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1. **Meeting Immediate Legal Needs by the Public Defender’s OFFICE in Brazil:aN EXEMPLARY CASE**

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**Abstract:***In this paper we will present a recent case occurred in Brazil, in which immediate and effective access to rights and to justice were sought through the intervention of the Public Defender’s Office. It will be analysed from the perspective of the legal needs theory. In 2013, a construction began on a new highway connecting the city of Rio de Janeiro with Petropolis: a historic and tourist town situated in a mountainous region, about 60 kilometers from Rio. One of the milestones of this project would be the construction of a continuous 4.64km-longroad tunnel. The work should have been completed before the Olympic Games in 2016, but was halted in 2015 and has since been abandoned. On November 7, 2017, a serious disaster occurred due to exactly this situation of abandonment of the road’s construction. Due to the flooding of the interior of the unfinished tunnel, at one point there was a rupture of the upper vault, causing the sinking of the ground and opening a huge crater on the surface, which engulfed one house and caused the interdiction of dozens of other houses located in the surrounding area. Ninety-five families were rendered homeless. Given this scenario, the Office of Public Defenders (OPD) – a Brazilian state institution constitutionally charged with the obligation of providing legal aid, both judicially and extrajudicially, to those who cannot afford a lawyer -promptly took initiatives to meet the immediate civil legal needs of all those affected by the accident. In addition to the individual needs (housing, food, clothing), there was also an important collective demand: a primary public school, which served the children of the community, also had to be closed. The day after the accident, November 8th, the Public Defenders held a meeting with representatives of the local government, the Federal Public Prosecutor's Office, the CONCER company (responsible for the administration of the Highway), alongside representatives of the families affected by the accident in order to identify their material needs arising from the disaster and with the aim of ensuring, in a friendly/consensual manner, immediate and adequate arrangements to meet those needs.The purpose was to avoid the judicialization of the conflict, since the filing of a judicial process, and the implementation of any decisions rendered by the Judiciary could hardly produce results soon enough. The initiative of Public Defenders representing the interests of the victims was successful and, on the same day (within 24 hours after the accident) an agreement was signed in which the company CONCER, even without legally taking the blame for the accident (which, according to it, would depend on complex technical expertise, to exclude the hypothesis of a natural disaster and to demonstrate the company’s responsibility) committed itself to providing all immediate material and financial assistance to the victims. As a result of this agreement, still on November 08, each family was paid a sufficient amount for rent costing - with the commitment that this amount would continue to be paid monthly until the end of the homelessness situation - while some families chose to stay in hotels, whose daily expenses were borne by the company. All families received, on this very same day, a "basic food basket" as well as a kit with toiletries. The company also committed itself to providing furniture and appliances for use in the new homes to be rented. The agreement even addressed the situation of the pets of these families: they were taken to shelters with daily care borne by the company. The company also committed to rent a building for the community primary school “provisional operation” and purchased all the furniture and necessary school supplies. It also took the responsibility for transporting students from their new places of residence to the new location where the school would be installed. All those obligations were fulfilled within the period of just a week after the accident, allowing the regular return to classes by students. This exemplary and real case demonstrates, in practice, the aptitude of a State legal aid service, be it in the model of salaried lawyers or public defenders, for an effective and emergency – when needed - response to civil legal needs, with greater readiness of access to justice.*

1. **Introduction**

Present-day Brazil finds itself immersed into a deep crisis which affects not only both the political and economic environments, but also a “subjective” sphere of Brazilian society now sees itself under a paradigmatic shift regarding the concepts of justice and democracy due to successive and severe corruption scandals broadly publicized in the international press.

Many infamous cases such as of embezzlement, bribery and extortion, among others, mostly vexing anywhere should they take place, have triggered in Brazil a process for the recovering of dignity in politics that reminds us of some of the theoretical constructs present in Hannah Arendt’s political thought. Simply put, Arendt’s concept as regards political action defines it as an act of “being-in-the-world”, that is to say, a self-awareness that enables oneself to abide by his or her consciousness according to the ethical standards provided for the benefit of the entireness of society. Accordingly, politics shape into a collective activity aiming at developing institutions whose absence, under the author’s perception, reveals the impossibility for a genuine public space to withstand[[3]](#footnote-3).

