



FEDERAL PUBLIC DEFENDERS' OFFICE

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## TECHNICAL NOTE No. 15 - DPGU/DNDH

On February 24, 2022.

**Subject: Technical Note on the Statement by the United Nations High Commissioner for Human Rights, Hon. Ms. Michelle Bachelet, on "Equal access to justice for all: a necessary element of democracy, the rule of law and the protection of human rights" during the Third Session of the United Nations Forum on Human Rights, Democracy and the Rule of Law, on November 16, 2021.**

### INTRODUCTION

THE FEDERAL PUBLIC DEFENDERS' OFFICE, an autonomous institution, endowed with functional independence, expression and instrument of the Democratic regime for the promotion of human rights, under the terms of art. 134 of the Constitution of the Federative Republic of Brazil, having a nationwide reach through branches in all states of the federation, and whose objectives, as set out in items I and III, art. 3-A of Supplementary Law nº 80 of 1994, are the primacy of the dignity of the human person and the prevalence and effectiveness of human rights, highlights the attention to its institutional attributions contained in art. 4 of said Act, among which stand out i) to promote, as a priority, the out-of-court settlement of disputes, aiming at the agreement among people in conflicts of interest, by means of mediation, conciliation, arbitration and other techniques of settlement and administration of disputes; (see item II, art. 4, LC 80/94); ii) to promote the dissemination and awareness of human rights, citizenship and the legal system (inc. III, art. 4, LC 80/94); as well as vi) to represent the international systems for the protection of human rights, by pleading before their bodies (inc. VI, art. 4, LC 80/94). Under such grounds, we hereby present our efforts and initiatives on the points highlighted by the United Nations High Commissioner for Human Rights, Hon. Ms. Michelle Bachelet, especially in relation to reference made to access to justice as a necessary element of democracy, in the Statement<sup>1</sup> proffered on 16 November 2021, during the Third Session of the United Nations Forum on Human Rights, Democracy and the Rule of Law.

### ACCESS TO JUSTICE AS A CONSTITUTIONAL MISSION ASSIGNED TO THE BRAZILIAN FEDERAL PUBLIC DEFENDERS' OFFICE

The Federal Constitution of 1988 inaugurated a new perspective in the protection of human rights. Guided by the principle of human dignity, the same that governs human rights at the international level, our so called "citizens Constitution" endowed the rights of freedom and equality with greater axiological value, highlighting them as interpretative vectors for legal relations in society and ensuring their protection as a fundamental clause of our legal system (art. 60, §4, IV). For this reason, it provided for an extensive list of fundamental rights and guarantees for the exercise of citizenship, inaugurating the corresponding article with the right to equality (article 5, *caput*), in addition to the express provision of rights to access to justice (article 5, XXXV) and free legal assistance (art. 5 LXXIV). In order to instrumentalize these rights, which are considered absolute,<sup>2</sup> together with the other fundamental rights, art. 134 of the Constitution created the Public Defenders' Office as an essential institution of the State, whose mission is, among others, full and free legal assistance.

Much broader than other expressions that relate to access to justice, the definition of "comprehensive legal assistance" goes beyond the strict scope of the judicial process to reach all legal relationships existing in society, inside and outside of legal proceedings, including the education in rights as a way of promoting the exercise of citizenship. Thus, in an unprecedented way, Brazil, under the Republican Constitution of 1988, has created an Institution that instrumentalizes the rule of law *per se*, by raising awareness on and by promoting human rights, in order to achieve material equality and the true sense of justice in our society.

For no other reason, the objectives of the Public Defenders' Office are coincident with the foundations and objectives of the Federative Republic of Brazil: primacy of human dignity, reduction of social inequalities, prevalence and effectiveness of human rights (art. 3-A, of LC 80/1994).

