

Honorable members of the Committee on the Rights of the Child,

Bearing in mind the “Call for Submissions” on General Comment No. 27, regarding the Children’s Rights to Access to Justice and Effective Remedies, the Public Defender’s Office of the State of Rio de Janeiro, Brazil, presents its comments, hoping they will contribute to the drafting of the welcomed General Comment.

1. The establishment of Offices of Public Defenders (Legal Aid Public Lawyers), as National Human Rights Institutions, mandated with the function of legally representing children and promoting their rights, autonomously, as an obligation of States Parties to fulfil the right of every child to access to justice.

The Brazilian Constitution has adopted the salaried staff model for legal aid, attributing to an autonomous and independent entity – the “Defensoria Pública” – the task of representing, counseling, consulting, and advising people who cannot afford to hire a lawyer. It also states that this entity is responsible for promoting human rights.

Article 134 of the Constitution provides: “The Defensoria Pública is essential to the jurisdictional function of the State, being responsible, as an expression and instrument of the democratic regime, fundamentally, for juridical counseling, the promotion of human rights, and the defense, at all levels, judicial and extrajudicial, of individual and collective rights, in full and free of charge, to those in need (...)”.

The Brazilian Constitution thus guarantees, especially to the most vulnerable in society, the *right to legal assistance* (encompassing legal advice and legal representation), which must be *integral* (i.e. in all areas of law) and *free of charge* (to those who cannot afford legal services). Moreover, the Constitution states *the manner of implementation of the right, as it demands from* the Government that they organise and maintain this specific agency. We believe to be crucial that the States Parties to the Convention enact similar pieces of legislation so that legal representation and assistance, in all areas of law, is guaranteed to all, especially to children.

We would like to draw the Committee’s attention to relevant international resolutions that underscore the importance of legal aid and public defense systems in ensuring access to justice, particularly for vulnerable populations. Human Rights Council Resolution 25/2 (2014) encourages states to make legal aid accessible to all, recognizing the crucial role of public defense systems in this regard. Similarly, General Assembly Resolution 67/187 (2012) adopted the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, urging Member States to establish, strengthen, and fund public defender systems as a means of ensuring legal aid. General Assembly Resolution 70/174 (2015) emphasizes the importance of legal aid in guaranteeing access to justice, particularly for those who are economically disadvantaged, supporting the establishment and strengthening of public defense systems. Additionally, General Assembly Resolution 72/186 (2017), focused on human rights in the administration of justice, highlights the role of legal aid and public defense systems in upholding human rights and ensuring access to justice.

In the Interamerican System of Human Rights, the General Assembly of the OAS has also issued several resolutions, which recommend and urge state parties to invest in this model of legal aid, widely spread in Latin America¹.

One crucial milestone in the historic development of the Office of Public Defenders in Brazil was the progressive strengthening of the institution towards its enhanced autonomy. In 1994, Complementary Law 80 recognized important guarantees to the Office of Public Defenders, most notably the protection against any interference from other state organs (the guarantee of technical independence). In 2004, a reform of the Judiciary occurred and the Constitution was amended² to include the guarantee of administrative and financial autonomy of the agency, in addition to the technical independence³. In 2009, Complementary Law 80 was amended by Complementary Law 132.

The guarantees enshrined in Complementary Law 132 of 2009, designed to protect the technical independence and financial autonomy of the OPD, are indispensable for the OPD to achieve its objectives. Children, in particular, benefit enormously from the enhanced powers conferred to the Office of Public Defenders by the new law.

According to the innovations brought by the Complementary Law 132, which altered Complementary Law 80 (see Article 4), Public Defenders must: a.) promote the dissemination and the awareness of human rights, citizenship and the legal order among the poorest; b.) provide an interdisciplinary service to those in need, through its administrative organs; c.) petition before international systems of human rights protection; d.) initiate any type of collective lawsuit, when the expected result of litigation will benefit groups of individuals considered to be in need (this has been widely used in the defence of children, when non-functional public policies are at stake); e.) file any lawsuit or remedy in defence of the OPD's own functions and public defenders' guarantees; d.) work to preserve, and seek reparation for the violation of, the rights of persons victims of torture, sexual abuse, discrimination or any other form of violation or oppression, providing support and interdisciplinary service to the victims; e.) participate of governmental meetings where the OPD's functions are discussed and receive the funds due to the OPD from judicial fees or any other public entity, having the obligation to establish special funds to administer such income; f.) call public consultations.