Following this reasoning, an appeal for the belief in the “public sector”, albeit seemingly contradictory at first (especially during moments of crisis) should be encouraged. As Arendt demonstrates in a plethora of her writings, such as the widely known “*What Is Authority*” and “*The Origins of Totalitarianism*”, stability as a value granted by institutions to the public sphere is believed to prevent politics from broader damage caused by power-hungry and private affairs conflicts[[4]](#footnote-4).

The present dire political scene in Brazil unequivocally puts at risk the aspiring guidelines designed by the nation´s institutions, in other words, the real objectives pursued by them, at whom they are targeted specifically and to what extent the role of each public service offered from a macro perspective is. Nevertheless, we believe that an analysis of these institutions’ past is imperative to evaluate the construction or not of a new *modus operandi* and policies for them. Among those institutions, reassuringly holding a pivotal role in the retrieval of dignity of the human person, widening of access to justice and, furthermore, to protect democracy, stands the Public Defender’s Office, an official branch devised by Brazilian Federal Constitution responsible for providing full and complimentary legal aid in both civil and criminal affairs of any given nature in individual rights and collective rights’ protection/enforcement.

Brazil’s legal aid model, after over a decade of progressive (increasing) public funding to consolidate the Public Defender’s Office (PDO) as indicated in a paper presented at the 2015’s ILAG Conference, has turned its focus as well towards the future of Brazilian justice.

Considering that access to justice does not stand solely for the formal accessibility of legal services but also as a relevant social right which forcefully binds government entities to the adoption of concrete measures in order to accomplish citizens’ entitlement to their rights[[5]](#footnote-5), the Public Defender’s Office role and action area extents further the traditional legal system. This shall be discussed following the example of a concrete case, in which the nature of the legal service provided showed itself able to secure effective and timely support for the vital needs to a number of persons victimized by a disaster responsible for the interdiction of a significant number of habitations, therefore preventing formal bureaucracy’s stoppage on access to justice and to proper rights in a factual stance.

Observation regarding events in this particular case also led to a self-critique made by the institution’s members precisely for reasons aforementioned, aiming at a reflection concerning the role of Public Defender’s Office and the legal aid system in the country.

After a brief introduction of the Brazilian legal aid model and the role devised by Public Defender’s Office, this work shall discuss the effective activities of this State agency, its multiple areas of interest, based on protection and safeguard of access to justice to the most vulnerable within society, which can be seen as exemplary in the out-of-court proceedings of this specific case that is the subject of this paper: it shows its particular feature inside the “justice system”.

Conclusions demonstrate that institutionalization, guarantees and prerogatives of Public Defenders proved to be essential for the integrity of measures taken in response of the victims’ needs in the given case. Likely otherwise, there would have been fewer assurances in due time for effective access to justice, that is to say, legal needs would probably not have been suitably fulfilled as in the concrete case.

1. **Why study Legal Needs?**

Cappelletti and Garth claim that “the expression ‘access to justice’ is admittedly difficult to define but works to determine two basic finalities of legal system, the system by which people may claim their rights and/or solve their litigations under the sponsorship of State”. Therefore, the system must be equally accessible to every individual and must produce results both individually and socially fair. This must not be mistaken into thinking that access to justice merely exists while there are conflicts; on the contrary, it is present also in their absence since law system is crafted after social rules. Considering after this, it comes to a conclusion the existence of legal needs unanswered by formal legal system, which widens the concept of access to justice[[6]](#footnote-6).

