to multiracial membership, Du Bois was the only African American among the organization's original executives. He was made director of publications and research and in 1910 established *The Crisis*, the acclaimed publication of the NAACP." Source: <https://naacp.org/about/our-history>

<sup>80</sup> "The ACLU has evolved in the years since from this small group of idealists into the nation's premier defender of the rights enshrined in the U.S. Constitution. With more than 1.7 million members, 500 staff attorneys, thousands of volunteer attorneys, and offices throughout the nation, the ACLU of today continues to fight government abuse and to vigorously defend individual freedoms including speech and religion, a woman's right to choose, the right to due process, citizens' rights to privacy and much more. The ACLU stands up for these rights even when the cause is unpopular, and sometimes when nobody else will. While not always in agreement with us on every issue, Americans have come to count on the ACLU for its unyielding dedication to principle. The ACLU has become so ingrained in American society that it is hard to imagine an America without it." Source: <https://www.aclu.org/about/aclu-history>

The *judicare* model is divided into two: direct and indirect. In the direct *judicare* model, the management of public resources is carried out by state entities responsible for maintaining the register of available lawyers. They also organise requests for legal assistance made by the needy and pay lawyers according to their performance in each specific case. The Bureaux d'Aide Juridictionnelle<sup>81</sup> in France is an example of a direct *judicare* model. In the indirect *judicare* model, the management of public resources is carried out by non-state entities, usually non-profit ones. The entities coordinate the system for free legal assistance and organise payments for the legal services provided. It is important to mention that on many occasions, entities raise funds from the private sector, such as companies, large law firms and individuals.

The *judicare* model is considered by many to be the ideal system of legal assistance to grant the economically disadvantaged the possibility of choosing a private lawyer who will sponsor their interests. According to Piero Calamandrei<sup>82</sup>, the bond of trust between the lawyer and the party is an essential guarantee for the fullness of the defence. Thus, the poor should be guaranteed the same right to choose than the one who could pay for a lawyer. However, it should be considered that for the exercise of the right to choose in its entirety, it would be essential that the remuneration by the *judicare* system to be close to the one practiced by the market, which is not the case. As it is a model basically maintained by the state, the remuneration is very far from the reality of great lawyers, which leads to the fact that few lawyers want to work in this model of free legal assistance.

In the salaried staff model, lawyers are paid per day of work, regardless of the workload or tasks performed. Unlike the *judicare* model, remuneration is not based on the legal activity performed but on a working day, so they receive a fixed remuneration. There are three types of salaried staff model: direct, indirect and university.

In the direct model, the state creates bodies to provide free legal assistance services, such as the case in Brazil and the Public Defender's Office. In the indirect model, the service organisation is carried out by non-state, non-profit entities, which receive subsidies from the public coffers, such as the Neighborhood Law Offices, implemented in the United States in the 1960s. The university model is one that provides free legal assistance carried out by

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<sup>81</sup> "L'aide juridictionnelle est la prise en charge de vos frais de justice par l'État. Elle est accordée aux personnes qui ont des revenus modestes et peu de patrimoine (épargne et biens immobiliers). Pour bénéficier de l'aide, vous devez remplir le formulaire de demande et fournir les justificatifs de vos revenus et de votre patrimoine. La demande doit être déposée auprès du bureau d'aide juridictionnelle compétent pour votre domicile, avant ou après le début de la procédure." Source: <https://www.service-public.fr/particuliers/vosdroits/F18074>

<sup>82</sup> Calamandrei, P. (1965). *Processo e democrazia*. P.618

public university offices whose students perform the consultations under the supervision of a lawyer paid by the university.

The salaried staff model is the target of several criticisms because it does not provide freedom of choice for the low-sufficient who seek legal assistance.

The mixed or hybrid model is characterised by the combination of *pro bono*, *judicare* and staff salaried models. The systems complement each other and provide the service of legal assistance to the poor. As an example of the application of the model, the Japan Legal Support Center, created in 2006, provides legal assistance in civil and criminal areas. The socialist model is when the legal assistance is provided by collective offices, whose tariff is modest. Private law is prohibited and the prices charged are set by the state. There are even situations where the service can be completely free. The socialist model is applied in Cuba<sup>83</sup>.

Salaried staff is the model adopted in Brazil, as provided for in article 134 of the Brazilian Constitution. Although funded by public services, the Public Defender's Office is not linked to state powers, as already mentioned. Thus, the defence of the hyposufficient is carried out by professionals who hold public service examinations and are paid directly by the state under the regime of exclusive dedication:

É dever constitucional do Estado oferecer assistência jurídica gratuita aos que não disponham de meios para contratação de advogado, tendo sido a Defensoria Pública eleita, pela Carta Magna, como o único órgão estatal predestinado ao exercício ordinário dessa competência. Daí, qualquer política pública que desvie pessoas ou verbas para outra entidade, com o mesmo objetivo, em prejuízo da Defensoria Pública, insulta a Constituição (Supremo Tribunal Federal – Pleno – ADI nº 4.163/SP – Relator Ministro Cezar Peluso, decisão: 29-02-2012)<sup>84</sup>.

Due to the high rate of poverty in Brazil, the legal assistance model adopted is subject to criticism<sup>85</sup>. According to critics, the high workload and the excessive number of causes attributed to the public defender would harm the quality of the work. In addition, the fact that the needy cannot choose the professional of their preference is criticised, mainly because it

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<sup>83</sup> Cappelletti, M., Godeley, J. and Johnson Jr., E. *Toward Equal Justice: A Comparative Study Case of Legal Aid in Modern Societies*. P. 85: "One danger arises from the fact that the lawyers collectives depend upon their clients for fees. The result may be that collectives locate in areas where these fees are easily and regularly obtainable and that lawyers spend an undue proportion of their time on fee-generating business. A second danger, inherent in any system of price control, stems from the fact that fees are fixed at low levels by the state. A 'black market' may develop in which clients pay irregular fees for legal services. Yet another danger is that even the low fees set by the state may be beyond the ability of poorest citizens to pay; indeed, is it difficult to imagine a level of fees that would be equally appropriate for the head of a state enterprise, the worker in a state factory, and the peasant. Moreover, when the poor man is denied aid for any of these reasons, his plight is serious since he has no comprehensive alternative legal aid system to turn to for help."

<sup>84</sup> Source: <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=3451439>

<sup>85</sup> According to Professor Virgílio Afonso da Silva "it is estimated that more than 70% of the economically active population in Brazil are potential users of the services of public defenders in the states of the federation." (Silva, V. A. da. (2011). *Parecer sobre o convênio entre a Defensoria Pública do Estado e a OAB/SP na prestação de assistência judiciária*. P. 171).

can be done in the *judicare* model. However, it is essential to point out that freedom of choice does not guarantee the quality of choice, given that the social and cultural barriers imposed on the underprivileged directly interfere in the exercise of choice. The reality is that no modern legal assistance system is exempt from criticism. Considering the impossibility of creating a perfect model - utopian search left aside -, the current goal is to maximise the cost-benefit ratio.

The speciality of the services provided by the Public Defender's Office and its growing support team, the salaried staff model adopted in Brazil, compared to other existing models in the world, has provided a high degree of use of public resources. Undoubtedly, the Public Defender's Office is not yet fully installed in the country, in perfect conditions of service to all the needy masses. However, if the resources transferred to the Public Defender's Office were dispersed in the forensic market through the *judicare* system, the number of people reached by it and the quality of service would be lower. Thus, the model adopted in Brazil is the one that maximises the cost-benefit ratio, given the country's social situation.

## CHAPTER III - THE CHILD AS A SUBJECT OF RIGHTS AND HOLDER OF HUMAN RIGHTS

*“Todos reconheceram os direitos de Pedro Bala à chefia, e foi desta época que a cidade começou a ouvir falar nos Capitães da Areia, crianças abandonadas que viviam do furto. Nunca ninguém soube o número exato de meninos que assim viviam. Eram bem uns cem e destes mais de quarenta dormiam nas ruínas do velho trapiche.*

*Vestidos de farrapos, sujos, semi-esfomeados, agressivos, soltando palavrões e fumando pontas de cigarro, eram, em verdade, os donos da cidade, os que a conheciam totalmente, os que totalmente a amavam, os seus poetas.”<sup>86</sup>*

### 1. The Convention on the Rights of the Child

In 1978, Poland presented the draft of the Convention on the Rights of the Child to the United Nations Commission of Human Rights. A working group was created to discuss the development of the Convention. Initially, it was thought that the project would quickly advance with the agreement of all member countries, a fact that was not confirmed. For ten long years, the project was discussed, negotiated and finally adopted in 1989 with the creation of the Convention on the Rights of the Child<sup>87</sup>.

The excessive delay is due to several factors: the tension between the United States and the former Soviet Union, the attempts to obstruct the work by some countries, and the significant number of proposals. All these factors consumed precious time and were decisive for the discussions to take ten years. It is interesting to note that UNICEF was initially sceptical about the creation of the Convention. It was only with the progress of the work and the proportion that the discussions took that UNICEF decided to get directly involved in the draft

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<sup>86</sup> Amado, J. (1937). *Capitães da Areia*. Source: [http://www.joinville.ifsc.edu.br/~samuel.kuhn/MÓDULO%20VI/MODERNISMO%20-%202º%20FASE/Romance%20-%20JORGE%20AMADO\\_Capitães%20de%20Areia.pdf](http://www.joinville.ifsc.edu.br/~samuel.kuhn/MÓDULO%20VI/MODERNISMO%20-%202º%20FASE/Romance%20-%20JORGE%20AMADO_Capitães%20de%20Areia.pdf)

<sup>87</sup> “There was an expectation that the Polish draft, which was largely based on the 1959 Declaration, would be readily accepted by states. Indeed a resolution from UN General Assembly requested the Commission on Human Rights ‘to organize its work on the draft on the convention on the rights of the child ... so that the draft of the convention may be ready for adoption if possible during the International Year of the Child’. History shows, however, that this expectation was never met and the drafting process endured ten long years of negotiation and compromise before the Convention was finally adopted by the Working Group in 1989.” Source: <https://opil.ouplaw.com/view/10.1093/law/9780198262657.001.0001/law-9780198262657-chapter-1#law-9780198262657-chapter-1-div2-3>

of the document. Other actors were also involved, such as the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Committee of the Red Cross (ICRC)<sup>88</sup>.

On November 20, 1989, the UN General Assembly adopted the Convention on the Rights of the Child and opened it for signature. Only after the twentieth signature would the Convention enter into force, which took place on September 2, 1990. The Convention enjoys almost universal ratification, considering that only the United States has not ratified the document. This unprecedented acceptance of an international treaty is due to the proposals being thoroughly discussed, so the provisions were built based on consensus. Some criticisms, at this point, are based precisely on the minimum standard of protection of the Convention. The Convention could have been bolder<sup>89</sup>.

The Convention is divided into the preamble and three other parts. The preamble, although not mandatory, is essential because it outlines the objectives and interpretative pillars of the document. The articles of the Convention provide civil, political, economic, social, cultural and special rights. Examples of civil and political rights include the registrar, name, nationality, freedom of thought, and privacy protection. As for economic, social and cultural rights, there is the right to life, health, social security, education, leisure, and cultural activities. Special rights are the ones that exist because the document deals with people in development<sup>90</sup>. Examples are protection against abuse and neglect, education for children with disabilities, protection against trafficking, sexual exploitation, selling, and protection against harmful work and drug use.

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<sup>88</sup> “Indeed UNICEF, which now champions the Convention, was initially sceptical of the utility of an international instrument dealing with children’s (p. 6) rights.<sup>39</sup> This attitude shifted part way through the drafting process when its Executive Director, James Grant, recognized that the Convention would be so important and influential that UNICEF had to be actively involved in the drafting process.<sup>40</sup> He subsequently committed UNICEF both physically and financially to resolving the draft of the Convention before 1989, the thirtieth anniversary of the 1959 Declaration.” Source: <https://opil.ouplaw.com/view/10.1093/law/9780198262657.001.0001/law-9780198262657-chapter-1#law-9780198262657-chapter-1-div2-3>

<sup>89</sup> “The compromises required to arrive at this point were not without consequences and concern was expressed that the ‘standards set in some articles in the draft convention were too low’.<sup>48</sup> The counterpoint made at the time, however, was that this was necessary to enable ‘States with limited resources to ratify the Convention’.<sup>49</sup> Moreover, the inclusion of article 41 serves as a safeguard by providing that ‘[n]othing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in ... the law of a State party ... or ... International law in force for that State’. As such the Convention, although ambitious in its aspirations for children, actually represents the minimum standards agreed to by states with respect to the treatment of children within their jurisdiction.” Source: <https://opil.ouplaw.com/view/10.1093/law/9780198262657.001.0001/law-9780198262657-chapter-1#law-9780198262657-chapter-1-div2-3>

<sup>90</sup> Rosemberg, F. and Mariano, C. L. S. (2010). *A Convenção Internacional sobre os Direitos da Criança: Debates e Tensões*. P. 712: “Se os direitos de liberdade e participação são reconhecidos à criança devido à sua identidade com o “homem”, os direitos de proteção são devidos em razão da especificidade de ser criança.”

The Convention includes the Optional Protocols on the Sale of Children, Child Prostitution and Child Pornography, the Involvement of Children in Armed Conflicts and the Communications Procedure. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography entered into force on January 18, 2002<sup>91</sup>. The protocol aims to protect children from sexual violence and their economic exploitation. The Optional Protocol on the Involvement of Children in Armed Conflict is quite specific as to its purpose. It entered into force on February 12, 2002, and aims to protect children from the profound and harmful impact that participation in armed conflict has not only at the time it occurs but also in long term<sup>92</sup>. The Protocol on the Communications Procedure, in force since April 14, 2014, provides to the Committee on the Rights of the Child the possibility to supervise the application of the Convention and its protocols, as well as implement the mechanism to report the violation of rights by children<sup>93</sup>. Article 1 of the CRC provides that "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."<sup>94</sup> By establishing the age of those protected by the document, a considerable advance was made. Previous documents never mentioned at what age the individual would be considered a child. It was, therefore, under the analysis of each country to determine who a child would be. This significant change brings a vital milestone in the protection of child's human rights.

## **2. The Committee on the Rights of the Child and monitoring reports referring to the rights of the child in Brazil**

The Committee on the Rights of the Child is the body responsible for monitoring the implementation of the Convention on the Rights of the Child and the optional protocols. The CRC comprises eighteen independent members with high moral character and recognized competence in human rights<sup>95</sup>. According to geographical distribution, members are elected

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<sup>91</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child>

<sup>92</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>

<sup>93</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-communications>

<sup>94</sup> Source: <https://www.unicef.org/child-rights-convention/convention-text>

<sup>95</sup> Ms. Suzanne AHO – Togo, Ms. Aissatou ALASSANE SIDIKOU – Niger, Ms. Hynd AYOUBI IDRISSE (Vice Chair) – Morocco, Mr. Rinchen CHOPHEL – Bhutan, Mr. Bragi GUDBRANDSSON – Iceland, Mr. Philip D. JAFFE – Switzerland, Ms. Sopio KILADZE – Georgia, Mr. Gehad MADI – Egypt, Ms. Faith MARSHALL-HARRIS (Vice Chair and Rapporteur) – Barbados, Mr. Benyam Dawit MEZMUR – Ethiopia,

for a four-year term by the States Parties to contemplate a multicultural body, as provided for in Article 43 of the Convention on the Rights of the Child<sup>96</sup>.

All States Parties must submit regular reports to the Committee on the implementation of the Convention. An initial report must be sent within two years after ratifying the document and the optional protocols. After that, countries must submit reports every five years. The CRC analyzes the reports and points out suggestions and recommendations to be implemented by the states. The Committee also receives individual complaints with information about the violation of children's human rights. The CRC also publishes its interpretation of the human rights provisions, the general comments. The Committee meets in Geneva three times a year<sup>97</sup>.

Interesting is the fact that children can actively participate in the meetings of the Committee on the Rights of the Child in the discussions and the reporting process, as set out in document CRC/C/155. The right to be heard is a fundamental principle. As stated, the child's right to be heard must be taken seriously to make adequate arrangements for their participation in CRC meetings. Children's opinions and contributions should be part of the discussions in the body<sup>98</sup>.

As mentioned, state parties must submit the first report within two years of ratification of the Convention. The first Brazilian report was sent only in 2003, with an eleven-year delay. Thus, the report shows information referring to the period from 1991 to 2002 is included. The report lists the various measures adopted to promote and protect children's rights. The most important of these was the creation of the Child and Adolescent Statute, which modified the

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Mr. Clarence NELSON – Samoa, Ms. Mikiko OTANI (Chair) – Japan, Mr. Luis Ernesto PEDERNERA REYNA – Uruguay, Ms. Zara RATOU – Chad, Mr. José Angel RODRÍGUEZ REYES – Venezuela, Ms. Ann Marie SKELTON – South Africa, Ms. Velina TODOROVA (Vice Chair) – Bulgaria, Mr. Benoit VAN KEIRSBILCK – Belgium. Source: <https://www.ohchr.org/en/treaty-bodies/crc/membership>

<sup>96</sup> “Article 43: 1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.1/ The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.” Source: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>97</sup> <https://www.ohchr.org/en/treaty-bodies/crc/introduction-committee>

<sup>98</sup> “The participation of children in days of general discussion enables the Committee, and all participating stakeholders, to have a stronger understanding of the situation of children’s rights in their respective countries and contexts with regard to the specific themes under discussion, and to understand the perspective of children on issues directly affecting them. The Committee acknowledges the value of the contributions of children to days of general discussion, and emphasizes that due consideration of their views, recommendations and other forms of information from children must be an integral part of such discussions.” Source: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f155&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f155&Lang=en)



treatment given to children, previously seen as an object of rights. The new legislation guaranteed the treatment of children as subjects of rights, with their needs and specificities that must be respected – the doctrine of full protection.

The first Brazilian report also mentions the various mechanisms to coordinate children-related policies and supervise the Convention's application. It also refers to financing public policies aimed at children, emphasising the National Fund for Children and Adolescents (FNCA). The report also points out the challenges faced by Brazil in protecting children's rights. The situation of girls and boys who live and work on the streets must be acknowledged. The extreme vulnerability in which these children find themselves imposes a series of violations of their rights: housing, health, education, healthy development and adequate nutrition, just to name a few<sup>99</sup>. The report also mentions the reality of several children who are victims of abusive, cruel, inhuman, disrespectful, or degrading treatment within their own families. There is also the situation of children involved in prostitution, drug trafficking, and child work. Although measures were taken, it acknowledges that much remains to be done.