Therefore, under our constitutional mission, access to justice cannot be interpreted simply as claims before the Judiciary in the face of violations or potential threats to fundamental rights. It ranges from education in rights through the understanding and awareness of these rights, to the multiplication of knowledge, to conflict resolution through self-composition, to effective access to a fair legal order through both judicial and administrative instruments. In this context, access to justice is not limited to individual rights, but affects, overall, collective human rights capable of transforming society. Therefore, our mission does not merely refer to the economic possibility of hiring a lawyer or coping with the procedural costs of legal actions, but, above all, to our role as a State Institution capable of monitoring and promoting human rights, among other ways, through national and international reports, inter-institutional meetings, opinions, technical studies, recommendations, advocacy, bills and public hearings with the effective participation of civil society, in order to transform the social and economic reality of a society. Therefore, from this perspective, access to a fair legal order involves ensuring that people who are below the poverty line, or digitally excluded, have an Institution they can access and rely on, where they will be seen and heard.

In this sense, much more than an institution of the justice system, the Public Defenders' Office is a messenger and spokesperson for the needs of those who need to be given voice, consolidating democracy, ensuring greater visibility to minorities and overcoming the gaps that prevent the full exercise of citizenship. Our institution represents, therefore, an important instrument of the system of "checks and balances" of the State, for monitoring, discussing, creating, advocating for, and, when necessary, judicializing public policies necessary for a more plural, fair and solidary society.

### ACCESS TO JUSTICE AS AN EXPRESSION OF HUMAN RIGHTS

The United Nations High Commissioner for Human Rights, Hon. Ms. Michelle Bachelet, highlighted that access to justice is a central issue for the realization of the principles of democracy, the rule of law and for the expression of human rights. For no other reason, access to justice is a key instrument in the search for peace and collective development, which is why it was included in Sustainable Development Goal 16, which refers to "Peace, Justice and Strong Institutions".

Hon. Ms. Michelle Bachelet draws attention to the existence of a global justice gap that mainly affects economically marginalized individuals, women, people with disabilities, people of African origin, children, indigenous communities, LGBT+ groups and other minorities, as they are targeted of systematic discrimination on grounds, in particular, of ethnic, racial, gender or economic conditions. According to the speech, more than 5 billion people, about 2/3 of the world's population, make up this huge portion that does not have access to justice.

It should be clarified that these numbers were calculated until April 2019, according to the document "Justice for all"<sup>3</sup>. The new Coronavirus pandemic, as punctuated in the speech, intensified these issues, since emergency circulation measures restricted access to the Justice System. It should be noted that many institutions and actors of the justice system began to suffer attacks in the performance of their duties due to fake news and hate speeches originated from sensitive moral dilemmas taken to the appreciation of the countermajoritarian system.

The High Commissioner's statement highlighted that this scenario increases the feeling of injustice in society, generates a deep erosion of social cohesion and reduces the population's trust in the State's instruments of power. It points out that this fact led to underreporting of human rights violations and abuses.

The factual scenario presented by the UN High Commissioner for Human Rights also has repercussions in the political and social sphere of Brazil. The Covid-19 Pandemic has brought relevant challenges to all economic sectors in our State. In an attempt to contain the spread of the virus and safeguard lives, fundamental rights were relativized. If, on the one hand, the health emergency demanded the closure of businesses and social isolation, on the other hand, the government needed to guarantee minimum economic conditions for the population, especially the low-income population, which was not entirely possible.

The sharp cut in the income of thousands of families that survived from the service sector resulted in a significant increase in the number of people dependent on income transfer programs. In this context, it was necessary to adopt urgent public policies to guarantee food and housing security, avoiding hunger, uncontrolled eviction and, consequently, the increase in extreme poverty.

The conditions of the Brazilian prison system, which was already under an unconstitutional state of affairs, as per the decision of the Federal Supreme Court under the Claims of Non-Compliance with a Fundamental Precept (ADPF, PT.) 347, were further aggravated. The prison population in Brazil had the right to family visits, so important for the resocialization process, restricted. The right to full defense, embodied, among others, in the hearing of the accused persons through interrogation and technical defense, had to be readapted to videoconferencing, which undoubtedly has impaired the production of evidence.