A question proposed by Portuguese sociologist and lecturer Boaventura de Souza Santos in “*Towards a Democratic Revolution of Justice*” was if Law could be emancipatory[[7]](#footnote-7). That question often appears linked to what we propose to discuss and to think regarding this work. Although broadly recognized by legal professionals that, in a democratic environment to promote access to justice is quintessential to reach an ideal of equity, one has to think further: is it enough to promote access to justice the way it is currently being carried out or should one meet legal needs not only as redress to occasional default circumstances but also as an emancipating act?

Gradually our existence becomes more regulated, so the law occupies a relevant part in our daily affairs. Bureaucracy stands as a key factor in several researches regarding the mechanics behind legal needs. When the individual chooses not to resort to formal legal system, one of the factors which interferes in one’s decision to solve a legal problem with extralegal apparatus is bureaucracy. But what would be then the role of law in face of increasing regulation and bureaucratization? Could it have a meaningful contribution towards a fairest society? And what is the impact then of institutionalized legal aid?

De Souza Santos destines a chapter of the mentioned work on behalf of Public Defender’s Offices and adds “considering the evolution of mechanisms and conceptions regarding access to justice, the proposal of building a Public Defender’s Office as predicted by Brazilian standards accounts for varied potential benefits: universal access through aid provided by certified professionals recruited with the sole purpose to commit to it; specialized legal aid for protection of public and collective rights; diversification of services and legal counseling beyond litigation, through conciliation and extralegal conflicts’ resolution and finally, as tool to foment education concerning the existence of rights”[[8]](#footnote-8).

Therefore, the case analysis shall demonstrate how Public Defender’s Office as an institutional actor may fulfill immediate legal needs and hitherto intends to shed light on the relevance of this subject.

* 1. **Access to justice problematic from a legal needs perspective**

Since the mid-1990s, at least 26 nationwide large-scale researches featuring public experience of justiciable problems were conducted in at least 15 separate jurisdictions: Australia, Bulgaria, Canada, England and Wales, Northern Ireland, Scotland, Slovakia, Hong Kong, Republic of China, Japan, Moldavia, Netherlands, New Zealand, Ukraine and the United States. Researches were also thoroughly conducted at local level in China (Michelson 2008) and in the Russian Federation, among many other researches to the same extent in all of the jurisdictions aforementioned.[[9]](#footnote-9).

These studies have their origins in the reference work of Clark and Corstvet (1938) about “how community’s needs for legal services were being answered” in Connecticut during the 1930s recession in the United States. However, although Clark and Corstvet had anticipated that similar researches would become a common feature, five additional researches took place during the following decades. It was not until the 1990s, however, that their research would be pushed with a “considerable impulse” (Coumarelos et al 2012, p.1) according to top-level surveys held first in the U.S. (Reese and Eldred 1994), followed by England and Wales (Genn 1999), New Zealand (Maxwell et al 1999) and Scotland (Genn and Paterson 2001).Such impulse has been affected due to wide reformation’s activity as to concern legal aid worldwide, with civil legal services being introduced in countries such as Bulgaria and Moldavia, their expanse in locations such as the Republic of China and a substantial (further developing) reform in accomplished civil legal assistance structures such as those featured by England and Wales (Lord Chancellor's Department 1998, Legal Services Commission 2006, Ministry of Justice 2010).

Researches came to a conclusion acknowledging that not always would traditional law suffice in a problem-solving scenario. The collected data made it possible to understand that a way to solve these issues, while remaining legal, does not restrain itself within the limits of a legal system *stricto sensu*. All these inferences were made possible from neutral-point observation attempts regarding citizens’ experience and behaviours of all sorts of “quarrels’ pyramid” from daily-routine problems – taken or not taken as legal ones – to formal procedures.

1. **Concept of legal needs or judicial needs**

 Legal needs may be defined as problems involving law issues regardless of their acknowledgment by those enduring them and of measures taken to accommodate these issues to be proceeded into a legal system.[[10]](#footnote-10).

Under this notion, it might be stated that two essential elements of the legal needs’ notion should be taken into account. The first one is, to be legal, a problem must be about the existence of an administrative, jurisprudential, legal, constitutional or contract-based right[[11]](#footnote-11). In other words, it is “legal” any positive right predicted by law; if there is a safeguarded right beneath a legal text, expectances are that a litigation which should jeopardize that right, be solved via Judiciary Power.