The Committee commented on the more than ten years of delay in sending the first report. The CRC praised the Federal Constitution of 1988, the inclusion of human rights guiding principles, and the guarantee of absolute ownership in favour of children. It also praised the enactment of several domestic laws, all intending to protect children, as well as the creation of bodies at the federal, state and municipal levels to promote and protect children's rights and the ratification of two optional protocols from the Convention. The great concern the Committee showed involves the deep social inequality in the country, which generates extreme poverty and, consequently, makes it challenging to implement children's rights in their entirety<sup>100</sup>.

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<sup>99</sup> “In 1985, one of the most influential non-governmental organizations for the enforcement of children and adolescents’ rights in Brazil was created: the National Street Children Movement, which together with other human rights NGOs, particularly *Pastoral do Menor*, began to play an important role in elaborating article 227 of the Constitution, the Statute of the Child and Adolescent (ECA) and disseminating the principles and dictates of the Convention. The Movement also made a contribution, through the experiences of its militants, to reformulating public social assistance programmes. The Movement has already staged National Meetings of Street Children, which have been helping to increase the participation of children and adolescents in discussing their own problems and making society aware of the question of children who are excluded and are victims of violence.”

Source: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhstK6yYSguLNL5x9gjkZOg22NazyderPQupGZ2y%2fe3Hp3XkOA6jL5h7vbVexp%2bO%2fwgBST2JegbHr%2fTH6gKf0%2bfS29oZNYrJd0Y61gfrBXleO>

<sup>100</sup> “12. The Committee notes with extreme concern the dramatic inequalities based on race, social class, gender and geographic location which significantly hamper progress towards the full realization of the children’s rights enshrined in the Convention.”

Source: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgnXZ0ChBsrwm>

The Committee made several recommendations in different areas, which is why only a part of them will be highlighted in this quick analysis. Thus, the document encourages the creation of independent internal monitoring bodies following the Paris Principles. It also incites the country to apply the recommendations made by the Special Rapporteur on extrajudicial, summary or arbitrary executions of children, sale, child prostitution and pornography. This issue must be dealt with the highest priority and those responsible punished and victims' families must be provided with adequate support and compensation<sup>101</sup>. Regarding the deprivation of children from their family environment, the Committee encourages Brazil to implement mechanisms to reduce this period and institutionalise children as a last resort.

The Committee expressed great concern regarding children with disabilities and their rights even though it recognised that the creation of the National Council for the Rights of Persons with Special Needs (CONADE) and the National Coordination for the Integration of Persons with Special Needs (CORDE) as important tools. It recommended that measures be taken to integrate children with disabilities into society, guaranteeing their rights. Street children were also a target of concern by the Committee. It was suggested that they receive adequate nutrition, shelter, health care, and education. In addition, other measures must be taken to reduce and prevent the high number of street children.

The second report, which should have been sent in 2007, was presented in 2012, five years late. It pointed out that the State of Brazil had heavily invested in social policies and the promotion of human rights. It detailed the creation of various bodies and mechanisms for the protection of children's rights, such as the Secretariat for Human Rights linked to the presidency of the republic, the National Secretariat for the Promotion of the Rights of Children and Adolescents (SNPDCA), the President Friend of the Child and Teenagers Plan (PPACA), the Social Agenda for Children and Adolescents, the National Plan for the Promotion, Protection and Defense of the Right of Children and Adolescents to Family and

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cy8%2f%2bFNoDEbiN6%2f0Afs2t20x0WEwN4jXHbgxbB98tggEtOG%2f9vBRSxKggR3iOBBrXJ2fMydgAd5ort%2fVec%2bQi7flAtvxyHI

<sup>101</sup> “41. The Committee urges the State party to implement fully its legislation and to take into account the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture, in particular with regard to effective measures to combat impunity . The Committee urges the State party to include in its next periodic report information, about the number of cases of torture, inhuman and/or degrading treatment of children reported to the authorities or relevant agencies, the number of perpetrators of such acts who have been sentenced by the courts and the nature of these sentences.”  
Source:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgnXZ0ChBsrwmcy8%2f%2bFNoDEbiN6%2f0Afs2t20x0WEwN4jXHbgxbB98tggEtOG%2f9vBRSxKggR3iOBBrXJ2fMydgAd5ort%2fVec%2bQi7flAtvxyHI>

Community Life, the National Plan to Combat Sexual Violence against Children and Adolescents and Disque 100<sup>102</sup>.

The report highlighted holding various training courses for employees dealing with this topic, in addition to offering courses and lectures. It called attention to the creation of the Program for the Protection of Children and Adolescents Threatened (PPCAAM) and its implementation in states with high levels of violence against children and adolescents. It is important to note at this point that the Public Defender's Office is one of the gateways to the PPCAAM. Regarding identity preservation, report emphasised that the first birth certificate is free for all Brazilians. However, it recognised the difficulty in controlling the records, as many children are not born in hospitals.

Observations on the second Brazilian report were made in 2015. The Committee recommended that Brazil take all necessary steps to meet previous recommendations that were not implemented or sufficiently implemented, particularly regarding data collection, independent monitoring, training and dissemination of children's rights. The Committee was concerned about insufficient data on street children, children with disabilities and indigenous children, as well as insufficient data on violence against children, including sexual and trafficking<sup>103</sup>.

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<sup>102</sup> “7.3 National Reporting Toll-Free Number – Disque 100

The database from the National Reporting Number has been one of the most utilized sources by managers, councilors and other operators of the System for the Guarantee of Rights of Children and Adolescents. Also, the media frequently publishes data from Disque 100. In order to generate statistics from the service, a data extraction system was developed, aiming at daily monitoring the reports and at producing monthly reports. In addition to the operators in the call center, there is also a specific team that forwards and monitors the reports, and another one that treats and analyzes the data. The service is a direct dial toll-free number, available in all Brazilian cities, which is intended to receive reports and information on violence against children and adolescents. Once a violation is reported, local networks are triggered to care for the victim and to ensure the aggressor's liability. It was created in 1997, under the coordination of the Brazilian Multi-Disciplinary Association for the Protection of Children and Adolescents (Abrapia), and turned over to the Federal Government in 2003. In 2006, there was a change from the 0800 system to the number 100. The service is now offered by SDH through a partnership with Petroleo Brasileiro S/A (Petrobras) and the Center of Reference, Studies and Actions on Children and Adolescents (Cecria). Disque 100 also takes on reports on other human rights violations such as human trafficking and missing children and adolescents. Since 2006, there is a specialized kind of hearing directed to children and adolescents, as well as possible aggressors. The service also provides information on the protection network and the work of guardianship councils. Received reports are sent to the relevant authorities within 24-hour and the authors' identities kept anonymous. During the period under analysis, the service increased enormously: from 4,494 reports received in 2003 to 24,942 reports in 2007, or almost five times more.” Source: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjNHBumcEd5TkNWJOjDFQeaRbvDrfhKCrOM1NVkRs%2fzcD%2bBbszyIEh9m9FpF5UyumzRs%2bqiTZkOPjmJAT5%2btjB4M1GwGbEZFcfMXVe3Y9Om>

<sup>103</sup> “The Committee is concerned about the insufficient data on children in street situations, children with disabilities and indigenous children, as well as the inadequate data on violence against children, including sexual violence and trafficking in children. In the light of its general comment No. 5 (2003) on general measures of implementation, the Committee urges the State party to improve its data collection system. The data should cover all areas of the Convention and should be disaggregated by age, sex, disability, geographic location,

The Committee also showed concern about widespread gender-based violence affecting children, including femicide. Furthermore, it recommended that measures be taken to protect children, especially in favour of those involved in gangs and recruited into organized crime. Still, on the topic of violence, the Committee highlighted the importance of measures to curb police violence, including changes in legislation, if applicable<sup>104</sup>.

### 3. The Universal Periodic Review (UPR) reports and the right of the child in Brazil

Brazil participated in three UPR cycles, and the concern for children's rights appears in all of them. The first report mentions a mechanism to fight hunger through the Zero Hunger Program and the School Feeding Program, an income transfer program for low-income families whose children were enrolled and attending school. As for the right to health, it was highlighted that investments in urbanization and basic sanitation and also the increase in vaccine coverage ensured a significant reduction in infant mortality<sup>105</sup>. The report also mentions that efforts have been made to eradicate child labour.

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ethnic origin and socioeconomic background, in order to facilitate analysis of the situation of all children, particularly those in situations of vulnerability. Furthermore, the Committee recommends that the data and indicators be shared among the ministries concerned and used for the formulation and evaluation of policies, programmes and projects for the implementation of the Convention.” Source: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjNHBumcEd5TkNWJOjDFQeatJbyFs960qiwzXV0YO437juxmhfAMHNLV1o3vXd5Afw5LCD74G939ZexURikte8y6sfGv2Qx5kMx0LNfKclbM>

<sup>104</sup> “The Committee urges the State party to take all necessary measures, including by enacting or amending legislation and establishing corresponding mechanisms, to ensure the prompt and effective investigation of all deaths and injuries of children, including those that are considered so-called “acts of resistance”, resulting from the use of force by State agents. In doing so, the State party should consider the use of increased penalties for perpetrators with experience in law enforcement or security. The Committee also recommends that law enforcement and other State security personnel who are under investigation for crimes constituting extrajudicial execution, torture and/or enforced disappearance be removed from active duty. Moreover, the Committee recommends that the State party take into consideration recommendations made by the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24/Add.4, Appendix) and: (a) Ensure proper investigation into cases of police violence during forced evictions and public protests, and ensure that perpetrators are brought to justice. The State party should also regularly conduct comprehensive training courses on children’s rights as well as on de-escalation strategies, including for situations such as forced evictions and demonstrations, for all security forces; (b) Ensure that children participating in demonstrations are not arbitrarily detained; (c) Establish an independent assessment system for military and police operations in favelas, including by involving children, with a view to incentivizing non-violent and constructive interaction with communities and children; (d) Collaborate with civil society organizations in setting up an independent network of accessible child-friendly complaint mechanisms in favelas, promote this network among children, and deploy social workers who regularly visit families, particularly those living in areas where military and police forces are present, in order to monitor and register cases of violence.” Source: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjNHBumcEd5TkNWJOjDFQeatJbyFs960qiwzXV0YO437juxmhfAMHNLV1o3vXd5Afw5LCD74G939ZexURikte8y6sfGv2Qx5kMx0LNfKclbM>

<sup>105</sup> “43. The policies of incentive to breastfeeding, increase of vaccine coverage and access to the pre-natal examination, associated to the investment in urbanization and in basic sanitation caused the mortality rate of children up to five years old to decrease one-half in Brazil. However, the challenges imposed by the poverty,

Brazil highlights that it was one of the first countries to adopt a legal framework under the principles listed in the Convention on the Rights of the Child by adopting the Child and Teenager Act (ECA). The principles of full protection, respect for the peculiar condition of the developing person and the universality of their rights and their outstanding role. The report points out the various measures adopted to provide broad protection to children<sup>106</sup>. The adoption of public policies aimed at reducing deep social inequality was one of the strategies used.

Brazil calls attention to the efforts to face social pressure to lower the age of criminal accountability. In addition, it highlighted the creation of the Program of Fight Against Abuse and Sexual Exploration of Children and Teenagers in 2002<sup>107</sup> and also the Program for Eradication of the Child Work (PETI)<sup>108</sup>.

In the working group's discussions, France congratulated the considerable advance of child protection legislation, despite the undeniable difficulty of its implementation in large cities and the poorest states. However, France showed concern with the discussions about reducing the age of criminal responsibility pursued by the population. Norway welcomed good

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social inequality and ethnic-racial discrimination are yet to be overcoming.” Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/117/01/PDF/G0811701.pdf?OpenElement>

<sup>106</sup> “79. The ECA comprised the following initiatives to tackle the main problems concerning children and teenagers in jeopardy: the creation of specialized Justice Courts, Public Prosecution Service and Police Offices; the approach on multidisciplinary policies; a decentralized decision process on public policies; co-participation of public officials and NGO members on deliberative Councils; and the creation of specific funds for the approved policy actions. The main advances in the area led to new national plans to fight against sexual violence; to prevent and eradicate child labor; to guaranty the right to family and community relationship; and to establish a National System of Social-Educational Service (SINASE). Besides those achievements , it was launched in 2003 the "Plano Presidente Amigo da Criança e do Adolescente" (President Friend of the Child and Teenager Plan), in compliance with the Millennium Development Goals, which is monitored by a network of civil society entities in order to collect data on violence against children and teenagers. From the available information, Brazil launched, in 2007, the Child and Teenager Social Plan, involving actions in strategic areas to fight against violence.” Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/117/01/PDF/G0811701.pdf?OpenElement>

<sup>107</sup> “The Program of Fight Against Abuse and Sexual Exploration of Children and Teenagers has been created in 2002. It foresees integrated actions among several Government entities for a diagnosis of the stage, geographic distribution and causes of sexual exploration in Brazil; to qualify professionals in the matters of prevention, defense, liability and care to the victims; and to receive and forward the violation accusations. The follow-up of the Program is made by an inter-sector commission, comprised of about 40 representatives of the Government, of the civil society and of international entities.” Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/117/01/PDF/G0811701.pdf?OpenElement>

<sup>108</sup> “The child labor is fought by the Program for Eradication of the Child Work (PETI). The main purpose of the Program is to take children and teenagers, from 7 to 14 years old, out of labor market, especially those considered as dangerous, hard, unhealthy or degrading. The families included in the program receive a monthly allowance for each child taken out of work; for such purpose, the children and teenagers shall attend the school in an enlarged shift, which includes sports, educational and leisure activities. The child labor in the country has increased from 2004 to 2006. The occupation rate of children in 2004 were about 5,365,000 (11.8% of the Brazilian population from 5 to 17 years old) and in 2005 this number has grown to 5,520,000 (12.1%). In 2006, the rate decreased, with the record of 5,120,000 working children (11.45%)” Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/117/01/PDF/G0811701.pdf?OpenElement>

Brazilian practices in efforts to combat child labour. Chile questioned Brazil about the measures adopted to reduce school dropouts, although it praised the school attendance of children between seven and fourteen years old. Guatemala was also impressed by this rate.

The UK highlighted the difficulty in making progress on critical issues, such as child labour and recognised Brazil's genuine efforts in this regard. Ecuador “requested that Brazil indicate its main challenges with regard to the President Friend of the Child and Teenager Plan and how to address the issue of street children. It also asked whether Brazil considered bilingual teaching in its education plans as a method to fight against poverty and consolidate cultural diversity.”<sup>109</sup>

The second report was submitted in 2012. Brazil mentioned the efforts developed to increase the protection of the early childhood, which is understood as a priority. The Pro-Childhood Program was included as an essential public policy for protecting children under six. Thus, numerous daycare centres and pre-schools were financed. The report brings up that efforts to reduce the number of children without birth registration finally had an effect. In just a few years, the percentage of unregistered children dropped by more than fifty per cent. This is a result of the policy of mobilisation in traditional communities, nomads, semi-nomads, Roma and homeless people<sup>110</sup>.

Brazil presents the various measures adopted to eradicate child labour. These efforts carried out inspection operations in both urban and rural areas. In addition, public policies were created to encourage permanence in school, such as full-day public schools, and income transfer programs<sup>111</sup>. Concerning juvenile justice, the National System for Social-Educational Assistance (SINASE) was instituted, which created a mechanism of minimum standards and guidelines for adolescents accused of an infraction. Socio-education is prioritised to the

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<sup>109</sup> Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/68/PDF/G0813668.pdf?OpenElement>

<sup>110</sup> “Unregistered births 38. Brazil has made significant efforts to ensure all Brazilians effectively exercise the right to a civil birth certificate. Consequently, from 2003 to 2009 the national average of children without birth certificates fell more than 50%. In 2009–2010, 2,895 collective mobilizations were launched to provide basic civil documents, resulting in the issuance of more than 85,000 birth certificates. Some collective mobilizations were aimed specifically at traditional, nomadic, semi-nomadic, gypsies, and homeless communities, of which 2,200 were sponsored in rural areas, resulting in the issuance of more than 1.3 million documents. Thus, today only 6% of children between 1 and 2 years of age lack a birth certificate.” Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/116/18/PDF/G1211618.pdf?OpenElement>

<sup>111</sup> “57. In 2010, the Programme to Eradicate Child Labour (PETI) benefited approximately 824,000 children in more than 3,500 municipalities, and 66.5% of Brazilian municipalities reported having implemented child labour eradication measures. In 2011, the PETI benefited 817,000 children, with an investment of R\$ 258 million, and it will be strengthened in 2012, with an expected 27.1% raise in the resources provided. The BSM Plan aims, through the Active Search, to increase the number of PETI beneficiaries and to address high vulnerability situations, such as children working in dumpsters, drug trafficking, sexual exploitation, among others.” Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/116/18/PDF/G1211618.pdf?OpenElement>

detriment of punishment. The system places the adolescent's family as essential to this recovery process. The creation of the system relied on the intense participation of civil society.

The working group's report was also prepared in 2012. Mozambique and the Netherlands recognised Brazil's efforts to implement rights in several areas, including children's rights and eradicating child labour. In the same vein, Namibia congratulated the creation of the Program to Eradicate Child Labour. Saudi Arabia praised Brazil's work in early childhood protection. Senegal and Singapore<sup>112</sup> were interested in the work being done on the eradication of child labour. Slovakia welcomed Brazil's ratification of the third optional protocol to the Convention on the Rights of the Child and recommended that efforts should be directed towards reducing poverty, malnutrition and infant mortality. The Holy See appreciates Brazil's efforts to reduce child labour while recognising challenges in preserving street and working children's rights.

Brazil sent the third cycle report in 2017. The country marked the 25th anniversary of the Child and Adolescent Statute acknowledging that challenges remain for its full implementation. The report points out several laws enacted to protect children and adolescents and guarantee their rights. Regarding child labour, it highlighted that between 1992 and 2015 the figure decreased by 80% due to public policies developed by the Brazilian state. It accentuates that civil society and street children had been encouraged to participate in the discussions on homeless children. In parallel, several organisations have been offering support to children<sup>113</sup>. Concerning the recommendations about children without a birth certificate, Brazil reported that according to surveys, only 1% of children do not have the document. Thus, the continuous decrease in numbers remains to be demonstrated<sup>114</sup>.