The above – quite extensive – list of functions and powers provides concreteness to the objectives conferred to the Office of Public Defenders: the protection of human dignity, the human rights of the poorest and most vulnerable in society, and the reduction of social inequalities, granting to the OPD the autonomy and other characteristics found in the Principles relating to the Status of National Institutions (The Paris Principles).

We therefore strongly believe, based on the Brazilian experience of the existence of an agency that **both delivers legal representation in all areas of law and acts as a national human rights**

¹ Please refer to OAS documents AG/RES 2656 (XLI-O/11); AG/RES 2714 (XLII-O/12); AG/RES 2801 (XLIII-O/13); AG/RES 2821 (XLIV-O/14); AG/RES 2887 (XLVI-O/16); AG/RES. 2908 (XLVII-O-17); AG/RES. 2928 (XLVIII-O/18); AG/RES 0794 (XLIX-O/19); and AG/CG doc. 2 (L-O/20).

² Constitutional Amendment no. 45, of 8 December 2004.

³ Article 134 of the Constitution was amended in order to transform its Paragraph into Paragraph 1, and to add a second paragraph that reads: 'The public legal defence of the States is guaranteed technical and administrative autonomy and budgetary initiative within the limits determined by the law of budgetary directives and observance of the provisions of article 99, paragraph 2.' (Paragraph 2 added by Constitutional Amendment no. 45, of 8 December 2004).

institution (as defined in the Paris Principles), that every State Party to the Convention would benefit from enacting similar pieces of legislation and from establishing similar structures to protect the most vulnerable in society, especially children.

2. The adoption of Strengthened Formulas of Access to Justice to Children as an obligation of States Parties to promote the right of every child to access to justice.

We believe that General Comment No. 27 should emphasize that this type of ample representation must be available to every child, regardless of their parents' income, particularly because children do not have the capacity to hire legal professionals themselves. Sometimes, in Brazil, children even litigate against their parents, represented by a public defender, acting as “Defender of the Child”. In such cases, access to legal counseling and representation should be facilitated, and all barriers should be lifted. That is to say: children should be eligible to access the services of legal aid services irrespectively of the economic status of their family, simply due to their age-related vulnerability.

States should develop strengthened formulas of access to justice to children, so that all barriers are effectively lifted and children are reached and ultimately understood in their needs and wills. In this respect, we recommend that states relate to the document “**100 Brasilia Rules about Access to Justice for Vulnerable Persons**”, approved at the **14th Iberic-American Judicial Summit, which took place in Brasilia in March 2008**. Although not a legally binding instrument, it provides important information on how to implement those strengthened formulas of access to justice, according to the vulnerability at stake.

The Public Defender’s Office in the state of Rio de Janeiro will soon celebrate 70 years of existence. As a result of its prolonged existence, it has accumulated extensive experience in matters of access to justice, especially for children, who are considered inherently in need due to their age-related vulnerability.

In this regard, we find the Brazilian legislation to be highly precise when it states: “The access of every child or adolescent to the Public Defender's Office, the Public Prosecutor's Office, and the Judiciary is guaranteed, through any of their bodies” (Article 141 of Law No. 8.069/90). This right, however, should not be understood merely as having the “doors opened,” welcoming children to seek help, but also as imposing obligations on the state. These obligations include visiting remote areas, institutions, services, and facilities responsible for the care or protection of children, to ensure that their rights are practical and effective. These, again, should be seen as strengthened formulas of access to justice especially designed to protect children.

To this point, we are proud to have initiated a project called “Defensoria in Action at Favelas.” Every weekend, a group of public defenders visits a favela, providing legal aid to its inhabitants, especially in family cases. Every week, public defenders also visit foster care institutions. During these visits, every child or adolescent’s case is studied and debated and public defenders act as “Defenders of the Child” in every detected legal need. We intend to expand this project even more, to address children and their specific rights, such as education (primary and childcare services) and health (vaccination).