Secondly, the problem admits the presence of a conflict – a litigating situation between two or more parties – concerning the property of a certain right or a circumstance that should affect its satisfaction, either harming it or putting it in jeopardy.

These combined elements allow us to differentiate legal needs from social problems, that is to say, the ensemble of such elements present trace the path from a routinely issue to a legal need.[[12]](#footnote-12).

The bone of contention is indispensable, for instance, to distinguish situations demanding unspecified public service – for the appeasing of numerous social problems – and legal needs which require justice’s potential service so the State comprehends its duties. Therefore, situations depending solely on a public service, by themselves, are insufficient to be portrayed as a legal need case. From the moment State refuses to offer a public service, the conflict arises and following, the emergence of a judicial or legal need.

Likewise, it is also possible to depict a legal-needs’ scenario when there is a rebuff or the eruption of a conflict between private parties. In this case, the “conflict” or “disagreement” is a meaningful personal experience which affects collective or individual interests or expectances while the individuals are also able to grasp an illegality or injustice provoked by an also private third party. That situation is commonly referred to as, colloquially by the general public, “problem” or “legal problem”: an extraordinary situation – which escapes from average routine – challenging and undesirable, stressful for daily life, causing pains, discomfort and collective, familiar and personal suffering.[[13]](#footnote-13).

In order to face such “problems”, people prove to have the tendency to mobilize means and solid activities steadfastly to solve them, inside what, in a given reality and ambience, would be the fittest.

When the “problem” derives from a social conflict, comes in addition to strictly personal consequences an erosion of the ties and the possibility of peaceful coexistence with the person or persons to be blamed or held accountable for an offense.

1. **Present case description as an object of analysis**

In 2013, construction work began to give place to a Rio de Janeiro-Petropolis 60-kilometer long highway, connecting the former with a historic tourist town of the same name in mountainous Rio’s State. One of its landmarks would be the construction of a 4,64km mega tunnel. Construction should have been finished prior to the 2016 Summer Olympic Games in Rio, but it was halted in 2015 and then was left abandoned.

On November 7th2017, a massive accident related to this abandonment took place. Due to the flooding of the tunnel’s inner ring, it is assumed that it is likely that its upper vault suffered a breach and that this caused a land subsidence resulting in a massive crater on the surface which engulfed one house and caused the interdiction of dozens of others with final figures of ninety-five families made homeless.

In this scenario, Public Defender’s Office – in its capacity of the Brazilian institution constitutionally charged with legal aid assistance, legal and extralegal, to those who are unable to afford legal counseling – took measures in order to satisfy the immediate needs of those affected by the accident. It was perceived that beside individual needs (housing, food, clothing) there was also an important collective demand: the following interdiction of a local public elementary school.

A day after the accident, the State Public Defender’s Office of Rio de Janeiro set a meeting between representatives from the local government, the Federal Prosecutor’s Office, the CONCER company (charged with the highway’s maintenance) and those representing the affected by the accident with the goal of identifying the consequent material needs of the latter and to insure a consensual/friendly settlement to satisfy them. The intent was to avoid litigation, since formal legal system would scarcely satisfy those soon enough.

The Public Defender’s Office initiative, by representing the victims’ interests, was taken and within 24 hours since the accident had taken place an agreement was signed committing CONCER (although not legally acknowledging guilt for the accident for alleged lack of technical proof) to provide full and immediate material assistance. As a result, still on November 8th, each family received enough compensation to pay for rental – with the commitment to honor it until the housing situation is solved –; families who chose to check in to hotels had their rates also backed by the company; a kit with groceries was also included in the compensation. The company also provided furniture and house appliances for the new accommodation to be rented in a 72-hour deadline. The extent of this arrangement also included support for their pet animals’ stay at shelters until the situation was solved.