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<sup>112</sup> "Continue with its efforts to eradicate child labour with a particular focus on children in highly vulnerable situations (Singapore);" Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/151/15/PDF/G1215115.pdf?OpenElement>

<sup>113</sup> "120. The Specialized Centres for Social Assistance (CREAS)<sup>181</sup> and the Specialized Centres for Homeless People support street children and adolescents and provide specialized and continuous guidance to individuals and families whose rights may have been violated." Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/046/89/PDF/G1704689.pdf?OpenElement>

<sup>114</sup> "124. In the past five years, the national average of unregistered children declined by more than 50%. The percentage of children that were not registered kept falling: it was 20.9% in 2002, 12.2% in 2007, 6.6% in 2010 and only 1% in 2014, according to IBGE's data.

125. This achievement derives from the implementation of specific public policies, such as: the establishment of registry offices in health clinics and hospitals; the establishment of state and municipal committees to implement the birth registration policies; the establishment of the National Civil Registry Information System (SIRC); campaigns to raise awareness; and the expansion of indigenous people's birth registration." Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/046/89/PDF/G1704689.pdf?OpenElement>

In the working group report, Montenegro asked for information about policies to eliminate violence against children. Marocco showed satisfaction with the public policy focused on malnourished children and the fight against infant mortality. Poland recognised Brazil's efforts to combat child labour. Sweden drew Brazil's attention to a large number of child marriages. Thailand acknowledged Brazil's efforts to eliminate child labour and the sexual exploitation of children. East Timor suggested that Brazil adopt a national policy to combat violence against children.

Gabon praised the programs developed by Brazil to promote children's rights and improve their quality of life. Georgia addressed the important steps taken by Brazil in the promotion of human rights. Croatia recommended that Brazil adopt measures to promote children's rights, especially homeless children. Liechtenstein praised adopting the "Boy Bernardo Act" as a measure to combat corporal punishment that remains a common practice. It was also satisfied with the measures adopted to eradicate child labour.

#### **4. The Brazilian Constitution and the Child and Adolescent Statute**

The Brazilian Constitution, promulgated in 1988 after almost thirty years of a dictatorial regime, already from the preamble<sup>115</sup> declares that the Brazilian State is destined to ensure the exercise of social and individual rights. Title I is dedicated to Fundamental Rights, while Title II is called Fundamental Rights and Guarantees, which mentions the protection of motherhood and childhood. The Constitution determines that it is competence of the Union, States and Federal District to legislate concurrently in matters of protecting children and the young.

Title VIII, On the Social Order, establishes specific regulations on the rights of children and adolescents. Article 203 determines that social assistance will be provided to those who need it, regardless of the contribution to social security, mentioning the protection due to the family, maternity, childhood, adolescence, and old age<sup>116</sup>. Thus, in Chapter VII, entitled On

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<sup>115</sup> “Nós, representantes do povo brasileiro, reunidos em Assembleia Nacional Constituinte para instituir um Estado Democrático, destinado a assegurar o exercício dos direitos sociais e individuais, a liberdade, a segurança, o bem-estar, o desenvolvimento, a igualdade e a justiça como valores supremos de uma sociedade fraterna, pluralista e sem preconceitos, fundada na harmonia social e comprometida, na ordem interna e internacional, com a solução pacífica das controvérsias, promulgamos, sob a proteção de Deus, a seguinte CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL.” Source: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)

<sup>116</sup> “Art. 203. A assistência social será prestada a quem dela necessitar, independentemente de contribuição à seguridade social, e tem por objetivos: I - a proteção à família, à maternidade, à infância, à adolescência e à velhice; II - o amparo às crianças e adolescentes carentes;” Source: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)



the Family, Children, Adolescents and the Elderly, the Constitution expressly underlines the obligation of parents, society, and the State to protect children<sup>117</sup>.

The long article 227 expresses that it is the duty of the family, society and the State to guarantee children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom and family and community life. In addition to protecting them from all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression. The State undertakes to promote programs of integral assistance to the health of children and adolescents, admitting the participation of non-governmental entities.

Article 229 expresses the obligation of parents to assist, raise and educate their minor children based on the principles of human dignity and responsible parenthood (§ 7 of article 226) since the State will ensure assistance to the family in the person of each one of its members (§ 8 of art. 226), understanding as a family entity, the community formed by any of the parents and their descendants (§ 4 of art. 226). However, article 228 declares the non-imputability of minors under eighteen years of age, subject to the rules of special legislation.

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<sup>117</sup> “Art. 227. É dever da família, da sociedade e do Estado assegurar à criança, ao adolescente e ao jovem, com absoluta prioridade, o direito à vida, à saúde, à alimentação, à educação, ao lazer, à profissionalização, à cultura, à dignidade, ao respeito, à liberdade e à convivência familiar e comunitária, além de colocá-los a salvo de toda forma de negligência, discriminação, exploração, violência, crueldade e opressão. § 1º O Estado promoverá programas de assistência integral à saúde da criança, do adolescente e do jovem, admitida a participação de entidades não governamentais, mediante políticas específicas e obedecendo aos seguintes preceitos: I - aplicação de percentual dos recursos públicos destinados à saúde na assistência materno-infantil; II - criação de programas de prevenção e atendimento especializado para as pessoas portadoras de deficiência física, sensorial ou mental, bem como de integração social do adolescente e do jovem portador de deficiência, mediante o treinamento para o trabalho e a convivência, e a facilitação do acesso aos bens e serviços coletivos, com a eliminação de obstáculos arquitetônicos e de todas as formas de discriminação; § 2º A lei disporá sobre normas de construção dos logradouros e dos edifícios de uso público e de fabricação de veículos de transporte coletivo, a fim de garantir acesso adequado às pessoas portadoras de deficiência. § 3º O direito a proteção especial abrangerá os seguintes aspectos: I - idade mínima de quatorze anos para admissão ao trabalho, observado o disposto no art. 7º, XXXIII; II - garantia de direitos previdenciários e trabalhistas; III - garantia de acesso do trabalhador adolescente e jovem à escola; IV - garantia de pleno e formal conhecimento da atribuição de ato infracional, igualdade na relação processual e defesa técnica por profissional habilitado, segundo dispuser a legislação tutelar específica; V - obediência aos princípios de brevidade, excepcionalidade e respeito à condição peculiar de pessoa em desenvolvimento, quando da aplicação de qualquer medida privativa da liberdade; VI - estímulo do Poder Público, através de assistência jurídica, incentivos fiscais e subsídios, nos termos da lei, ao acolhimento, sob a forma de guarda, de criança ou adolescente órfão ou abandonado; VII - programas de prevenção e atendimento especializado à criança, ao adolescente e ao jovem dependente de entorpecentes e drogas afins. § 4º A lei punirá severamente o abuso, a violência e a exploração sexual da criança e do adolescente. § 5º A adoção será assistida pelo Poder Público, na forma da lei, que estabelecerá casos e condições de sua efetivação por parte de estrangeiros. § 6º Os filhos, havidos ou não da relação do casamento, ou por adoção, terão os mesmos direitos e qualificações, proibidas quaisquer designações discriminatórias relativas à filiação. § 7º No atendimento dos direitos da criança e do adolescente levar-se-á em consideração o disposto no art. 204. § 8º A lei estabelecerá: I - o estatuto da juventude, destinado a regular os direitos dos jovens; II - o plano nacional de juventude, de duração decenal, visando à articulação das várias esferas do poder público para a execução de políticas públicas.” Source: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)

The 1988 Constitution's emphasis on declaring children's rights leaves no doubt that this is a guarantee binding on public authorities, creating an obligation for them to act according to established principles. Furthermore, incorporating the Convention on the Rights of the Child into domestic law reinforces that these are not merely programmatic norms. The wide range of rights listed in the Constitution to guarantee a dignified life for children and adolescents is indisputable.

The Child and Adolescent Statute (ECA), Law No. 8069, was enacted on July 13, 1990. The law is responsible for detailing the child's rights, always in compliance with the Convention on the Rights of the Child, United Nations Minimum Rules for the Administration of Children and Youth Justice (Beijing Rules) and United Nations Guidelines for the Prevention of Juvenile Delinquency and the Brazilian Constitution. The legislation implements the doctrine of integral protection, to be discussed in the next topic, placing the child and adolescent as subjects of protection rights and specific guarantees. The law establishes that a child is who is not yet twelve years old, and an adolescent is between twelve and eighteen.

The Child and Adolescent Statute is divided into two books and is composed of 267 articles. In its first book, it deals with general questions about how the law should be understood and what is the scope of the rights listed by it, as well as pointing out the fundamental rights provided for in the Federal Constitution. The second book deals with the general rules that govern the policy for confronting situations of violation or threat to the rights of children and adolescents, dealing with the guidelines of the service policy, protection and socio-educational measures, access to justice and administrative crimes and infractions.

The ECA regulates, in a broad sense, fundamental rights provided in the Constitution, such as respect for life and health, freedom and dignity, family and community coexistence, education, culture, sport and leisure, adoption, professionalisation and protection at work. Highlighting the value of children and adolescents as subjects of rights, the ECA provides that they should receive the maximum dedication due to their peculiar condition as people in physical, psychological and social development. Therefore, the ones who have needs to be met in the three spheres. For this to be achieved, the ECA was structured around two fundamental principles: the doctrine of integral protection and the principle of the child's best interests. These two principles are the basic rules of childhood and youth law.

The ECA determines the absolute priority in formulating public policies and allocating resources by the various political-administrative bodies in Brazil. Although it is considered one of the most advanced pieces of legislation in protecting and promoting children's rights, much remains to be done for its complete application. Some practices, especially concerning

adolescents in conflict with the law, are rooted in outdated treatment and behaviour by both public policymakers and law enforcers (police chiefs, judges, and prosecutors).

## **5. Child as subject of rights and the doctrine of integral protection**

The ECA, as already mentioned, was structured around the doctrine of full protection. This is the basic rule of childhood and youth law. The doctrine of integral protection, inaugurated with article 227 of the Constitution, provides that the rights of children and adolescents must be protected with absolute priority. It ensures the fundamental rights granted to all citizens and those that pay attention to the specifics of childhood. The doctrine also understands that caring of the child is necessary, fighting against violations and promoting rights<sup>118</sup>.

The doctrine of integral protection rests on two fundamental principles: the principle of the best interests of the child and the principle of absolute priority. The principle of the child's best interests guarantees that all decisions concerning the child or adolescent must consider their best interests. Thus, in any situation or problem involving children, this principle ensures that the best alternative is sought to satisfy the rights of children and adolescents so that their interests are always priorities<sup>119</sup>. In contrast, the principle of absolute priority indicates that the child should receive priority care or treatment concerning any other person in the face of any problem. This principle highlights the concern to protect, in a special way, a segment of society that is in a situation of vulnerability, such as children and adolescents.

The doctrine of integral protection affirms the value of the child as a human being, a subject of rights, and their condition as a person in development must be respected, guaranteeing children and adolescents, with absolute priority, fundamental rights, determining the family, the society and the state the legal and concurrent duty to ensure them. The doctrine breaks with the culture of minorism based on the 1979 Minors' Code, which lasted until the advent of the 1988 Citizen Constitution. It is worth noting that the minorist legislation was enacted during the military regime and gave children objectified treatment.

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<sup>118</sup> RÉ, A.I.M.R. (2013). *Temas Aprofundados Defensoria Pública*. P. 633: “Trata-se de uma verdadeira mudança de paradigma, que se afasta de uma doutrina restrita a um público limitado, geralmente os filhos de famílias empobrecidas, negros o pardos, para uma doutrina universal de crianças e adolescentes. Deixa-se de agir sobre o menor para ver as crianças e adolescentes como sujeitos de direitos. (...). A doutrina da proteção integral afirma o valor da criança como ser humano, e, assim, sujeito de direitos, devendo ser respeitada à sua condição de pessoa em desenvolvimento, assegurando às crianças e adolescentes, como absoluta prioridade, direitos fundamentais, determinando à família, à sociedade e ao Estado o dever legal e concorrente de assegurá-los.”

<sup>119</sup> ECPAT. (2006). P. 13: “The possibility of contradiction between what safeguards are required to protect children from harm, and what choices the individual child is entitled to make his/her own right, is resolved in modern jurisprudence by having regard to ‘best interested’ of the child.”

The 1979 Minors Code reflects positivist criminological thinking, adopting the etiological paradigm by establishing that children and adolescents are objects of the norm that deserve treatment when they are in an irregular situation. This situation legitimises authoritarian, repressive and incriminating practices of poverty. The doctrine of the irregular situation reflected the thinking of that time, being considered in an irregular situation any minor in a situation of family abandonment or delinquency. The idea of the criminalisation of poverty and the difference in treatment between rich and poor was a hallmark of the doctrine of irregular doctrine<sup>120</sup>.

This doctrine gave judges almost absolute power so that children and adolescents were subjected to a process that overrode their rights and human dignity. The child was treated as a mere object of investigative analysis, and the participation of a lawyer was not mandatory. The juvenile offender was sent to the facility whose objective was to deprive them of liberty. The law authorised adolescents to remain in prisons with adults if there was no adequate establishment. In the name of the "protection" of minors, they were denied all the guarantees of the legal systems, practicing true violations of rights and materialising the criminalisation of poverty and the judicialisation of the social issue. This doctrine placed minors as the object of the norm because they would present a "social pathology" due to not adjusting to the established social standard<sup>121</sup>.

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<sup>120</sup> “Art. 2º Para os efeitos deste Código, considera-se em situação irregular o menor: I - privado de condições essenciais à sua subsistência, saúde e instrução obrigatória, ainda que eventualmente, em razão de: a) falta, ação ou omissão dos pais ou responsável; b) manifesta impossibilidade dos pais ou responsável para provê-las; II - vítima de maus tratos ou castigos imoderados impostos pelos pais ou responsável; III - em perigo moral, devido a: a) encontrar-se, de modo habitual, em ambiente contrário aos bons costumes; b) exploração em atividade contrária aos bons costumes; IV - privado de representação ou assistência legal, pela falta eventual dos pais ou responsável; V - Com desvio de conduta, em virtude de grave inadaptação familiar ou comunitária; VI - autor de infração penal. Parágrafo único. Entende-se por responsável aquele que, não sendo pai ou mãe, exerce, a qualquer título, vigilância, direção ou educação de menor, ou voluntariamente o traz em seu poder ou companhia, independentemente de ato judicial.” Source: [http://www.planalto.gov.br/ccivil\\_03/leis/1970-1979/l6697.htm](http://www.planalto.gov.br/ccivil_03/leis/1970-1979/l6697.htm)

<sup>121</sup> WACQUANT, L. (2013). P. 20/21: “A incontestável hegemonia do pensamento neoliberal sobre segurança dos dois lados do Atlântico oculta o fato de que as sociedades contemporâneas dispõem de pelo menos três estratégias principais para tratar as condições e as condutas que julgam indesejáveis, ofensivas ou ameaçadoras. A primeira consiste em socializá-las, isto é, em agir no nível das estruturas e dos mecanismos coletivos que as produzem e as reproduzem. No que diz respeito, por exemplo, ao aumento persistente do número de pessoas visivelmente sem domicílio fixo, que ‘sujam’ a paisagem urbana, deve-se construir ou subvencionar alojamentos, ou ainda assegurar-lhes um emprego ou um rendimento que lhes permita encontrar um refúgio no mercado habitacional. Este caminho requer a (re)afirmação e a (re)construção das capacidades do Estado social em lidar com deslocamentos urbanos persistentes ou emergentes. A segunda estratégia é a medicalização, isto é, considerar que uma pessoa vive nas ruas porque sofre de dependência ao álcool, é viciada em drogas ou tem problemas de saúde mental, e, portanto, procurar um remédio médico a um problema, apressadamente definido como patologia individual, que deve ser tratado por profissionais de saúde. A terceira estratégia do Estado é a penalização. Nesse contexto, não se trata de compreender uma situação de estresse individual, bem de se contrapor às engrenagens sociais. O nômade urbano é etiquetado como delinquente (por intermédio, por exemplo, de um decreto municipal colocando fora da lei pedir esmolas ou ficar deitado na calçada) e tratado enquanto tal; ele deixa de integrar o contingente dos ‘sem teto’ quando é colocado atrás das grades. (...) A

The replacement of the Minors' Code of 1979 by the Child and Adolescent Statute in 1990 constitutes a true paradigm shift, a cultural revolution. The worst atrocities against children were committed at a time when, in the name of "love", the ideals of messianism, subjectivism and discretion reigned. The ECA puts an end to the existing ambiguities between the protection and accountability of juvenile offenders in conflict with the law. Contrary to the subjectivism and discretion of the Minors' Code, a law with a guaranteeing nature emerges, which establishes strict respect for the its rule.

The doctrine of integral protection is based on the principle that all children and adolescents, without distinction, enjoy the same rights and are subject to obligations compatible with the particular condition of development they enjoy. The Court of Childhood and Youth starts to deal with all issues involving children and adolescents, from situations of neglect or family abandonment to mistreatment and adolescents in conflict with the law (offenders). In addition to such aspects more directly linked to children and adolescents as subjects of rights, it is important to emphasise that the ECA also redistributed the roles between the former - Executive and Judiciary -, defining their attributions, restricting the functions of the Court of Childhood and Youth, determining the municipalisation of care and providing for the responsibility of the Public Power for omission or irregular provision of children's rights.

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penalização serve aqui como uma *técnica para a invisibilização dos 'problemas' sociais* que o Estado, enquanto alavanca burocrática da vontade coletiva, não pode ou não se preocupa mais em tratar de forma profunda, e a prisão serve de lata de lixo judiciária em que são lançados os desejos humanos da sociedade de mercado.”