In this context, social inequalities have become even greater and marginalized groups disproportionately impacted, as highlighted by the inequality map for the year 2021 prepared by the city hall of the city of São Paulo, the largest city in the country<sup>4</sup>. Other indicators draw attention to the vertiginous growth during the Pandemic of: domestic violence against women, number of homeless people, people in a situation of food insecurity, etc.

In the face of so many events, the DPU strengthened its work in favor of human rights, creating Working Groups and strengthening the system of Public Defenders of Human Rights to act focused on specific themes and areas, in order to mitigate the effects of the pandemic. Through collective action, it was possible to implement public policies such as the "Emergency Aid", "Auxílio Brasil", "Auxílio Gás", social security and assistance benefits, which guaranteed a minimum income to the population in poverty or extreme poverty. Inter-institutional dialogues and collective lawsuits promoted by the DPU enabled good practices in human rights, such as preventing forced evictions, promoting the national immunization program against Covid-19, protecting the rights of persons deprived of their liberty, the rights of indigenous and quilombola communities. In addition, we have acted in situations of great socio-environmental impacts, whether due to natural disasters or anthropic actions.

Despite all the actions taken by the Federal Public Defenders' Office, by other actors in the justice system and by civil society, the economic and social dilemmas open new challenges to be faced.

The Statement published at the third session of the UN Forum on Democracy, Rule of Law and Human Rights presents four focal points to be worked on to achieve the reversal of the worrying scenario aggravated by the pandemic: 1) restoration of trust in public institutions, notably in relation to gender gaps, as women have historically shown less confidence in public institutions than men, due to structural inequalities and less participation in decision-making; 2) social participation in the identification of gaps and in the construction of public policies aimed at solving them, to be developed through education in rights and access to information, given that increased participation has the potential to increase trust in institutions and allow building a more responsive and discrimination-free society; 3) the structuring of justice centered on people, based on the establishment of the population's needs, and their solutions, as the center of the work of justice institutions; and, 4) independence of justice actors through the performance of their activities free from interference and pressure capable of compromising the impartiality of their work.

In relation to the points listed, it is important to highlight the legal and constitutional guarantee of functional independence attributed to the Public Defenders' Office and all its members, in the exercise of their duties as public defenders, as well as the institutional role of promoting education in rights and the necessary legal guidance (article 4, I and III, of LC 80/1994). Furthermore, it should be noted that the System of National and Regional Defenders of Human Rights, established within the scope of the DPU, acts not only by direct provocation of the interested parties, but also carries out an active search for repressed demands and monitors situations that violate human rights, carrying out on-site visits and meetings with the communities directly affected to learn about their real needs and seek joint solutions that meet the peculiarities of the affected group to the extent of their interests.

In light of the foregoing and in view of the proposals mentioned, the Federal Public Defenders' Office, through this Technical Note, expresses its support for the Statement of the United Nations High Commissioner for Human Rights, during the Third Session of the Forum of the United Nations on Human Rights, Democracy and the Rule of Law, on November 16, 2021, while reinforcing its commitment to the protection, promotion and defense of human rights, in the use of its constitutionally conferred attributions, committing to adopt more people-centered *modus operandi*, with increase popular participation in decision-making and as a guiding principle for institutional action.

Finally, in order to promote more responsive public policies on human rights, especially in relation to social and gender inequalities, as well as the challenges of the post-pandemic context, the federal public defenders recognize the need to restore society's trust in institutions and the adoption of a broad inter-institutional dialogue about the effective implementation of the measures proposed by said Statement.

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1- The Opening Statement is available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27818&LangID=E>

2- RAMOS, André de Carvalho. Human Rights Course/André de Carvalho Ramos - 8th ed.- São Paulo: Saraiva Educação, 2021. pp. 645-868.

3- The document is available for download at: <https://www.hiil.org/wp-content/uploads/2019/06/Justice-for-All-report-1.pdf>

4- The inequality map for the year 2021 is available at: [https://www.nossasaopaulo.org.br/wp-content/uploads/2021/10/Mapa-Da-Desigualdade-2021\\_Mapas.pdf](https://www.nossasaopaulo.org.br/wp-content/uploads/2021/10/Mapa-Da-Desigualdade-2021_Mapas.pdf)



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