The company would also rent a building for the temporary functioning of the local school and also acquired furniture and supplies for the school’s activities within a week from the accident, allowing the school’s calendar to be normalized. This particular case demonstrates, in a factual stance, the propensity of this specific model of public legal aid services existing in Brazil to establish such support under an emergency status of legal needs with higher effectiveness to the access to justice.

1. **Public Defender’s Office competence for the present case**

The Brazilian 1988 Constitution expressly regulates in its chapter IV – destined to the Public Defender’s Office – what are the competences of that institution. It is an autonomous institution, therefore non-hierarchical from other State’s Power and their inter-relations.

Under constitutional principles and guidelines which attribute the Public Defender’s Office the responsibility of defending the interest of those who are most vulnerable’, inside or outside courtrooms, public defenders are fully entitled in the decision-making process, prevented from being subordinated to any public or private agent at any stance.

Only the PDO´s members have the competence to decide about “means test” and “merits test” when deciding which legal aid cases they will take and which people they will represent: under no circumstances might an outside agent such as judges or public prosecutors, as well as private agents seize this attribution.

According to article 134 of the Brazilian Constitution, Public Defender’s Office is charged with “legal counseling, the promotion of human rights and judicially or extra judicially, to the defense of collective and individual rights in a comprehensive and complimentary manner to those in need”.

Within the traditional and individual scope of civil nature cases, the Public Defender’s Office might take action providing legal aid, contract crafting, sponsoring cases of multiple areas, extralegal settlements-oriented interventions and legal procedures of any nature. The sponsorship of civil nature’s individual cases only takes place on behalf of economically vulnerable people.

Beyond individual processes’ actions, Brazilian PDO also defends population collective rights, with competence to act in Public Civil Suits, guaranteeing, for instance, consumer rights’ protection, citizens with special needs, incarcerated population in inhumane conditions, senior citizens with medical aid issues, public school students’ transportation demands, among others.

Public Defender’s Office also has the constitutional attribution to promote human rights’ defense *lato* sensu and its array of action is not restrained solely to the economically vulnerable. Whenever a blatant violation of human rights is to take place, the PDO – secured by Brazilian Constitution and international treaties – may act regardless of economic status of whomever gets benefitted for the cause sponsorship. Accordingly, there is a competence to act alongside human rights protection international systems, taking action also, if that is the case, against the Brazilian State.

Ultimately, the Public Defender’s Office might act promoting the human rights’ education and raising awareness among the population regarding proper procedures should these rights suffer a violation.

Because of the institution’s considerable workload and structural shortcomings, a supplementary law “80/1994” (named “Public Defender’s Office Organic Law) confers to public defenders some of the necessary prerogatives in order to achieve their aims. To illustrate that in a regular example, according to articles 44, 89 and 128 of the aforementioned law, public defenders have twice their procedural time limits as regular basis. So for instance, if a private solicitor has fifteen days to make an appeal (art. 1003, §5º, CPC/2015 – 2015 and current Brazilian Code of Civil Procedure) a public defender must have 30 days to practice the same act.

The Public Defender also holds the prerogative to solicit to any public authority documents, certificates, surveys, procedures, information, clearances and any other measures required to ensure the functionality of their activities. Hence, should the public defender need any document held by a government branch, its consultation can be required by the Public Defender’s Office. Likewise, should the PDO eventually have the need to execute any diligence in specific cases, it shall be possible to request law enforcement support to assist the public defender on his needs.

Concerning the present case, unequivocally the legal aid system as it is conceived in Brazil was a fundamental element for the immediate effectiveness of the access to justice. The institution’s structural level, its competences and prerogatives attributed to its personnel proved essential for their achievement in face of the private sector situation and the other government branches.