## CHAPTER IV - THE EARLY CHILDHOOD RIGHTS

*“No aeroporto o menino perguntou:  
 -E se o avião tropical num passarinho?  
 O pai ficou torto e não respondeu.  
 O menino perguntou de novo:  
 -E se o avião tropical num passarinho triste?  
 A mãe teve ternuras e pensou:  
 Será que os absurdos não são as maiores virtudes da  
 poesia?  
 Será que os despropósitos não são mais carregados de  
 poesia do que o bom senso?  
 Ao sair do sufoco o pai refletiu:  
 Com certeza, a liberdade e a poesia a gente aprende  
 com as crianças.  
 E ficou sendo.”<sup>122</sup>*

### 1. What is the early childhood?

Early childhood is a fundamental stage in human life so human beings can fulfil their potential throughout their existence. Scientific evidence has shown that the brain develops rapidly in the first years of life and is very sensitive to environmental care and stimuli. This period is seen as a “window of opportunity” because, in it, learning and developing skills and competencies happen more quickly<sup>123</sup>. Children with healthy integral development during the first years of life find it easier to adapt to different environments and acquire new knowledge, helping them to achieve good school performance later, achieve personal, vocational, and economic fulfilment and become responsible citizens.

The early childhood stage comprises birth to six years of age. It is a period of continuous growth and development in acquiring motor, cognitive, social, language and communication skills. The transformation trajectory is notorious when considering a baby and a six-year-old child. The child advances in issues of autonomy and in the way he/she interacts with his/her environment. New behaviours emerge, and the child becomes more complex in this period, in ways of thinking and acting. These transformations receive “direct influence from school, home, family, teachers, relatives, friends and stimulation through activities that this child receives”<sup>124</sup>.

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<sup>122</sup> Barros, M. de. (1999). *Exercícios de ser criança*. P. 21.

<sup>123</sup> “Children’s brains are built, moment by moment, as they interact with their environments. In the first few years of life, more than one million neural connections are formed each second – a pace never repeated again. The quality of a child’s early experiences makes a critical difference as their brains develop, providing either strong or weak foundations for learning, health and behaviour throughout life.” Source: <https://www.unicef.org/early-childhood-development>

<sup>124</sup> Araújo, I. (2014). P. 15.

The bonding, demanding, and responsive relationships built in early childhood have repercussions on the child's interpersonal relationship styles, openness to novelty, and willingness to explore, discover and adapt to the unforeseen. Likewise, the psychosocial skills of trust and autonomy are specially developed in early childhood. Therefore, early childhood is the most important period in an individual's life, as it is from the stimuli received by the family, community, and school that the child will develop essential tools for a healthy, in many ways, adult life<sup>125</sup>. Thus, the absence of adequate stimuli negatively affects the child's development.

Early childhood is simultaneously characterised by more remarkable brain plasticity, which potentially allows the construction of different brain circuits, the optimisation of brain architecture and the accommodation of new learning and experiences, realising the impact of this phase in adult life. Neuroplasticity, or neuronal plasticity, is the dynamic capacity of the brain that allows physiological and structural changes in response to changes in the environment. The human being has this ability to remodel throughout life, but for specific functions, plasticity finds maximum power in early childhood.

Neuroscience research shows that experience “adjusts the genetic blueprint for the brain and shapes the architecture of its neural circuits to the needs and characteristic environment of the individual”<sup>126</sup>. Moreover, among the studies of the brain that consider aspects of the environment as relevant, research on brain plasticity stands out as an essential resource of brain architecture.

Thus, the family<sup>127</sup>, the school and the community are spaces where the child develops in a dynamic and uninterrupted process, established in the relationship between their biological characteristics and the quality of the experiences offered to them. Learning does not occur in repetitive trials but through constant interactions dispersed over time in their natural environment. The management of adults and the experiences provided make up the scene of development, and children are daily constituted in these lives.

Therefore, the lack of correct stimuli directly impacts the quality of early childhood experiences. Adequate nutrition, leisure time, access to quality education, housing, access to

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<sup>125</sup> The Lancet. (2017). P.77: “Ideally, early childhood development services must be provided holistically across all relevant sectors to enable young children to thrive. Some countries have adopted multisectoral policies and are beginning to implement them. Other countries are expanding one set of services, such as social protection or pre-primary education, creating a wedge for the introduction of other services. Ultimately, action is required across health and nutrition, education, and social and child protection.”

<sup>126</sup> NATIONAL SCIENTIFIC COUNCIL CHILD. (2007). P. 3, 4.

<sup>127</sup> BARNETT, W. S., & BELFIELD, C. R. (2006). P. 79: “Although some studies produce larger estimates, the most reliable research - randomized experimental trials - estimates that family support programs improve both cognitive and social development by perhaps 0.10 standard deviations.”

health care, love and acceptance by the family and society directly interfere in the formation of someone. When the correct stimuli are not received at the appropriate age, the consequences of this absence are likely to be carried into adulthood. Among these consequences there are harmful effects on adult health and human capital, including chronic diseases and lower adult education and income. All these disadvantages, in general, are observed in the following generations, perpetuating poverty<sup>128</sup>.

The understanding that investments in early childhood could interrupt the cycles of poverty led the UN to organise and encourage its agencies and countries to invest in early childhood, especially in the first thousand days, the most critical early childhood period. Integrated interventions in early childhood are crucial to improving the lives of families and communities and investing in early childhood development is one of the most effective strategies for a country to eliminate extreme poverty, promote inclusive economic growth and expand equal opportunities<sup>129</sup>.

Direct investment in early child development is complemented by investment in parents and family environments. Quality early childhood education from birth to age six and parent training, such as home visiting programs for teenage fathers and mothers, are important tools for early childhood empowerment. In addition, research by Nobel laureate in economics Heckman demonstrates a lower incidence of chronic diseases in adulthood. A broad investment in children's health demonstrates a dramatic decrease in heart attack, stroke, obesity, hypertension and diabetes<sup>130</sup>.

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<sup>128</sup> Selina Lo, P. das, Richard H. (2017). *Early childhood development: the foundation of sustainable development*. The Lancet. P. 63: “Conversely, long-term follow-up of children from birth shows that growth failure in the first 2 years of life has harmful effects on adult health and human capital, including chronic disease, and lower educational attainment and adult earning. Moreover, deficits and disadvantages persist into the subsequent generation, producing a vicious inter-generational cycle of lost human capital and perpetuation of poverty. These findings shine light on the transformative potential of early childhood development programmes in low-income and middle-income countries.”

<sup>129</sup> Heckman, J. J. (2012). *Invest in Early Childhood Development: Reduce Deficits, Strengthen the Economy*. “The highest rate of return in early childhood development comes from investing as early as possible, from birth through age five, in disadvantaged families. Starting at age three or four is too little late, as it fails to recognize that skills beget skills in a complementary and dynamic way. Efforts should focus on the first years for the greatest efficiency and effectiveness. The best investment is in quality early childhood development from birth to five for disadvantaged children and their families.”

<sup>130</sup> HECKMAN, J. J. (2014). *Abecedarian & Health: Improve adult health outcomes with quality early childhood programs that include health and nutrition*: “High-quality, birth-to-five preschool has demonstrated positive effects on a variety of life outcomes. A new analysis of the Abecedarian preschool program, one of the oldest and most cited U.S. early childhood intervention programs, shows positive effects on adult health. Using recently collected data in a biomedical sweep, this research finds that children who were in the treatment group have significantly better health in their mid-30s. The estimated treatment effects survive corrections for several statistical challenges faced by small-sample randomized controlled trials. The findings show the potential of early life programs to prevent disease and promote adult health.”



## 2. Early childhood rights in international law

It is indisputable that investments in early childhood have proven effective in reducing social inequalities. Both from an economic point of view, in the sense that financial investments have an inevitable return in the long term, and from the point of view of social equity. Understanding that children have the right to live and develop their full potential, the UN guaranteed the protection of early childhood.

The rights of early childhood at the international level are provided both in a more general way, guaranteeing rights for children, and in a more specific way, directing rights to the age group included in early childhood. In general terms, early childhood protection is provided for in the Convention on the Rights of the Child, widely discussed in a previous topic, as well as in the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of Persons with Disabilities (CRPD). Specifically, there is a reference to early childhood rights in the United Nations Sustainable Development Goals (SDGs), the global programme to eradicate poverty and reduce inequality within and between nations by 2030<sup>131</sup>. It is essential to point out that although the treaties have a binding and mandatory character to the signatory state parties, the same cannot be said about the objectives outlined in the SDGs, which consist of political commitments signed between the states without any binding force.

The Convention on the Rights of the Child provides for the application of the rights listed to all those under the age of 18, including early childhood. The child must have her/his life and survival protected. There is also mentioned protection against discriminatory treatment, guaranteeing respect for their opinions and beliefs. It provides for the right to education, health and security, and the registration of birth, name, and nationality. More specifically, on education, compulsory and free primary education is guaranteed. Freedom of thought, conscience and religious belief is also guaranteed. The right to leisure and participation in artistic and cultural life is also guaranteed.

The International Covenant on Economic, Social and Cultural Rights provides, in article 10, item 3, that “Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life

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<sup>131</sup> “Target 4.2 requires all countries in the world, by 2030 to: ‘ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education.’”. Source: <https://ssrn.com/abstract=3964160> or <http://dx.doi.org/10.2139/ssrn.3964160>

or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”<sup>132</sup>. Article 12 ensures that states must work to reduce infant mortality rates and ensure the healthy development of children.

The Convention on the Rights of Persons with Disabilities ensures that children with disabilities must respect their developmental capacity to preserve their identity. Article 7 provides that children with disabilities shall exercise all human rights and fundamental freedoms and ensure respect for their opinion<sup>133</sup>. It is also mentioned the importance of including in the educational system an attitude of respect for people with disabilities. Some other rights are already provided for in the Convention on the Rights of the Child. However, this repetition is necessary and essential to reinforce that no rights should be taken away from a child because of his or her condition of having a disability<sup>134</sup>.

The Sustainable Development Goals were set in 2015 with the objective that by 2030 they would be implemented. The goals were set by the United Nations and consist of a universal appeal to end poverty, protect the planet and improve the lives of all. The 17 goals are: 1) No poverty, 2) Zero hunger, 3) Good health and well-being, 4) Quality of education, 5) Gender equality, 6) Clean water and sanitation, 7) Affordable and clean energy, 8) Decent work and economic growth, 9) Industry, innovation and infrastructure, 10) Reduce inequalities, 11) Sustainable cities and communities, 12) Responsible consumption and production 13) Climate action, 14) Life below water, 15) Life on land, 16) Peace, justice and strong institutions, and 17) Partnerships for the goals.

While it is recognised, as mentioned above, that the SDGs are not binding, it is important and significant that early childhood was expressly mentioned for the first time at the international

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<sup>132</sup> Source: <https://www.ohchr.org/sites/default/files/cescr.pdf>

<sup>133</sup> “Article 7 – Children with disabilities. 1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. 2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. 3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.”. Source: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-7-children-with-disabilities.html>

<sup>134</sup> “18. *Recognizing* that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,”. Source: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-7-children-with-disabilities.html>

level. SDG 4<sup>135</sup> aims to ensure lifelong learning but recognises that early stimulation increases the length of stay in school, improves school performance and the income of these children when they become adults<sup>136</sup>. In addition, education and early childhood valuation is directly linked to SDGs 1, 2, 3, 5, 10 and 16:

- Goal 1: No poverty. Early childhood interventions increase the skills, productivity and income of adults and therefore reduce inequalities.
- Goal 2: Zero hunger and improve nutrition. Interventions to promote nutrition affect learning directly and help improve the growth and development of young children.
- Goal 3: Good health and well-being. Supporting early childhood development increases the quality of home care practices, protects against stress and reduces the risk of chronic illness.
- Goal 5: Gender equality. Early childhood development interventions improve motivation and learning opportunities for girls so they can benefit equally from schooling and enter the workforce
- Goal 10: Reduce inequality. Stimulating early childhood programs and food supplementation will enable children living in extreme poverty to achieve outcomes closer to wealthier peers.
- Goal 16: Peace, justice and strong institutions. Well-nourished and safe children have improved coping strategies, even in conditions of severe adversity. In the absence of nutrition care, there is a high likelihood that an increasing number of children worldwide will be exposed to violence in their homes and communities. This can cause adverse transgenerational consequences.
- Goal 17: Partnerships for the goals. Investments in early childhood are important because they can potentially strengthen coordination across sectors to achieve common health, social and economic goals and bring together civil society and government partners.

Although no international treaty or covenant expressly deals with early childhood, it is indisputable that its protection is supported by the Convention on the Rights of the Child, the

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<sup>135</sup> “In the Sustainable Development Goals, the international community recognized the importance of early childhood development through the inclusion of a dedicated indicator, SDG 4.2.1, which measures the proportion of children under 5 years old who are developmentally on track in health, learning and psychosocial well-being.” Source: <https://www.unicef.org/early-childhood-development/data-evidence-tracking>

<sup>136</sup> “We now know, from recent neuroscience research, just how critical the early years of life are in the development of a child’s brain and in shaping their future. Meanwhile, economics has shown us the great benefits of investing in young children during this unique developmental window – and the wrenching costs, to children and societies, of failing to do so.”. Source: <https://www.unicef.org/early-childhood-development/data-evidence-tracking>

International Covenant on Economics, Social and Cultural Rights, and the Convention on the Rights of Persons with Disabilities. All these international instruments guarantee rights to children, regardless of their age. More specific treatment is given in the Sustainable Development Goals, which, although not binding, deals with the importance of investing in early childhood, encouraging countries around the world to invest in children up to the age of six<sup>137</sup>.

### 3. Early childhood rights in Brazil

The protection of early childhood finds support in Brazil, which recognises the importance of this stage in an individual's life and therefore guarantees its protection. As it is the case internationally, in Brazil, early childhood protection occurs more generally when it provides for the rights guaranteed to children and adolescents in the Federal Constitution and the Child and Adolescent Statute, as well as, more specifically, in the Law No. 13,257/16.

When article 227 of the Federal Constitution provides that "It is the duty of the family, society and the State to guarantee children, adolescents and young people, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom and family and community coexistence, in addition to protecting them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.", it ensures rights for all children and adolescents, including those in early childhood<sup>138</sup>.

Likewise, the Child and Adolescent Statute provides for a wide range of rights in favour of children and adolescents, without mentioning the term early childhood. It is worth pointing out that when the Federal Constitution and the Statute were promulgated, there were not enough studies on the importance of the period between 0 and 6 years of age. Therefore,

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<sup>137</sup> "The early childhood agenda is truly global, because the need is not limited to low-income countries. Children living in disadvantaged households in middle-income and wealthy countries are also at risk. In targeting our investments, we should give priority to populations in the greatest need, such as families and children in extreme poverty and those who require humanitarian assistance. In addition, we have to build more resilient systems in vulnerable communities to mitigate the disruptive influence of natural disasters, fragility, conflict, and violence." Source: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)31701-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)31701-9/fulltext)

<sup>138</sup> "Art. 227. É dever da família, da sociedade e do Estado assegurar à criança, ao adolescente e ao jovem, com absoluta prioridade, o direito à vida, à saúde, à alimentação, à educação, ao lazer, à profissionalização, à cultura, à dignidade, ao respeito, à liberdade e à convivência familiar e comunitária, além de colocá-los a salvo de toda forma de negligência, discriminação, exploração, violência, crueldade e opressão." Source: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)

although not expressly, the Child and Adolescent Statute protects children comprised in early childhood<sup>139</sup>.

Law No. 13,257/16 provides in detail the rights inherent to early childhood and the implementation of public policies in order to guarantee these rights. The law also amends the Child and Adolescent Statute, the Criminal Procedure Code and the Consolidated Labour Laws. The law highlights as priority areas in the elaboration and implementation of public policies: health, food, nutrition, early childhood education, family and community living, social assistance to the family, culture, play and leisure, environment, protection against all forms of violence<sup>140</sup> and consumerist pressure<sup>141</sup>.

The law declares that the public power, in the elaboration of public policies concerning the early childhood, must observe:

- the best interests of the child and his/her condition as a subject of rights and a citizen;
- the child's participation in the definition of actions that concern him/her, following his/her age and developmental characteristics;
- the individuality and developmental rhythms of children and valuing the diversity of Brazilian childhood, as well as the differences among children in their different social and cultural contexts;
- inequalities in access to goods and services that meet the rights of children in early childhood, prioritising public investment in promoting social justice<sup>142</sup>, equity and inclusion without discrimination against children;

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<sup>139</sup> “Art. 4º É dever da família, da comunidade, da sociedade em geral e do poder público assegurar, com absoluta prioridade, a efetivação dos direitos referentes à vida, à saúde, à alimentação, à educação, ao esporte, ao lazer, à profissionalização, à cultura, à dignidade, ao respeito, à liberdade e à convivência familiar e comunitária.”. Source: [http://www.planalto.gov.br/ccivil\\_03/leis/l8069.htm](http://www.planalto.gov.br/ccivil_03/leis/l8069.htm)

<sup>140</sup> “Family violence is increasingly recognised as a key public health problem in LMICs. Maltreatment during childhood is associated with reduced volume of both the midsagittal area and hippocampus, which are brain regions involved in learning and memory. Children who receive inadequate care, especially in the first 24 months of life, are more sensitive to the effects of stress and display more behavioural problems than do children who receive nurturing care. There is increasing evidence that one of the most powerful predictors of caregiving behaviour is how caregivers, especially mothers, were cared for themselves. Children who grow up neglected or abused by their parents, or under conditions of extreme distress within their families, are at risk of developing a host of unhealthy behaviours that affect their own lives. When these children grow up, they tend to be less equipped to take on a parenting role and are more likely to perpetuate a cycle of adverse caregiving across generations.”. Source: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)31390-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)31390-3/fulltext)

<sup>141</sup> “Art. 5º Constituem áreas prioritárias para as políticas públicas para a primeira infância a saúde, a alimentação e a nutrição, a educação infantil, a convivência familiar e comunitária, a assistência social à família da criança, a cultura, o brincar e o lazer, o espaço e o meio ambiente, bem como a proteção contra toda forma de violência e de pressão consumista, a prevenção de acidentes e a adoção de medidas que evitem a exposição precoce à comunicação mercadológica.” Source: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2016/lei/l13257.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/l13257.htm)

- the ethical, humanistic and political dimensions of the child citizen with scientific evidence and professional practice in early childhood care;
- a participatory approach, involving society, through its representative organisations, professionals, parents and children, in improving the quality of actions and guaranteeing the provision of services;
- sectoral actions with a view to comprehensive and integrated service;
- decentralise actions among Federation entities;
- the formation of a culture of child protection and promotion, with support from the media.