We would also like to highlight that not only economic barriers can threaten access to justice, but also the architecture of buildings, cultural practices, and the language used during hearings and debates can be obstacles. Language appropriate to a child’s age and level of understanding should be used at all times.



Establishing a legal system of staff salaried lawyers working in an agency with powers and autonomy as prescribed in the Paris Principles is essential, we believe. However, it is still not sufficient if children, due to their enhanced vulnerability, are not effectively reached, heard, understood and ultimately defended.

3. Securing the *locus standi* of children, by themselves, in all procedures, and their right to be represented by their own lawyer, free of charge, as an obligation of States Parties to promote the right of every child of access to justice. Recognizing the imposition of decisions upon children without the guarantee of a qualified *locus standi* as non-compliance with the obligation to respect the right of every child to an effective access to justice.

The Defensoria Pública has been advancing the idea that acting as “Defender of the Child” plays an essential role within the system of guarantees of rights of children. Children have the right to participate in judicial and non-judicial processes, to be able to effectively influence in the decisions made about their own lives.

In Brazil, the legal foundation of the “Defender of the Child” is found, first, in the Convention on the Rights of the Child itself. Moreover, in Article 227 of the Federal Constitution, which recognized the “Integral Protection Doctrine”, based on the principle of human dignity, which states that children are expressly entitled with rights, that is – they are not to be considered objects upon which decisions are made. Article 206 of Federal Law 8069/90 states that “the child or adolescent, their parents, and any person with legitimate interest in the solution of the lawsuit may intervene in the procedures mentioned in this Act, represented by a lawyer (...)”. Thus, children themselves have *locus standi* and must be represented by a lawyer, as a priority and free of charge. Complementary Law 80, as already mentioned, establishes the defense of the interests of the child – both individually and collectively – as one of the functions of the Office of Public Defenders in Brazil.

In this regard, we express our concern about recent decisions of the Superior Court of Justice of Brazil stating that the presence of the District Attorney’s Office (Ministério Público) in proceedings deciding the placement of a child in foster care is sufficient, to the detriment of the participation of the OPD, as Defender of the Child.

We believe that States Parties would better protect the right of their children if they conferred to an independent national agency the autonomy and power to defend children acting as “Defender of the Child”, including via the enactment of legislation.

4. Concluding Remarks

It must be stated that merely appointing a lawyer does not meet the state’s obligation to provide access to justice. The legal professional must be qualified and able to present the case with due diligence. In this context, we are concerned about the curriculum of Brazilian law schools, where “Rights of Children” is not included as a mandatory subject. We are also concerned that every lawyer, representing children, should be trained in special hearing techniques, or else, should be accompanied by trained psychology and social services professionals.

We also invite the Committee to address the issue of the time and duration of legal proceedings. In our view, these proceedings should be as expeditious as possible, given that children experience a limited window of opportunities. The judicial process must meet the children’s needs and best interests, but it should also allow parents adequate time and means to present



their case (as well as children themselves, via the Defender of the Child), especially when a parental separation is involved.

To achieve this, we are convinced that states should allocate adequate economic and human resources to their maximum capacities. We also believe that the specialization of courts can make them more child-centered and friendly. However, this alone is insufficient if the allocation of resources does not meet the necessities and the number of pending cases.

Finally, we are deeply concerned about the use of artificial intelligence and other technologies in the judicial system. Every child is unique and must have the right to full development, with the assurance that they can become whatever they wish in their adult life. The automation and mechanization of legal processes might be incompatible with this right. Courts and the judicial system must be aware of this and consider the risks of using technologies in cases related to children's rights. Such technologies should only be admitted if they are designed bearing in mind the principle of the best interests of the child.

We strongly hope to have contributed to the Committee's important endeavor, which will undoubtedly help to improve the quality of children's lives and ensure the enjoyment of all rights enshrined in the Convention.

Rio de Janeiro, 20th August 2024.

Patricia Cardoso Maciel Tavares

Head of The Public Defender's Office of Rio de Janeiro

Rodrigo Azambuja

Coordinator of the Children's Department

André Castro

Coordinator of the Human Rights Department

Andréa Sepúlveda

Vice-Coordinator of the Children's Department



DEFENSORIA PÚBLICA
DO ESTADO DO RIO DE JANEIRO