1. **The performance and strategy of the Public Defender´s Office in resolving this specific case**

As already mentioned, the Public Defender’s Office is considered by Brazilian Federal Constitution as “a permanent and essential institution for the judicial function of the State, with legal responsibility to promote human rights and the defense, to all judicial and extrajudicial degrees, of individual and collective rights, of to the needy”. So, as already pointed out, it has a wide assignment to act judicially and extra-judicially in guaranteeing the effectiveness of rights and access to justice primarily (but not exclusively) in favor of people who do not have the financial resources to hire private lawyers. Specifically in the extra-judicial field, it seeks to act strategically both in the prevention of litigation, through legal advice and counseling for specific cases and through public legal education initiatives, and in the search for consensual solutions, which often prove to be faster and more effective, which would occur if the option were the judicialization of the conflict. In addition to acting in an individual perspective, Brazilian law also ensures the Public Defender's Office ability to act as a collective guardian of the rights of its target public, either through filing collective law suits (class actions) or through the celebration of the so called "conduct adjustment agreements" (in Portuguese it corresponds to the acronym TAC – “Termo de Ajustamento de Conduta”).

As can be seen, the legislation makes it possible for the Public Defender's Office to act in practically all areas of Law, with particular emphasis on the attributions exercised in the Civil Law fields (covering Family Law, such as Obligations, Contracts, Probate), Housing, Consumer, Child and Adolescent, Criminal, Human Rights, Criminal Enforcement, Violence against Women, Environmental, among others.

There are, among all areas of activity of the institution, some specialized divisions, according to the fields of prioritary areas of interest, inside the Public Defender’s Office of the State of Rio de Janeiro. One of these divisions can be exemplified by the creation of the Center for Consumer Protection – NUDECON (in Portuguese, “Núcleo de Defesa do Consumidor”)– that recently has adopted a very proactive positioning for the resolution of major consumer accident conflicts. That's because accidents are usually of a huge impact and evident gravity.

So, in order to ensure immediate attention to the legal needs of the respective consumers or victims, NUDECON has developed a standard *modus operandi* to deal with these kind of situations, focusing on extrajudicial and consensual solutions.

The expertise and methodology developed by NUDECON has been as follows: on-site inspection (direct contact with people whose rights have been damaged/harmed[[14]](#footnote-14)); Immediate collection of data (dispatch of letters or other measures to collect other data not available locally); Immediate scheduling of meeting with people with effective "decision-making power" for the case, with the purpose of obtaining immediate concrete measures, primarily to meet the most urgent needs of the victims; Mobilization of the Media (press in general): the goal is to demonstrate that the PDO is taking initiative in the case and to exert "pressure" for a quick solution of the case; TAC ("conduct adjustment agreements”, as explained above) Proposal: in a formal document, the obligations assumed by the parties involved are expressly established - this is considered an appropriate, quick and efficient way to solve the case through extrajudicial and consensual solution.

This systematized performance by NUDECON was an essential facilitator for the resolution of the case on screen. In the episode of the accident occurred in November 2017, in Petrópolis, mentioned above, although the victimized persons did not properly have a relationship as "consumers" of the services provided by the company that manages Highway BR-040, considering the probable link between the accident(sinking of the ground, with opening of the crater that caused the interdiction of the houses) and the tunnel construction under the highway, the Public Defenders responsible for the case considered that they could try to adopt the same strategy described above, at least in regard to meeting the immediate legal needs of the victims, seeking to sensitize the said company to give the needed support to the victims.

So, on the very night of the accident, the public defender of Petropolis contacted the responsible authorities and was reassured with the information that the municipal public power was on the spot providing emergency assistance to the victims – they all were able to sleep in relatives´ houses, there was therefore no need to use temporary shelters at that moment. Early the next morning, the Public Defenders of Petrópolis, aware of NUDECON's experience, called on it for support to deal with the tragedy in an attempt to meet the immediate needs of the families.