It is interesting to note that the law points out, in several passages, that children's participation in formulating public policies is essential, promoting their social inclusion. The age of the child and its proper listening, through qualified professionals, must be considered at this point.

In order to put into practice the provisions of the Legal Framework for Early Childhood, the Happy Child Program was created, through Decree No. 8,869, on October 5, 2016, and amended by Decree No. 9,579, on November 22, 2018. The program aims to provide children from 0 to 6 years old with tools to promote their integral development. Considering the specificities and relevance of the first years of a child's life, the program aims to develop children regarding their family and social context<sup>143</sup>. It is intended for pregnant women; children up to 6 years of age whose family receives government assistance benefits; children up to 6 years old in orphanages, and children up to 72 months who benefit from assistance programs and who have lost at least one of the responsible family members during the emergency period of COVID-19.

From the program's perspective, families in social vulnerability are those that continually seek to develop survival strategies reconciling domestic life, family care, support in the large

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<sup>142</sup> “Living in poverty is associated with a high degree of stress. Conditional cash transfer programmes have increased the proportion of people receiving prenatal care, probability of in-facility birth and of having a skilled birth attendant, conditions often associated with improved birth outcomes (ie, decreased neonatal mortality) and later developmental outcomes. During labour and childbirth, mothers who have continuous social support (eg, emotional support, comfort measures, information, and advocacy) show significantly more positive clinical benefits for themselves and for their infants compared with mothers who don't.” Source: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)31390-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)31390-3/fulltext)

<sup>143</sup> “O Programa Criança Feliz surge como uma importante ferramenta para que famílias com crianças entre zero e seis anos ofereçam a seus pequenos meios para promover seu desenvolvimento integral. É uma estratégia alinhada ao Marco legal da Primeira Infância que traz as diretrizes para a formulação e a implementação de políticas públicas para a primeira infância em atenção à especificidade e à relevância dos primeiros anos de vida no desenvolvimento infantil e no desenvolvimento do ser humano.”. Source: [https://www.gov.br/cidadania/pt-br/acoes-e-programas/crianca-feliz/copy\\_of\\_o-programa](https://www.gov.br/cidadania/pt-br/acoes-e-programas/crianca-feliz/copy_of_o-programa)

family or their social support networks. Due to intense urbanisation, these families live in territories with little infrastructure, far from essential services, that is, difficult to access. Sometimes, they are spaces that are polluted and in environmental degradation. These families suffer countless pressure in their daily lives, without coexistence for dialogue and leisure, and are commonly exposed to violence and drug trafficking.

Its methodological pillars are home visits, intersectoral articulation for the forwarding of family demands identified in the visits, and the launch of the registration of visits in electronic medical records of the states<sup>144</sup>. Therefore, they develop programs, projects and services considering the social vulnerabilities presented by families as a focus of action. The medical record is vital because it constitutes the official, systematised and standardised record of data that demonstrates the service provided to society, enabling the diagnosis, planning and monitoring of social work with families and being a source of information that makes it possible to assess the need to add other services when demands go beyond the program's objectives.

The Happy Child Program favours family protagonism and the expansion of the ability to interact and deal with the needs of children, using listening, welcoming, guiding questions and observations about the care practices that families already develop. Visitors appear from one to four times a month at the beneficiary's homes, depending on the child's profile. The technical visit aims to strengthen child development through attention and support to the family, passing on guidelines on the child's daily life and referring them to different bodies when necessary.

Brazil has, from a legal point of view, ample protection for early childhood. Federal Constitution, Child and Adolescent Statute and Law No. 13,257/16 outline numerous rights and the way to guarantee them, ensuring that all government entities, society and family must protect early childhood and make available all the rights listed in the law. In addition, it is essential to highlight that important programs, such as the Happy Child Program, were created to accompany children, their families and pregnant women, all to provide children with the possibility of working on and reaching their maximum potential.

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<sup>144</sup> “A principal ação do Programa Criança Feliz é a realização de visitas domiciliares. As visitas são ações desenvolvidas pelos visitantes na residência da família incluída no programa. Elas representam uma estratégia de aproximação dos serviços com a família atendida e, por isso, favorecem um reconhecimento mais preciso das características, potencialidades e necessidades de cada contexto, resultando em propostas de intervenção singulares, pertinentes a cada realidade.”. Source: [https://www.gov.br/cidadania/pt-br/acoes-e-programas/crianca-feliz/copy\\_of\\_o-programa](https://www.gov.br/cidadania/pt-br/acoes-e-programas/crianca-feliz/copy_of_o-programa)

#### **4. The rights covered by the early childhood in Brazil**

Brazilian legislation broadly protects children's rights, especially those in early childhood, that is, those between 0 and 6 years of age. The provision of these rights in the legislative framework ensures the pursuit of their implementation and application to all children.

Based on the Federal Constitution, the Statute of Children and Adolescents, and the Convention on the Rights of the Child, the Legal Framework for Early Childhood specifies a series of actions to fulfil children's rights. Such as:

- a) including the child's participation in the definition of actions that concern them, according to their age and developmental characteristics;
- b) respecting the individuality of children and valuing the diversity of Brazilian childhoods;
- c) reducing inequalities in access to goods and services that meet the rights of children in early childhood, prioritising public investment in promoting social justice, equity and non-discriminatory inclusion for children;
- d) promoting the formation of a culture of child protection and promotion, with support from the media;
- e) organising and encouraging the creation of recreational spaces that promote well-being, play and the exercise of creativity in public and private places where children circulate, as well as the enjoyment of free and safe environments in their communities;
- f) replacing preventive detention with house arrest when the agent is pregnant or a woman with a child up to 12 years of age;
- g) prioritising the qualification of professionals on the specifics of early childhood;
- h) reinforcing the importance of home care, especially in vulnerable conditions;
- i) extending paternity leave from 5 to 20 days. The rule, however, is valid only for workers of companies enrolled in the Citizen Company Program and for civil servants;
- j) ensuring that all women have access to women's health and reproductive planning programs and policies, and to pregnant women, adequate nutrition, humanised care for pregnancy, childbirth and the puerperium, and prenatal, perinatal and postnatal care.

Observing all the premises mentioned above, the fundamental right to be guaranteed to early childhood is the right to life. Its protection, it is worth noting, starts from conception, assuring



pregnant women the right to adequate prenatal care. Thus, routine consultations must be carried out regularly, and the pregnant woman must have access to the necessary tests to protect her health and the fetus. Therefore, this follow-up is essential to prevent, identify and treat any problem that may affect the mother's health and the baby's development. Prenatal care will also help a woman understand the changes in her body and the emotional impact of pregnancy. After all, the pregnant woman needs to be well for the baby to develop healthily<sup>145</sup>. Still, on the subject, it is important to note that Brazil reduced infant mortality between 1990 and 2018. According to the Ministry of Health, the rate dropped from 47.1 to 13.1 deaths per 1,000 live births. In 2016, infant and child mortality rates rose for the first time in 26 years, falling again in later years<sup>146</sup>.

Health also appears as a priority area within early childhood and is closely linked to the right to life. The law ensures that a child must have his/her health treated as a priority by the family, society and the state. Thus, medical follow-up, exams, prostheses, medication and all appropriate treatment, depending on whether or not the child suffers from any disease. An essential point in this topic is the mandatory vaccination regarding vaccines approved by the country's health authorities. In cases where the family does not take the child to healthcare services, an active search is carried out through health agents. However, since 2015, vaccine coverage – which had been maintaining levels of excellence – has entered a downward trend. From 2015 to 2019, polio vaccine coverage dropped from 98.29% to 79.42%, and viral triple from 96.07% to 91.57%<sup>147</sup>.

Food and nutrition are listed as essential within the wide range of rights for children in early childhood. Linked to the right to life and health, food and the guarantee of the minimum necessary for the child's development must be ensured to all. For this reason, over the last decades, several income transfer programs were created in Brazil, responsible for reducing, in general terms, social inequality and providing access to the basics to the most humble

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<sup>145</sup> “O desenvolvimento da criança começa de fato no momento da concepção. Os cuidados durante a gestação, portanto, são determinantes para o processo de desenvolvimento, já que diversas estruturas do corpo estão em fase de formação e maturação. Assim, a ausência de atenção à fase intrauterina pode dificultar o bom desenvolvimento na primeira infância. O acompanhamento médico é essencial tanto para a mãe quanto para o bebê, mas a comunicação desse período deve ir além do ponto de vista médico e biológico.”. Source: [https://www.primeirainfanciaempauta.org.br/a-crianca-e-seu-desenvolvimento-tudo-comeca-na-gestacao.html#fn\\_24](https://www.primeirainfanciaempauta.org.br/a-crianca-e-seu-desenvolvimento-tudo-comeca-na-gestacao.html#fn_24)

<sup>146</sup> Source: <https://www.unicef.org/brazil/situacao-das-criancas-e-dos-adolescentes-no-brasil>

<sup>147</sup> “O Programa Nacional de Imunização (PNI) é referência mundial. O Brasil foi pioneiro na incorporação de diversas vacinas no calendário do Sistema Único do Saúde (SUS) e é um dos poucos países no mundo que ofertam de maneira universal um rol extenso e abrangente de imunobiológicos. Porém, a alta taxa de cobertura, que sempre foi sua principal característica, vem caindo nos últimos anos, conforme demonstra o quadro na página ao lado, colocando em alerta especialistas e profissionais da área.”. Source: <https://www.conass.org.br/consensus/queda-da-imunizacao-brasil/>

families. Income transfer assumes relevance in Brazilian society as a strategy to fight poverty, having as a central axis the monetary transfer articulated to the possibility of access and insertion to other social services in the areas of education, health, and work in the perspective of empowerment of beneficiary families<sup>148</sup>.

However, unfortunately, Brazil faces the severe phenomenon of food insecurity. Data from the Food and Agriculture Organization of the United Nations indicate that, in 2021, 44.8% of the Brazilian population lived in food security. This means that 116.8 million Brazilians lived with some degree of food insecurity; out of these, 43.4 million Brazilians did not have enough food and 19 millions faced hunger<sup>149</sup>. There was an increase in food insecurity for children during the COVID-19 pandemic, as many of them had their main meal served at school, which became impossible with its closure for almost two years.

It is urgent, therefore, that the right to adequate food and nutrition be widely discussed in the Brazilian state and implemented through public policies. The legislation guarantees these rights and their protection, especially in the current scenario, is imperative. Food is a fundamental right since adequate nutrition for children will directly affect their physical, cognitive and behavioural development.

The need for quality in education during the first years of life is substantiated in UNICEF's<sup>150</sup> analysis when they mention that quality daycare programs: promote school success and the motivated and regulated behaviour of children; they have a particularly positive impact on children from disadvantaged families and social backgrounds; present results that persist throughout the academic path and, in addition to these effects, if in conjunction with other services, quality educational programs also increase the employment possibilities of mothers, reduce family poverty, thus promoting a society with more skilled families. The daycare centre, as a socio-educational response in the early years, is a window of opportunity that promotes equity with added value for every child and society. The daycare centre emerges as a means that compensates for situations of social vulnerability (poverty, neglect, illness) and that, simultaneously, balances social differences and stimulates genetic and contextual potential.

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<sup>148</sup> “Tais programas têm por objetivos garantir autonomia aos indivíduos, enquanto frágil consumidor, amenizando os efeitos mais perversos dos efeitos da pobreza e desigualdade social, desconsiderando o crescimento do desemprego e a distribuição de renda, tendo como orientação a focalização na extrema pobreza, para que não ocorra o desestímulo ao trabalho. Sob tal perspectiva, constata-se que os resultados se reduzem à mera reprodução da pobreza, visando apenas garantir padrões mínimos de sobrevivência.”. Source: <https://meuartigo.brasilecola.uol.com.br/sociologia/os-programas-transferencia-renda-no-brasil.htm>

<sup>149</sup> <https://www.fao.org/family-farming/detail/fr/c/1392789/>

<sup>150</sup> UNICEF. (2008). *A transição dos cuidados na primeira infância*.

Family and community coexistence and social assistance to the family are essential pillars in early childhood development. Every child's right is to be raised within a family - natural or surrogate - and to grow up in a community. When parents and families feel supported by the community and social and governmental agents, they can better care for their children, meeting their needs more broadly. Services such as health, education, protection and social assistance are fundamental for development in early childhood. Professionals in these areas are important sources of information, services, and emotional support for families, helping them to overcome challenges and build a child-friendly environment.

Brazilian legislation also protects culture, play and leisure. The essence of childhood is in the moments the child has for exploration: make-believe and play. Therefore, this moment is fundamental for development, a right already provided by law and as important as sleeping and eating. While playing, children acquire skills to become capable of learning, either through their actions on objects and people or through their reactions to these stimuli. That is, they are active in their development.

Protection against all forms of violence is a fundamental right since chronic stressful situations for children (unfavourable environments, neglect, abuse or mistreatment) cause biological responses that affect children's development and can even harm the architecture of the child's environment brain and cause negative impacts on different organs and systems. Stressful situations for prolonged periods, the so-called toxic stress, can cause negative responses to brain development in early childhood. The child victim of violence can have his/her full development committed. If the intervention is carried out preventively, there are more chances of achieving positive results. Hence the need to highlight the importance of health and assistance programs for children, especially those in vulnerable situations.

An interesting point is the protection of children against consumer pressure and child advertising<sup>151</sup>. Thus, directing advertising to children is an abusive and illegal practice. This goes for any type of product or service, in any means of communication or space where the

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<sup>151</sup> “O Departamento de Proteção e Defesa do Consumidor (DPDC), vinculado ao Ministério de Justiça, multou em seis milhões de reais o McDonald’s por publicidade abusiva direcionada ao público infantil, em razão da realização do “Show do Ronald McDonald” em escolas. O caso teve início em 2013, depois de denúncia feita pelo programa Criança e Consumo. A decisão foi publicada hoje (11). Levantamento feito pelo Criança e Consumo à época constatou, em apenas dois meses, mais de 60 apresentações do palhaço em diversos estados do país, em escolas de educação infantil e creches. A decisão afirma que a estratégia de comunicação mercadológica utilizada pela empresa violou artigos do Código de Defesa do Consumidor e o Artigo 227 da Constituição Federal, além de ir ao desencontro dos princípios da Lei nº13.257/16, que estabelece diretrizes para a formulação e a implementação de políticas públicas para a primeira infância, em atenção à relevância dos primeiros anos de desenvolvimento infantil.”. Source: <https://criancaeconsumo.org.br/noticias/justica-multa-mcdonalds/>

child lives. It is imperative to point out that the legislation provides for the adoption of measures that prevent early exposure to marketing communication.

The Federal Constitution, the Statute of Children and Adolescents, the Convention on the Rights of the Child and the Legal Framework for Early Childhood provide a wide range of protections for the rights of children in the early childhood age group. Respect for rights and implementing public policies aimed at early childhood development are essential and absolute priorities in Brazil. Therefore, considering findings by neuroscience that this stage of life is one of the most relevant phases for brain development, when the window of opportunity of development is more significant, priority resources must be directed to it.

## 5. Challenges in implementing early childhood rights in Brazil

It is noticeable that Brazil has extensive legislation on the rights of children in the early childhood age group. As noted, at the constitutional and infralegal levels, numerous provisions protect the healthy development of early childhood and the possibility of the child developing his/her full potential. What happens is that the mere legal protection does not give immediate applicability to the listed rights, mainly since most depend on public policies - therefore, budget - for their implementation.

Social inequality is a characteristic feature of Brazilian society, which is divided between a modern minority with access to goods and services worthy of developed countries and a majority with no place. A society of extreme inequalities and asymmetries, which are expressed differently in the life of the population, especially children in early childhood. Poverty, one of Brazil's most prominent expressions of social inequality, dropped between the enactment of the Federal Constitution of 1988 and 2014. Studies show that this drop is directly related to creating direct income distribution programs for people in poverty and extreme poverty, which took place from 2003 onwards<sup>152</sup>. After a sharp drop between 2000 and 2011, motivated especially by economic growth and the aforementioned income distribution programs, this index grew again in 2015<sup>153</sup>.

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<sup>152</sup> Rizzini, I. (2021). *Construção social da Primeira Infância e sua priorização na agenda pública brasileira*. P.89: “Hoffmann (2013) estima que os benefícios do Programa Bolsa Família responderam por 16% da queda do coeficiente de Gini no período de 2001-2011. O Índice de Gini, “criado pelo matemático italiano Conrado Gini, é um instrumento para medir o grau de concentração de renda em determinado grupo. Ele aponta a diferença entre os rendimentos dos mais pobres e dos mais ricos. Numericamente, varia de zero a um (alguns apresentam de zero a cem). O valor zero representa a situação de igualdade, ou seja, todos têm a mesma renda. O valor um (ou cem) está no extremo oposto, isto é, uma só pessoa detém toda a riqueza. Na prática, o Índice de Gini costuma comparar os 20% mais pobres com os 20% mais ricos” (IPEA, 2004).”

<sup>153</sup> Rizzini, I. (2021). *Construção social da Primeira Infância e sua priorização na agenda pública brasileira*. P.90: “Em 2014, a reboque do fim do ciclo de alta dos preços das *commodities* no mercado externo, que afetou

In this aspect, it is essential to highlight that, unfortunately, Brazil has returned to the UN Hunger Map. As a world power and example in overcoming hunger, Brazil has returned to dramatic levels in terms of food and nutrition of the population. The severe economic crisis since 2015, the COVID-19 pandemic and its consequences and the denialism of President Bolsonaro<sup>154</sup> are obstacles. Therefore, 33 million people are food insecure, especially children<sup>155</sup>. Hunger, without a doubt, is a significant obstacle to early childhood development since the absence of adequate nutrition causes numerous physical and psychological problems, interfering directly in children's learning.

In fact, the current political scenario in Brazil is a huge challenge when considering public policies in favour of early childhood. The current president adopts a liberal and pro-market government policy so that resources are not directed to the humblest. Described by many as a “civilising retreat”, the government of Jair Bolsonaro closes its eyes to social indicators and governs for a minority that owns capital<sup>156</sup>.

In the Brazilian institutional context, attention to early childhood is one of the main tasks of the state, through the availability of public policies, considering that the rates of social inequality are alarming, and families are not able to provide adequate development to their children during early childhood by themselves. Therefore, another critical challenge is the

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as exportações brasileiras, levando à diminuição da entrada de capital estrangeiro no país, a economia brasileira entrou em recessão, a partir do segundo trimestre, além de constatar uma queda de 9% do produto *per capita* brasileiro, entre 2014 e 2016 (Filho, 2017).”

<sup>154</sup> “‘Saying that people starve in Brazil is a big lie’: Bolsonaro's denial reflects his policies. By picking up where Temer left off, now President Jair Bolsonaro seems oblivious to any sense of emergency regardless of a FAO’s Report indicating that hunger increased 43.7% in the past 5 years. One of his first measures was to abolish the *Consea* and close 27 of the 92 storage units of the *Conab* (National Food Supply Company). Many privatisations took place because of the neoliberal agenda of Paulo Guedes, one of the “Chicago Boys” and Minister of Economy. Privatisation, deregulation, and open foreign trade are at the core of the New Right of Bolsonaro’s government (Cowan, 2018). For instance, by prioritising agribusiness, rice is more present in the list of exporters than in local production, leading to increased food prices.”. Source: [https://www.sciencespo.fr/opalc/sites/sciencespo.fr.opalc/files/Ariel\\_Sepulveda\\_La%20Politics\\_Blog%20Post.pdf](https://www.sciencespo.fr/opalc/sites/sciencespo.fr.opalc/files/Ariel_Sepulveda_La%20Politics_Blog%20Post.pdf)

<sup>155</sup> “Brazil's Return to The Hunger Map is an Unprecedented Setback in the World, Says Economist.”. Source: <https://www1.folha.uol.com.br/internacional/en/business/2022/01/brazils-return-to-the-hunger-map-is-an-unprecedented-setback-in-the-world-says-economist.shtml>

“Pandemic puts Brazil back on the world hunger map.”. Source: <https://www.brasilsemfome.org.br/blog/pandemic-puts-brazil-back-on-the-world-hunger-map>

“Brazil is facing the return of hunger. Specialists estimate that Jair Bolsonaro's country has regressed thirty years regarding the issue. In 1998, just like today, nearly 32 million Brazilians were suffering from hunger.”. Source: [https://www.lemonde.fr/en/economy/article/2022/06/09/brazil-is-facing-the-return-of-hunger\\_5986229\\_19.html](https://www.lemonde.fr/en/economy/article/2022/06/09/brazil-is-facing-the-return-of-hunger_5986229_19.html)

<sup>156</sup> Rizzini, I. (2021). *Construção social da Primeira Infância e sua priorização na agenda pública brasileira*. P.93: “É a partir da eleição de Jair Bolsonaro, entretanto, que o “recoo civilizatório”, para utilizarmos o termo de Souza e Soares (2019), se intensifica. Eleito sob um discurso de defesa das pautas dos costumes, coloca-se enquanto candidato “antissistema”, desqualificando a todo momento o sistema político e suas instituições. Seu discurso ecoou facilmente em uma população que, desde 2013, vinha demonstrando claros sinais de insatisfação.”

multidimensionality of child development, which involves, in addition to cognitive and educational aspects, issues of physical, psychosocial, and nutritional development<sup>157</sup>, as well as the interaction with environmental factors and family contexts. Combined with poverty, it imposes greater participation of the state.

Another challenging issue in implementing early childhood rights is spatial and regional heterogeneity in terms of living conditions and service provision. Brazil is a country of continental dimensions, with indigenous, African and European cultural influences, which leads to incredible cultural diversity. Thus, the measures will not necessarily have the expected effects when applied from north to south of the country. In the north, there is a greater concentration, for example, of indigenous<sup>158</sup> and riverside communities, often several days away by boat along the region's rivers. At the same time, in the country's south, the population lives mostly in large urban centres. These differences must be observed when drawing up public policies aimed at early childhood. Only by observing these differences effective political actions can be traced and present good results.

Furthermore, horizontal and intersectoral governance are essential and necessary to ensure the construction of a network of actors with sufficient capillarity in the provision of services. This element adds to the previous one when considering the size of the country. In the Brazilian institutional context, early childhood care is the main task of municipal administrations. Due to the factors mentioned above, the relevance of public policies for this population segment has been increasing in recent years. The challenges are in place: expanding service coverage and increasing service quality. The diversity and peculiarity of each municipality put their conditions to achieve this objective. However, there are dimensions and problems common to all administrations.

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<sup>157</sup> “Existing policies have not yet been able to stop the epidemiological trend in Brazil. UNICEF Brazil targets children and adolescents living in vulnerable areas, with an approach that includes all the environments in which these children are living (household and families, pre-schools/schools and primary health care units) in order to change this epidemiological scenario and promote the rights of children and adolescents to good health and healthy food.”. Source: <https://open.unicef.org/sites/transparency/files/2020-06/Brazil-TP3-2018.pdf>

<sup>158</sup> “Several organizations have joined efforts to demand the formulation of resolutions that guarantee the education rights of indigenous peoples, regardless of the country of origin, from the Municipal Council of Education of Manaus (CME) and from the State Council of Indigenous Education of Amazonas (CEEI-AM). They are the United Nations Children's Fund (UNICEF), the Aldeias Infantis SOS Brasil, the Coordination of Indigenous Peoples of Manaus and Surroundings (COPIME), the Indigenous Students Movement of Amazonas (MEI-AM), the School Education and Health Forum for Indigenous Peoples of the Amazon (FOREEIA), the Coordination of Indigenous Organizations of the Brazilian Amazon (COIAB) and the Indigenous Missionary Council (CIMI). And as a result, the Municipal Education Council of Manaus published the Resolution 191, on December 27, 2021, which guarantees education rights to all indigenous peoples residing in Manaus, regardless of the country of origin, and that these rights are equivalent to the education rights of Brazilian indigenous peoples.”. Source: <https://www.unicef.org/brazil/en/press-releases/unicef-supports-guarantee-warao-boys-and-girls-rights-education>

The challenges to developing policies aimed at early childhood are numerous: the territorial extension, the budget issue, the lack of political will, the social inequality, and the misunderstanding about the importance of this period reveal that Brazil has a lot to advance. Actions aimed at early childhood must be designed according to where they will take place, given that their success depends directly on their suitability.

**CHAPTER V - HOW THE PUBLIC DEFENDER'S OFFICE IN BRAZIL  
CONTRIBUTES TO THE IMPLEMENTATION OF EARLY CHILDHOOD  
RIGHTS**

*“Todos estes que aí estão  
Atravancando o meu caminho,  
Eles passarão.  
Eu passarinho!”<sup>159</sup>*

**1. The Public Defender's Office and early childhood rights**

The Public Defender's Office is the only Brazilian institution whose duty to promote human rights is expressly mentioned by the Federal Constitution. It is crucial to point out that the task of protection is not only in the public sphere but also in the private one since there are under-sufficient people to be protected in both domains. Human rights have a fundamental character for a dignified human life and defend essential values so that each individual can develop their potential capabilities. Human rights express the highest expression of human dignity. The active and permanent action of the Public Defender's Office in this field increases the expectation of an effective response to severe violations of human rights, improving the national system of protection of dignified human life.

As constitutionally responsible for providing legal assistance to those in need, the Public Defender's Office maintains permanent contact with the disadvantaged and marginalised population, having better conditions to identify possible human rights violations - which, as a rule, occur precisely against the poor<sup>160</sup>. Therefore, the Public Defender's Office is responsible for empowering the socially vulnerable population so that it becomes aware of its rights and can demand their application.

Undeniably, the promotion of early childhood rights falls within human rights, which is why the Public Defender's Office is responsible for their broad promotion and protection. The

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<sup>159</sup> Quintana, M. (1980). *Poeminho do contra*. Source: <https://www.culturagenial.com/poeminho-do-contramario-quintana/>

<sup>160</sup> Barros, G. F de M & Seabra, G. C. (2016). *Defensoria Pública*. P. 73: “É inegável que os casos mais flagrantes e recorrentes de violação dos direitos humanos ocorrem nos bolsões de pobreza do nosso País. Exemplos emblemáticos são as chacinas dm favelas de grandes cidades, como Rio de Janeiro e São Paulo, e a situação caótica do sistema penitenciário. são os marginalizados que mais têm seus direitos violados. Como a Defensoria Pública tem a missão constitucional de tutelar os direitos dos necessitados, intuitivamente se conclui que o exercício de suas atribuições inclui a tutela dos direitos humanos.”



rights to health, food and nutrition, education, family and community living, social assistance for the child's family, culture, play and leisure, space and the environment, as well as protection against all forms of violence and consumer pressure, the prevention of accidents and the adoption of measures that avoid early exposure to marketing communication, widely protected by law, have in the Public Defender's Office an institution to supervise and promote their implementation<sup>161</sup>.

As mentioned above, the importance of investing in early childhood, in addition to a legal imposition, guarantees an inevitable return on what was spent on public policies aimed at this end. Studies show that this type of investment improves the life of the child and the family in several aspects (physical and mental health, financially, reduction of crimes), which leads to lower expenses in the future with those individuals whose investment was made in early childhood<sup>162</sup>. In addition to being a humanitarian issue in order to enable the child to fully develop his/her potential, investing in early childhood has a financial return; the states are realizing it little by little.

As already mentioned, one of the basic principles of childhood is the absolute priority, which is why it receives preferential treatment within the Public Defender's Office. In most of the Public Defender's Offices there are Children and Youth Centers (Núcleos da Infância e Juventude). These centers are formed by public defenders, who may or may not act on an exclusive basis, interns and other employees of administrative nature. The Center for Children and Youth is responsible for supporting the Public Defender:

- Compiling and forwarding non-binding technical-legal information to Public Defenders on general matters related to the area of children and adolescents, editing, for that purpose, a periodic newsletter with updated news, jurisprudence, legislation and doctrine;

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<sup>161</sup> “Art. 5º Constituem áreas prioritárias para as políticas públicas para a primeira infância a saúde, a alimentação e a nutrição, a educação infantil, a convivência familiar e comunitária, a assistência social à família da criança, a cultura, o brincar e o lazer, o espaço e o meio ambiente, bem como a proteção contra toda forma de violência e de pressão consumista, a prevenção de acidentes e a adoção de medidas que evitem a exposição precoce à comunicação mercadológica.”. Source: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2016/lei/113257.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/113257.htm)

<sup>162</sup> Heckman, J. J. (2014). *Abecedarian & Health: Improve adult health outcomes with quality early childhood programs that include health and nutrition*: “High-quality, birth-to-five preschool has demonstrated positive effects on a variety of life outcomes. A new analysis of the Abecedarian preschool program, one of the oldest and most cited U.S. early childhood intervention programs, shows positive effects on adult health. Using recently collected data in a biomedical sweep, this research finds that children who were in the treatment group have significantly better health in their mid-30s. The estimated treatment effects survive corrections for several statistical challenges faced by small-sample randomized controlled trials. The findings show the potential of early life programs to prevent disease and promote adult health.”

- Carrying out and encouraging, in collaboration with other organs, the permanent exchange between Public Defenders, aiming at the improvement of institutional attributions and the uniformity of understandings of legal theses concerning the Law of Children and Adolescents;
- Coordinating the activation of International Courts about cases of violation of the rights of children and adolescents;
- Providing advice to public defenders and other centers;
- Proposing judicial and extrajudicial measures for the protection of individual, collective and diffuse interests of children and adolescents and accompany them, acting alone or jointly with the Public Defenders;
- Acting and representing before the Inter-American System of Human Rights, proposing the appropriate judicial measures;
- Promoting the protection of the interests of needy children and adolescents within the bodies or entities of the state and municipal administration, directly or indirectly;
- Providing guidance and judicial representation of civil entities that have among their purposes the protection of the interests of the needy provided that they do not have the financial resources to act in court;
- Acting in police, penal or internment establishments, aiming to ensure that adolescents deprived of their liberty, under any circumstances, can exercise their rights and guarantees;
- Acting in the institutions where children and adolescents are sheltered, to ensure that those sheltered exercises their rights and guarantees;
- Informing, educating and motivating the needy population, including through different means of communication, regarding their fundamental rights and guarantees;
- Establishing permanent liaisons with specialised centres or equivalents from other defenders' offices in the area of children and youth for the definition of common strategies in national matters and the exchange of experiences;
- Contributing to the planning, elaboration and proposition of public policies aimed at eradicating poverty and marginalisation and reducing social inequalities;
- Proposing and monitoring proposals for drafting, reviewing and updating legislation in the area of children's and adolescents' rights;

- Subsidising, from a technical point of view, the performance of organisations, with or without agreements with the Public Defender's Office, which provide additional legal assistance to needy children and adolescents;
- Providing subsidies to planning bodies regarding the human and material resources necessary for the entire fulfilment of the duties of the defender in defence of children and adolescents, ensuring compliance, within the scope of the institution, with the principle of absolute priority;
- Providing, whenever requested, legal guidance to Guardianship Councilors in general matters and in specific cases that deal with the care of poor children and adolescents;
- Carrying out and encouraging the Defender's Office's exchanges with public and private entities linked to the area of children and adolescents;
- Representing the institution before rights councils, by any of its members, by appointment of the Public Defender-General of the State;

The activities of the center aim to organise the action of defenders who work in children rights throughout the state, as well as to draw up recommendations, act in collective protection, promote education in rights and maintain contact with the Legislative and Executive powers seeking the maintenance of dialogues aimed at children. The centers have a permanent character, and their primary mission is to provide support and assistance, both administratively and judicially, in the performance of the Public Defenders' functional activity in collective, diffuse or individual demands involving the rights of children and adolescents. Through the specialisation of action, they seek to optimise the service provided to the population and to improve the know-how on acting in protecting children's rights.

The protection of early childhood rights by the Public Defender's Office can occur extrajudicially, judicially, individually or collectively. The promotion and protection of these rights in the extrajudicial sphere, outside the courts of justice, occurs primarily through education about rights. One of the fundamental roles of the institution, as responsible for promoting human rights, is to develop mechanisms to inform the population of their rights. Education about them is an essential tool to provide individuals with information and enable them to monitor compliance with the law and know where to look in case of non-compliance. Thus, the Public Defender's Office promotes numerous education projects about rights to pass on quality information to the population, get closer to them and meet their needs. In the scope of early childhood, it is possible to mention the projects "Mothers in Prison"<sup>163</sup>, "Maternities

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<sup>163</sup> <https://www.defensoria.sp.def.br/documents/20122/24de842e-0fd8-9b09-5c5f-ad1401fd3347>

and Vulnerabilities"<sup>164</sup> and "Birth Plan"<sup>165</sup>, all the Public Defender's Office of the State of São Paulo. These projects are some examples that serve early childhood.

Not only the distribution of free material is carried out, there are also lectures in schools and community centers, in order to reach, in fact, the population<sup>166</sup>. An exciting project is a course for popular defenders, through which classes are taught to community leaders and public agents who work to guarantee the population's rights in direct contact with the communities. After training, popular defenders acquire the expertise to identify rights violations and notions of referral to appropriate resolutions based on the intricacies of the justice system, in addition to recognise which institutions should be activated and how they can fulfill the implementation of such rights<sup>167</sup>.

For the adequate and necessary protection of the rights of early childhood, sometimes the claim must be carried out through judicial channels. It is worth noting, however, that, primarily, the issues must be resolved extrajudicially through constructing an adequate solution. In many situations, this attempt to search for a solution fails, forcing public defenders to plead the child's rights in the courts. Thus, when the Public Defender's Office publishes a situation of human rights violations in early childhood, the defender usually tries to resolve the issue in an extrajudicial manner. For this purpose, contact is made with the responsible authorities to verify the feasibility of granting the right<sup>168</sup>. If the answer is negative, the solution is to bring the case to justice.

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<sup>164</sup> <https://www.defensoria.sp.def.br/documents/20122/e0c47767-172b-d828-2373-b72c9a262372>

<sup>165</sup> <https://www.defensoria.sp.def.br/documents/20122/97ba035f-bb79-3da4-5c8d-3e47cc75ec78>

<sup>166</sup> "Defensoria Pública realiza projeto de educação em direitos com crianças e adolescentes em Cachoeiro de Itapemirim.

Publicação: 25 de julho de 2022.

A Defensoria Pública do Espírito Santo, por meio da Defensoria da Infância e Juventude de Cachoeiro de Itapemirim, realizou um projeto de educação em direitos com as crianças e adolescentes acolhidos nos abrigos Recanto da Criança e Orfanato Aprisco Rei Davi. Nos encontros, realizados ao longo de três semanas, as crianças e adolescentes participaram de atividades educacionais e conheceram melhor a Defensoria Pública.". Source: <https://www.defensoria.es.def.br/defensoria-publica-realiza-projeto-de-educacao-em-direitos-com-criancas-e-adolescentes-em-cachoeiro-de-itapemirim/>

<sup>167</sup> <https://www.defensoria.pe.def.br/curso-defensoras-e-defensores-populares/>

<sup>168</sup> "Educação infantil: Defensoria quer adequação da obrigatoriedade de matrícula à realidade da pandemia.

Publicação: 18 de junho de 2020.

A Defensoria Pública do Estado do Espírito Santo recomendou ao Conselho Estadual de Educação (CEE) que adeque a obrigatoriedade de matrícula da educação infantil à realidade da pandemia do novo coronavírus. Segundo a Instituição, a nota de esclarecimento emitida pela entidade no dia 9 de junho não considera a realidade das famílias no contexto da pandemia, especialmente, daquelas que têm crianças de 0 a 5 anos, matriculadas em estabelecimentos particulares.

A Defensoria Pública questiona a eficácia da nota para essas famílias, uma vez que, de acordo com dados apurados pelos defensores do Núcleo da Infância e Juventude, muitas delas tiveram suas rendas impactadas pela redução de jornada de trabalho, bem como corte salarial, e não estão conseguindo manter as crianças matriculadas nas escolas. Aquelas que ainda mantêm seus filhos matriculados, questionam os valores cobrados pelas instituições, já que as crianças, em muitos casos, estão sem aulas.

The person responsible for the child who has had his/her right violated can seek the Public Defender's Office in the service channels, in person, by going directly to the centers spread across the state, or through the telephone/messaging application, a tool made available due to the COVID-19 pandemic. Therefore, the search for a solution to the problem will be carried out in favour of that child<sup>169</sup>. However, there are situations in which a group of children, whether determined or not, are victims of a violation of their rights, such as in cases of lack of health professionals, absence of school in a specific location or lack of free medication. In these cases, the Public Defender's Office may, instead of proposing several individual actions, seek a solution that collectively meets all children who have had their rights violated, either extrajudicially or judicially<sup>170</sup>.

## **2. The Public Defender's Office available tools to implement early childhood rights**

The Public Defender's Office has numerous tools to protect the rights of early childhood. These tools may or may not be coercive. The appropriate choice to protect the rights of early childhood depends on the specific case and the public entity's availability to build an adequate response with the Public Defender's Office. Thus, Brazilian law provides how the Public Defender's Office can protect and assist in implementing early childhood rights.

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A Defensoria Pública acredita que seja necessário repensar e readequar a prestação do serviço de educação infantil, de modo a garantir que os alunos tenham acesso ao ensino adequado, em termos qualitativos e quantitativos, uma vez que somente a matrícula não dá essa garantia.”. Source: <https://www.defensoria.es.def.br/educacao-infantil-defensoria-quer-adequacao-da-obrigatoriedade-de-matricula-realidade-da-pandemia/>

169 “Justiça aceita pedido da Defensoria Pública para que Estado forneça à bebê recém-nascida prematura medicamento do exterior 14 de dezembro de 2020

Nascida de forma prematura, Elisa\*, de apenas dois meses, precisa fazer uso contínuo do medicamento importado diazóxido, utilizado para redução emergencial da pressão arterial. Com o remédio já no fim e com a previsão de nova entrega pela Farmácia Cidadã somente dentro de 45 dias, a família da recém-nascida procurou a Defensoria Pública do Estado do Espírito Santo (DPES), que conseguiu garantir na justiça o fornecimento da substância junto ao Estado do Espírito Santo e do Município de Vila Velha.”. Source: <https://www.defensoria.es.def.br/justica-aceita-pedido-da-defensoria-publica-para-que-estado-fornece-bebe-recem-nascida-prematura-medicamento-do-exterior/>

170 “Defensoria consegue redução de 50% nas mensalidades de escolas particulares para educação infantil. Publicação: 23 de novembro de 2020.

Pais de alunos de escolas particulares de ensino infantil terão desconto de 50% da mensalidade em virtude da suspensão das aulas durante a pandemia da COVID-19. A decisão, divulgada na última quarta-feira (18) pela 6ª Vara Cível de Vitória, é resultado da Ação Civil Pública proposta em julho pelo Núcleo de Direitos Humanos e da Infância e Juventude da Defensoria Pública do Estado do Espírito Santo (DPES).

A ação é um importante marco na garantia do direito à educação, em um momento em que muitas famílias passam por dificuldades financeiras. Uma vez que, caso ocorra novamente a suspensão das aulas no Estado, como foi o caso de alguns municípios nesta segunda-feira (23), as mensalidades devem ter um percentual de desconto de 50% ou a suspensão dos contratos firmados entre os responsáveis e as escolas até o retorno das aulas presenciais.”. Source: <https://www.defensoria.es.def.br/defensoria-consegue-reducao-de-50-nas-mensalidades-de-escolas-particulares-para-educacao-infantil/>

The first way is the possibility of issuing recommendations on a specific subject. Recommendations consist of formal communication aimed at reporting a particular fact or provoking/avoiding the practice of certain conduct by the institution or public power that receives it. The recommendation aims to draw up guidelines that guide alleged causes of collective damages to assume the obligation to do or not to avoid damages, even if these measures depend on the discretion of the Public Administration or subsequent judicial intervention.

This tool constitutes an administrative act emanating from the Public Defender's Office in which the facts are exposed, the legal qualification of the topics covered, and the institutional position, indicating which position should be adopted, without showing a binding character. Usually, the recommendations suggest adopting actions regarding a possible violation of rights. As an example, the Public Defender's Office of the State of Espírito Santo recommended to the municipalities, when there was a sudden drop in temperatures and the possibility of a severe winter, that measures must be adopted in order to protect people living on the streets, especially children, and be informed within 48 hours<sup>171</sup>.

According to articles 44, X, 89, X and 128, X of Complementary Law No. 80/94<sup>172</sup>, members of the Public Defender's Office are guaranteed the prerogative of requesting from the public authority and/or its agents' examinations, certificates, expertise, inspections, diligences, processes, documents, information, clarifications and measures necessary for the exercise of its attributions. The request does not depend on previous judicial control to produce its

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171 "Municípios têm 48 horas para apresentar medidas de acolhimento para pessoas em situação de rua. Publicação: 20 de maio de 2022.

A Defensoria Pública do Espírito Santo, por meio das Coordenações de Direitos Humanos e da Infância e Juventude, recomendou que os municípios do Estado do Espírito Santo adotem providências de atendimento e acolhimento para população em situação de rua, devido às quedas bruscas de temperatura no Estado. Dentre os pedidos da Defensoria Pública estão a ampliação dos abrigos, disponibilização de espaços públicos educacionais e esportivos que estejam com a utilização suspensa, além de equipamentos de higiene básica. Em um prazo de 48 horas, a partir de hoje (20), os municípios devem apresentar as providências adotadas para a proteção da vida, integridade pessoal e saúde da população em situação de rua, em virtude das mudanças climáticas drásticas que atingem o Espírito Santo." Source: <https://www.defensoria.es.def.br/municipios-tem-48-horas-para-apresentar-medidas-de-acolhimento-para-pessoas-em-situacao-de-rua/>

<sup>172</sup> "Art. 44. São prerrogativas dos membros da Defensoria Pública da União: X - requisitar de autoridade pública e de seus agentes exames, certidões, perícias, vistorias, diligências, processos, documentos, informações, esclarecimentos e providências necessárias ao exercício de suas atribuições;

Art. 89. São prerrogativas dos membros da Defensoria Pública do Distrito Federal e dos Territórios: X - requisitar de autoridade pública ou de seus agentes exames, certidões, perícias, vistorias, diligências, processos, documentos, informações, esclarecimentos e providências necessárias ao exercício de suas atribuições;

Art. 128. São prerrogativas dos membros da Defensoria Pública do Estado, dentre outras que a lei local estabelecer:

X - requisitar de autoridade pública ou de seus agentes exames, certidões, perícias, vistorias, diligências, processos, documentos, informações, esclarecimentos e providências necessárias ao exercício de suas atribuições;" Source: [http://www.planalto.gov.br/ccivil\\_03/leis/lcp/lcp80.htm](http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp80.htm)

regular effects<sup>173</sup>. This guarantee assures the public defender a more independent and dynamic performance in protecting the rights of early childhood.

The importance of this tool lies in the fact that the Public Defender's Office has a historical structural deficit and does not count with enough members to serve the entire vulnerable population, so this measure aims to protect the population and guarantee them a better defence of their rights. For example, the Public Defender's Office recently requested information about the quantity and quality of meals offered to children in public daycare centers and schools in Cachoeiro de Itapemirim, Espírito Santo, due to the appalling food insecurity that currently affects Brazil. There is no alternative for the municipality but to provide the information required by the Public Defender's Office, which must adopt the appropriate measures, judicial or otherwise.

Still, on the power of requisition, it is worth noting that the Paris Principles establish that national institutions dedicated to the promotion and defence of human rights – as the Public Defender's Office – must have the right to “Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence”<sup>174</sup>. Therefore, there is no doubt that the requisition is a vital tool available to the institution to protect children's rights in early childhood.

The Public Defender's power of requisition was questioned in the Federal Supreme Court by the head of the Public Ministry because they would conflict with the principles of isonomy, inexorability of jurisdiction, contradictory and due process of law, in addition to unbalancing the procedural relationship. The Supreme Court understood, however, that the requisition is a useful tool and an instrumental right of vulnerable people. The Court understood that by granting the prerogative of requisition to the Public Defender's Office, the legislator did nothing more than attribute powers to the institution for the better performance of its task<sup>175</sup>.

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<sup>173</sup> Esteves, D. e Silva, F. R. A. (2018). *Princípios institucionais da Defensoria Pública*. P. 749: “Como manifestação emanada do escalão primário do serviço público estatal, a requisição concentra verdadeira ordem ou comando de índole administrativa, que impele o destinatário a adotar determinada conduta comissiva ou omissiva. Justamente por conta de seus atributos jurídicos, a requisição não pode ser confundida com simples requerimento; requisição é exigência legal, enquanto requerimento é solicitação de algo permitido por lei”.

<sup>174</sup> Source: <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>

<sup>175</sup> “O Plenário do Supremo Tribunal Federal (STF) manteve a prerrogativa da Defensoria Pública de requisitar de autoridades e agentes públicos certidões, exames, perícias, vistorias, diligências, processos, documentos, informações, esclarecimentos e demais providências necessárias à sua atuação. A decisão majoritária se deu na sessão virtual finalizada em 18/2, no julgamento da Ação Direta de Inconstitucionalidade (ADI) 6852. (...). Prevaleceu o voto do relator, ministro Edson Fachin, pela improcedência da ação. Para o ministro, a prerrogativa foi atribuída na lei aos defensores públicos porque eles exercem uma função essencial à Justiça e à democracia, especialmente no que diz respeito à sua atuação coletiva e fiscalizadora. Na sua avaliação, a lei é instrumento de acesso à justiça, que viabiliza a prestação de assistência jurídica integral e efetiva. O relator salientou que a Defensoria Pública não deve ser equiparada à advocacia, pública ou privada, e que as funções desempenhadas

The Conduct Adjustment Term (TAC) is an agreement between interested parties to protect the rights of a trans-individual and unavailable nature. It is an enforceable extrajudicial instrument with at least an obligation to do or not to do and the corresponding penalty in the event of non-compliance. The legitimacy of the Public Defender's Office to propose the TAC is provided for in article 5, II, of Law No. 7,347/85<sup>176</sup>. The main objective of the TAC is to avoid filing Public Civil Action (ACP), which we will discuss below.

As an example of the use of TAC in favour of children in early childhood, there is the elaboration by the Public Defender's Office of Rio de Janeiro and a company which encouraged children in the school community to produce videos with the enterprise's jingles as a soundtrack. In addition to broadcasting advertising on TV, the company sent products to Young Youtubers, children who are widely watched on the internet, mainly by children, so they could publicise the promotion on their channels.

With the signing of the TAC, the company undertakes, before the Public Defender's Office of Rio de Janeiro, to comply with measures aimed at defending and protecting children's rights, especially concerning advertising. Among them is the commitment not to promote activities with children in a school environment and not to use children and adolescents under the age of 16 in its advertising campaigns due to the prohibition of child labour, as determined by Brazilian legislation. The Term also establishes that in case of non-compliance, the company will have a period of 24 hours to manifest itself, under penalty of a fine of R\$ 10 thousand for each day of undue advertising<sup>177</sup>.

The Public Civil Action (ACP) is another tool available to the Public Defender's Office to defend human rights, especially, in this case, the rights of early childhood. It consists of a collective action whose objective is to protect diffuse, collective, or homogeneous individual rights adequately. The legitimacy of the Public Defender's Office is provided for in

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pelo defensor público e pelo advogado não se confundem, ainda que, em determinadas situações, se aproximem. Para Fachin, sua atuação está mais próxima do desenho institucional atribuído ao próprio Ministério Público.”. Source: <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=482093&ori=1>

<sup>176</sup> “Art. 5º Têm legitimidade para propor a ação principal e a ação cautelar: II - a Defensoria Pública;”. Source: [http://www.planalto.gov.br/ccivil\\_03/leis/17347orig.htm](http://www.planalto.gov.br/ccivil_03/leis/17347orig.htm)

<sup>177</sup> “O TAC realizado entre a Defensoria Pública e a empresa é uma medida importante para efetivar os direitos das crianças, e seu cumprimento deve ser fiscalizado por toda a sociedade. Vale lembrar que o Código de Defesa do Consumidor determina que a publicidade é abusiva e ilegal quando se aproveita da deficiência de julgamento e experiência da criança, o que é reforçado pela Resolução 163 de 2014 do Conselho Nacional dos Direitos da Criança e do Adolescente (Conanda). Além disso, o Estatuto da Criança e do Adolescente e a Constituição Federal, no artigo 227, colocam as crianças em primeiro lugar nos planos e preocupações da nação exigindo o respeito de seus direitos com prioridade absoluta.”. Source: <https://criancaconsumo.org.br/noticias/apos-publicidade-abusiva-foroni-se-compromete-a-sair-das-escolas/>



Complementary Law No. 90/94 and Law No. 7,347/85<sup>178</sup>. For example, the Public Defender's Office of Rio de Janeiro proposed an ACP so that the justice system prohibits operations by the security forces in the vicinity of daycare centers and state and municipal public schools. The objective is to guarantee the school year for children and adolescents, especially in areas of the city that are constantly affected by violence. According to the data that led to the action filing, municipal schools were closed at least 700 times in 2019 because of violence<sup>179</sup>.

Carrying out inspections in places of deprivation of liberty and shelters for children and adolescents is also an essential tool in protecting and promoting human rights. The supervision of children's shelters curbs the violation of rights, in addition to contributing to their enforcement. The provision of this tool is in article 4, XVII of Complementary Law 80/84<sup>180</sup>. Thus, the public defender must periodically visit the establishments where children are sheltered due to situations of negligence or mistreatment they have suffered. The inspection aims to verify the housing conditions of the shelter (if, for example, it has all the operating permits), the adequacy of the rooms (if in sufficient quantity), food (nutritionally balanced? Is there a professional responsible for assembling the menu?), preparation of employees and the existence or not of leisure spaces.

As an example of the performance of the Public Defender's Office of Rio Grande do Sul in July 2022, the institution inspected the shelter in Planalto - RS and found several irregularities in the place, such as lack of adequate meals, electrical and lighting problems, among others. According to the report, the children's beds and mattresses deteriorated, and

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<sup>178</sup> “Art. 4º São funções institucionais da Defensoria Pública, dentre outras: VII – promover ação civil pública e todas as espécies de ações capazes de propiciar a adequada tutela dos direitos difusos, coletivos ou individuais homogêneos quando o resultado da demanda puder beneficiar grupo de pessoas hipossuficientes;”. Source: [http://www.planalto.gov.br/ccivil\\_03/leis/lcp/lcp80.htm](http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp80.htm)

<sup>179</sup> “Segundo o defensor Rodrigo Azambuja, coordenador da Infância e Juventude da Defensoria Pública, o impacto da exposição à violência vai além da suspensão ou interrupção das aulas. Não raro, alunos e profissionais de ensino desenvolvem problemas de saúde físico e mental, em consequência ao estresse pós-traumático. A dificuldade de aprendizado, a evasão escolar e alta rotatividade de professores são problemas comuns nas escolas das áreas conflagradas. (...). Entre a série de pedidos feitos pela ACP, destaca-se a concessão de liminar para obrigar a Secretaria de Estado de Segurança Pública a seguir uma instrução normativa elaborada pela própria instituição que proíbe operações policiais próximas a unidades de ensino e creches localizadas no Rio de Janeiro nos horários de maior fluxo de entrada e saída de pessoas, assim como a utilização desses estabelecimentos como bases operacionais das forças de segurança. Essa mesma norma também prevê a criação de um protocolo de comunicação para que diretores de unidades de saúde e de ensino, na iminência das operações, tenham tempo hábil para adotar as medidas necessárias para reduzir os riscos à integridade física das pessoas sob suas responsabilidades.”. Source: <https://www.defensoria.rj.def.br/noticia/detalhes/9967-DPRJ-move-acao-para-garantir-ano-letivo-em-areas-violentas>

<sup>180</sup> “Art. 4º São funções institucionais da Defensoria Pública, dentre outras: XVII – atuar nos estabelecimentos policiais, penitenciários e de internação de adolescentes, visando a assegurar às pessoas, sob quaisquer circunstâncias, o exercício pleno de seus direitos e garantias fundamentais;”. Source: [http://www.planalto.gov.br/ccivil\\_03/leis/lcp/lcp80.htm](http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp80.htm)

there were no fans. The only shower that worked was in the bathroom for the management and technical staff while the children took cold showers. The facts were brought to justice, which determined the temporary removal of the shelter directors. They also could not approach the facilities of the child and adolescent shelter. They had to keep a minimum distance of 100 meters and could not contact any host under penalty of disobedience and a fine of R\$ 10 thousand<sup>181</sup>.

The mechanism of individual legal actions, claiming children's rights in Court, is also an effective tool to face violations of children's rights. An attempt is usually made to resolve the issue extrajudicially, for example, by requesting information about the availability of the right. If there is no answer or if the answer is negative, it is imperative to file the action. Thousands of actions are proposed per day at the Public Defender's Office, as in the case in which the Public Defender's Office of Espírito Santo obtained a court order forcing a health plan to provide a 1.5-year-old child with the drug Spinraza, which costed, at the time, 3 million reais, to treat spinal muscular atrophy (SMA)<sup>182</sup>.

Finally, the aforementioned education about rights appears as an essential tool in promoting and protecting early childhood rights. The effectiveness consists in the individual informed about his rights. Once educated, they know exactly who to look for in order to demand them. Thus, the promotion of courses, lectures and classes and the training of people transforms them into supervisory agents of their own rights.

### **3. Case Study: implementation of health rights of autistic children in Cachoeiro de Itapemirim, Espírito Santo, Brazil**

It is pretty common for families with a vulnerable financial situation to seek the Public Defender's Office in Cachoeiro de Itapemirim, Espírito Santo, Brazil, once their children

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<sup>181</sup> “Inspeção da Defensoria Pública constata irregularidades em casa de acolhimento em Planalto. Publicação: 11/07/2022.

A Defensoria Pública do Estado do Rio Grande do Sul (DPE/RS) está atuando para garantir proteção e dignidade às crianças que estão abrigadas em uma casa de acolhimento, em Planalto, na região Norte do Estado. (...).” source: <https://www.defensoria.rs.def.br/inspecao-da-defensoria-publica-constata-irregularidades-em-casa-de-acolhimento-em-planalto>

<sup>182</sup> “Justiça manda plano pagar medicamento de R\$ 3 milhões. Publicação: 17/11/2017.

A luta de uma mãe pela vida do filho teve uma batalha vencida. A contabilista de 29 anos Kécia Dezan Nobre conseguiu na Justiça uma liminar que obriga o plano de saúde a fornecer ao filho dela, o menino Gabriel de 1 ano e 4 meses, um medicamento que custa 3 milhões de reais. O bebê tem uma doença degenerativa que paralisa os movimentos e pode levar a morte.

Na decisão, a juíza Priscilla Bazzarela de Oliveira, da 1ª Vara da Infância e Juventude de Cachoeiro de Itapemirim, estabelece um prazo de 15 dias para que o plano deposite o valor do tratamento em conta jurídica.”. Source: <http://www.tjes.jus.br/wp-content/uploads/11.17.17-Clipping-1.pdf>

have been diagnosed with autism. The diagnosis of autism spectrum disorder (ASD)<sup>183</sup> usually occurs after 04 years of age. In exceptional cases, when a multidisciplinary team accompanies the child and there is a specialist in the disorder, diagnosis can occur earlier. It requires extensive multidisciplinary treatment, through which several specialised professionals provide adequate treatment, making it possible for the child to develop within its personal conditions fully.

The first challenge fronted by children and their families is the diagnosis of ASD, since few medical professionals (doctors) are made available by the Unified Health Service (SUS)<sup>184</sup>. Although worthy of much praise for being a free system that reaches the whole territory of Brazil, the SUS does not have the adequate number of professionals to meet all the demands of vulnerable people in the country, which ends up overloading it and, in the case analysed here, hinder the diagnosis at the right time. It is imperative to point out that other professionals, such as psychologists, are qualified to carry out the diagnosis. It happens that, at least in the public health network of Cachoeiro de Itapemirim, this diagnosis is carried out primarily by doctors.

In the pre-diagnosis phase, it is possible that the party already has legal assistance from the Public Defender's Office. When families find insurmountable difficulties in making an

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<sup>183</sup> Lord, C., Elsabbagh, M., Baird, G., & Veenstra-Vanderweele, J. (2018). *Autism spectrum disorder. The lancet*. "The description of the core features of ASD as being social communication deficits and repetitive and unusual sensory-motor behaviours has not changed substantially since its original delineation. However, autism is now seen as a spectrum that can range from very mild to severe. (...). Although individuals with ASD are very different from one another, the disorder is characterised by core features in two areas—social communication and restricted, repetitive sensory-motor behaviours—irrespective of culture, race, ethnicity, or socioeconomic group. ASD results from early altered brain development and neural reorganisation. However, because there are no reliable biomarkers, the diagnosis must be made on the basis of behaviour. (...). To be diagnosed with ASD, a person must show evidence of difficulties, past or present, in each of three social communication subdomains, and must have or have had difficulty in two of the four different restricted, repetitive sensory-motor behaviours. There are also newly proposed levels of severity in DSM-5 based on the need for support, which so far have shown dubious validity, although the concept of functionality is in itself very important."

<sup>184</sup> "O Sistema Único de Saúde (SUS) é um dos maiores e mais complexos sistemas de saúde pública do mundo, abrangendo desde o simples atendimento para avaliação da pressão arterial, por meio da Atenção Primária, até o transplante de órgãos, garantindo acesso integral, universal e gratuito para toda a população do país. Com a sua criação, o SUS proporcionou o acesso universal ao sistema público de saúde, sem discriminação. A atenção integral à saúde, e não somente aos cuidados assistenciais, passou a ser um direito de todos os brasileiros, desde a gestação e por toda a vida, com foco na saúde com qualidade de vida, visando a prevenção e a promoção da saúde.

A gestão das ações e dos serviços de saúde deve ser solidária e participativa entre os três entes da Federação: a União, os Estados e os municípios. A rede que compõe o SUS é ampla e abrange tanto ações quanto os serviços de saúde. Engloba a atenção primária, média e alta complexidades, os serviços urgência e emergência, a atenção hospitalar, as ações e serviços das vigilâncias epidemiológica, sanitária e ambiental e assistência farmacêutica. Conforme a Constituição Federal de 1988 (CF-88), a 'Saúde é direito de todos e dever do Estado'. No período anterior a CF-88, o sistema público de saúde prestava assistência apenas aos trabalhadores vinculados à Previdência Social, aproximadamente 30 milhões de pessoas com acesso aos serviços hospitalares, cabendo o atendimento aos demais cidadãos às entidades filantrópicas." Source: <https://www.gov.br/saude/pt-br/assuntos/saude-de-a-a-z/s/sus-estrutura-principios-e-como-funciona>

appointment with the doctor in the neuropediatrics or paediatrics specialities, they might go to the institution. Thus, armed with primarily documents, the child's representative is assisted by the public defender, who can take two paths: officiate the public health network, using the tool mentioned above of requisition of information or directly file a lawsuit. Usually, an attempt is made to obtain the consultation extrajudicially, sending an official letter and granting a deadline for response. If the answer is positive, that is, if the consultation is scheduled, the public defender gets in touch with the child's family and goes over the date and time of the consultation (in many situations, the public network contacts them directly). If there is no answer within the stipulated deadline or if the answer is negative, it is necessary to file a lawsuit in Court and request an injunction.

In Cachoeiro de Itapemirim, actions proposed by the Public Defender's Office to obtain a medical consultation are usually victorious, that is, the justice understands that it is a case of forcing the public entity to grant the consultation with the specialist doctor. In these cases, the child will finally have the opportunity to be seen by the appropriate professional, who will or will not diagnose ASD. If the child is diagnosed with ASD and the treatment indicated by the doctor is available in the SUS, the child can benefit directly. In many situations, depending on the child, the symptoms, and the existence or not of other disorders added to the ASD<sup>185</sup>, the doctor can prescribe treatment that is not available at the SUS.

Here is the problem: when the doctor prescribes treatment that is not available at the SUS or when the treatment is available at a lesser frequency or fewer number of hours than necessary. In this case, once again, the child's family must go to the Public Defender's Office, and two paths can be taken. The first one is to send official communication to the health network asking about the possibility of granting treatment. If there is no answer or if it

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<sup>185</sup> Lord, C., Elsabbagh, M., Baird, G., & Veenstra-Vanderweele, J. (2018). *Autism spectrum disorder. The lancet*: "Clinicians have long been aware that ASD is often accompanied by other difficulties. In addition to ASD, the earliest considerations are usually developmental delay or intellectual disability, and language and motor difficulties. DSM-5 recognises this complexity by allowing multiple diagnoses, even within psychiatry, such as ASD and ADHD.

ADHD is the most common comorbidity in people with ASD (28.2% [95% CI 13.3–43.0]), and considerably affects outcomes in children with ASD who have average intelligence or intellectual disability. How ADHD affects children and adults changes over time in terms of interactions with executive functioning, peer relations, and depression, and should therefore be monitored.

Anxiety in various different forms—including social anxiety, generalised anxiety, separation anxiety in younger children, and phobias—also affects many children with ASD. Anxiety and depression are more common, or at least more observable, in verbally fluent individuals, and increase during adolescence in girls, while also occurring in a substantial minority of boys.

Irritability and aggression are more common in ASD (25%) than in other developmental disorders (eg, idiopathic intellectual disability), although they take many different forms from minor physical aggression in very young children to verbal aggression in adults"

is negative, the Public Defender's Office must propose the appropriate legal action so that justice decides on the case.

At this point, it is fundamental to note that the maximum period granted by the institution for the public health entity to respond in ten days. With that, the objective is to reduce the waiting time of the child for adequate treatment and to lessen the severe consequences that can happen in adult life. As already seen, the period of early childhood is essential, and the consequences are carried throughout life, good or bad, depending on the stimuli received.

Out of curiosity, families who seek care at the Public Defender's Office do so because the treatment prescribed to children by doctors is based on the Applied Behavior Analysis (ABA) Method<sup>186</sup>. This treatment, not covered by SUS, provides care by professionals in psychology, pedagogy, occupational therapy, and other professionals who are eventually necessary in a number of hours per week much smaller than those prescribed by the doctor with the ABA Method<sup>187</sup>. In addition to the shorter number of hours, the treatment offered by the public health network is not performed by professionals trained in ASD but who work with children and adolescents with different cognitive disorders. According to the public health network, the ABA Method does not present better results than traditional methods. However, research shows that only multidisciplinary treatment and several hours per week bring results, such as improvement in the child's communication, motor, cognitive, social and emotional performance.

Unfortunately, the treatment offered by the public health network is limited to half an hour per week for each speciality per child. Thus, if we consider the specialities of psychology, pedagogy and occupational therapy, the child can only perform, in Cachoeiro de Itapemirim,

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<sup>186</sup> Vietze, P., & Lax, L. E. (2020). Early intervention ABA for toddlers with ASD: Effect of age and amount. *Current Psychology*, 39(4): "Applied Behavior Analysis (ABA) has been reported to deliver successful outcomes for children diagnosed with ASD. Since Lovaas (1987) first demonstrated the effectiveness of ABA (ABA) with young children with diagnoses of ASDs, there have been a number of replications or partial replications of his study (e.g. Smith et al. 1997; Smith, Groen, & Wynn, 2000, Matson and Konst 2014). Based on the results of some of these early-randomized clinical trials demonstrating that ABA was the only treatment that produced significant improvement in developmental level and associated reduction in symptoms, New York State (NYS) approved the use of ABA in its Early Intervention Program for children diagnosed with an AASD (New York State Department of Health 1999)."

<sup>187</sup> Vietze, P., & Lax, L. E. (2020). Early intervention ABA for toddlers with ASD: Effect of age and amount. *Current Psychology*, 39(4): "It has also been assumed that the child who receives more ABA will benefit more than the child who receives fewer hours. However, there is no finite number of hours that has been demonstrated to effectively reduce the child's symptoms of ASD or to induce fluent language. (...). Logically, it is assumed that the more ABA hours a child receives, the more likely it is that that child will benefit as compared with the child who receives fewer hours. Lovaas (1987) compared children who received ABA for 40 h a week to children who received only 10 h a week and found better results for the former group. In fact, the children who received only 10 h or less a week showed little improvement in symptoms or cognitive test scores. Nevertheless, there is no definitive empirical support on the finite number of hours that is prescribed to effectively reduce the symptoms of ASD and improve functioning."

1 hour and a half of therapy combined with all the specialities per week. Although no research indicates the minimum amount of hours required for a child with ASD to benefit from the ABA Method, research shows that those who received only 10 hours or less per week showed a slight improvement in symptoms or cognitive test results. What can we expect of improvement with just 1 hour and a half of weekly treatment? The return is minimal or nil<sup>188</sup>.

It is worth pointing out that because the demand is enormous, and the public health power is not prepared for this demand, children often do not get places in the already deficient SUS. It is noteworthy, therefore, that the treatment offered is insufficient to guarantee to children in early childhood the development of their full potential, a right guaranteed both in international and domestic legislation.

To illustrate this dramatic situation, a widely circulated newspaper published a report about a protest held by mothers of children with ASD in front of the City Hall of Cachoeiro de Itapemirim. The report informs that mothers protest for better treatment conditions since children have difficulty accessing it. Families demanded more agility from public authorities in scheduling appointments for children who need care. Some report that they have been waiting for vacancies for five years and that the absence of treatment causes school absences and difficulty following the content taught. The municipality's only institution that serves children with autism reports that it works with above-average capacity and has no vacancies to receive more children. It also points to a shortage of professionals<sup>189</sup>.

The report above demonstrates numerous and primary challenges in implementing public policies for children in early childhood with ASD in Cachoeiro de Itapemirim. Thus, despite the Public Defender's Office contributing to the protection of these rights, there is much work

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<sup>188</sup> Vietze, P., & Lax, L. E. (2020). Early intervention ABA for toddlers with ASD: Effect of age and amount. *Current Psychology*, 39(4). Source: <https://link.springer.com/article/10.1007/s12144-018-9812-z>

<sup>189</sup> "Mães protestam por melhor atendimento a crianças autistas em Cachoeiro.

Mães relatam dificuldade para conseguir tratamento especializado; Apae afirma que trabalha acima da capacidade para atender grande demanda no Sul do ES.

A manicure Priscila Aritana participou do protesto, Para o repórter Thomas Albano, da TV Gazeta sul, ela explicou que o filho dela, Itallo Roberto, de oito anos, foi diagnosticado com o autismo quando tinha apenas um ano e meio. Segundo ela, Itallo precisa de tratamento especializado, porém, a espera já dura cinco anos: 'Ele está sem os remédios, com agitação total dentro de casa. Na escola é reclamação quase todos os dias. Semana passada ele estava muito nervoso e não posso mandá-lo para escola nem sair de casa'. Outra pessoa que está passando pela mesma situação é a auxiliar de serviços Daiana Souza. Ela aguarda atendimento para o filho Joaquim, de três anos, há quase um ano. O menino também possui autismo e necessita de acompanhamento multidisciplinar. Segundo ela, há falta de neurologista: 'A última consulta dele foi no dia 15 de dezembro. Ele teria que ter retornado com seis meses e até hoje não retornou, porque o mesmo posto não tem remédio. Até me mandaram para outro, mas até hoje não consegui consulta', afirmou.". Source: <https://www.agazeta.com.br/es/cotidiano/maes-protestam-por-melhor-atendimento-a-criancas-autistas-em-cachoeiro-0922>

to be done since at least 70% of the Brazilian population are potential users of the institution<sup>190</sup>. The protests portrayed in the report show that no matter how serious the work developed by the Public Defender's Office is, it is still not enough to meet all the children who need it. As incessant as the work developed by the Public Defender's Office is, there are the invisible, those who do not even know about the institution's existence and, therefore, cannot be reached. The work is hard but less than what is necessary so that all children can have their rights protected.

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<sup>190</sup> “Comarcas atendidas por pelo menos uma defensora ou defensor público lotado. Em 2019/20, havia cerca de 900 comarcas com pelo menos uma defensora ou defensor lotado, que atendiam a 142 milhões de pessoas, ou cerca de 70% da população do país.”. Source: [https://www.anadep.org.br/wtksite/cms/conteudo/49336/MAPA\\_RELATORIO\\_DIGITAL\\_.pdf](https://www.anadep.org.br/wtksite/cms/conteudo/49336/MAPA_RELATORIO_DIGITAL_.pdf)

## FINAL CONSIDERATIONS

Early childhood is the most crucial phase of an individual's life in several aspects: all stimuli received, or not, during this period will directly interfere, to a greater or lesser degree, in the life of the child who will one day become an adult. Children who receive primary and multidisciplinary care from the first years of life develop better skills in adapting and apprehending school content and a better emotional balance. Studies produced by neuroscientists, pedagogues, psychologists and related areas show that the period between zero and six years of age is an excellent “window of opportunity”, as brain plasticity reaches optimal levels for learning.

During the early childhood period, about 1 million neural connections are made in this phase, a level that will never be repeated in the individual's entire life. Although it is indisputable that human beings can remodel themselves throughout life, there is no doubt that plasticity finds its maximum strength in early childhood for specific functions. For this reason, the stimuli directly interfere with the formation of the human being. Therefore, adequate nutrition, love, health, leisure, education, fair housing, and proper family support are essential in early childhood.

Studies also show that investing in early childhood, in addition to being a humanitarian issue that allows children to reach their full potential, has a financial return. The numerous studies presented by James Heckman, economics Nobel, show that investing in early childhood can break cycles of poverty and raise the condition of families not only in the generation in which it is invested but also in later ones. Consequently, in addition to improving the lives of the children and their families, these people become potential wealth producers for a country. That is the reason why it is argued that there is a financial return when investing in early childhood.

Numerous international provisions protect early childhood, recognising the importance of this period in human life. The Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities are international documents protecting early childhood. They list rights, such as health, education, leisure, housing, protection against all forms of abandonment and negligence, non-discrimination, and healthy family life, among many others. Specifically, there is a reference to early childhood rights in the United Nations Sustainable Development Goals (SDGs). Although not binding, SDGs symbolize a commitment among all countries



and to the UN that they will do what they can to improve the conditions of children's lives in early childhood.

In Brazil, early childhood is also protected by domestic laws and the Federal Constitution of 1988. The Constitution sets out the general norms, which all federative entities must observe. The Statute of Children and Adolescents and the Legal Framework for Early Childhood are essential laws for protecting and implementing early childhood rights. In addition, Brazil has numerous projects to enforce the rights listed in the law. Among them, the Happy Child Program was created to accompany children, their families and pregnant women, all to provide children with the possibility of working on and reaching their maximum potential.

One of the protection mechanisms established by the Federal Constitution is the Public Defender's Office. The Brazilian Public Defender's Office is an important tool for protecting and implementing early childhood rights. The institution was created primarily for the defence of the needy, as stated in the Federal Constitution. Later on, the protection of human rights was included as one of its functions. In this aspect, the possibility arises for the institution to protect, monitor, and assist in the implementation of early childhood rights. In order to achieve this objective, there are several mechanisms and tools, both procedural and extrajudicial, to enable the protection mentioned above.

And although the importance of the Public Defender's Office in protecting and implementing early childhood rights is indisputable, it is imperative to recognise that the institution has numerous challenges. One of the most significant is that some potential institution users are unaware of its existence because they live on the margins of society, in a situation of extreme social vulnerability. Consequently, this part of the population does not even know their rights, let alone the only Brazilian institution capable of protecting them. That is why the mechanism of education about rights promoted by the Public Defender's Office has a unique role: to bring their rights and the institution to the knowledge of the population that lacks financial resources.

The practical case that illustrates the outcome of the Public Defender's Office in Cachoeiro de Itapemirim in favour of early childhood demonstrates how the institution operate for children within the autism spectrum disorder. The institution can act in all phases that may exist in the process to obtain the adequate treatment, both extrajudicially, in an attempt to obtain it more quickly and using methods of conflict resolution, and judicially, when a decision in this regard would be necessary. Children and their families find the possibility of having their rights guaranteed in the Public Defender's Office since the treatment usually prescribed by the medical team accompanying the child is not provided spontaneously by public entities.

The work developed by the Public Defender's Office in favour of early childhood occurs in several areas and instances, intending to ensure that children have access to all the rights listed in the international and domestic legislation. Hence, the institution acts in numerous fields, such as health, education, housing, adequate nutrition, orphanages, and shelters, so that children have their individuality and rights respected, reaching their maximum potential under the appropriate conditions. The exercise of these rights will guarantee the chance of fundamental changes not only in these children's lives but also in their families and the next generations.

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