The Public Defender, when contacting the municipal public power, was informed of the filing of a Class Action by the General Attorney of the Municipality on the dawn of the accident. In this Class Action they were asking in court for a preliminary decision to oblige the company to provide emergency assistance to families affected by the tragedy, with payment of the amount necessary for the cost of renting temporary housing. The intention was to avoid that this burden fell on the shoulders of the Town Hall, generating burdens in a moment of serious financial crisis that is being faced in Brazil. Thus, in order not to overlap acting independently, and sensing that the bureaucracy of the formal system would not allow effective needs to be ensured with the necessary urgency, there was direct contact with the City Mayor so that they could juxtapose efforts to solve the problem as soon as possible.

Although there was doubt as to which court would be competent to adjudicate this class action (the Highway where the accident occurred is under federal responsibility, but the lawsuit was filed before the State Judiciary), the Judge did not deliver the injunction pleaded by the Municipality, opting to schedule a special hearing for November 10, with the presence of all those involved, and only after that hearing would he provide some decision. Even if a court decision had been taken, this did not mean that it would necessarily be followed immediately: the controversy over jurisdiction competence and even other technical issues could justify a possible appeal by the company to a higher court, which would lead to delay in meeting immediate needs.

Faced with this situation, the Public Defender decided to intervene in the case with the purpose of seeking an immediate solution, following the "modus operandi" above, already applied in similar cases. On the morning of November 8, the Public Defenders appeared in the locality and met with representatives of the families that were gathered exactly to define their agenda of claims. In addition to the need for immediate assistance in the costing of expenses with temporary housing rent (or even the payment of hotel accommodation and food expenses until it was possible to rent a dwelling), it was noticed that an important concern of the community was with the functioning of the primary school, which functions on a full-time basis, whose building was also closed off: there was a fear by the community that, with the school building being banned, students would be redirected by the Municipal Education Department to other units, which would not work full-time[[15]](#footnote-15).At that meeting, a "commission of representatives" of the affected community was formed to take part in the negotiation to be conducted.

Once the complaints were established and the immediate needs of the victims were identified, the Public Defenders started to articulate so that the meeting with representatives of the concessionaire company, the victims and the local authorities could take place on the afternoon of November 8, in order to verify the possibility of an immediate consensual solution, at least to meet the emergency needs identified at first.

It was decided that the meeting involving all competent authorities and the responsible company – CONCER - would take place in the community itself (and not in the operational headquarters of the PDO), so as to enable the victims, through the formed committee of representatives, to follow more closely the negotiation and interfere more effectively in the agreement to be settled. This proximity to the residents gave transparency to the case and made it possible for the press to cover the whole transaction process. The meeting took place as simply and informally as possible on the balcony of a resident's house in the community near the place where the accident occurred. Present were the Mayor and his staff of advisors, the Councilor of the City Council and the attorneys of the CONCER concessionaire. The representative of the Federal Public Prosecutor's Office in Petropolis also had a fundamental participation, which proved to be of great importance in order to give legal force to the agreement and ensure its effectiveness, in the face of the controversy over federal or state judicial jurisdiction for the case.

Having heard the parties at that meeting (photo attached), it was possible to obtain a consensual solution, in which the concessionaire responsible for the Highway, although without formally assuming legal responsibility for the event (which would be to be discussed in the future, after carrying out relevant geological technical studies), agreed to sign an agreement in which it assumed a number of obligations expressly ensuring that all immediate legal needs identified at the time, not only from an individual perspective, but also from the collective community's great demand, which consisted in the viability of continuity primary school, on a full-time basis, in another building to be rented for this purpose.

Among the obligations assumed by the CONCER - concessionaire, in favor of the immediate legal needs of the people whose houses were interdicted are the following:

1) Monthly payment of a financial grant in the amount of R $ 1,000.00 (one thousand Brazilian reais)[[16]](#footnote-16), intended for the cost of housing rental expenses, to be paid to each of the 96 families whose home has been foreclosed: the first payment had already occurred on the very same day that the agreement was signed, that is, immediately;

2) Payment of accommodation and food expenses of families who indicated the need for immediate accommodation in hotels (while looking for some house to be rented), which were specially contracted for this purpose by CONCER;

3) Monthly supply of a “basic food basket” (with basic foodstuffs and hygiene products), in the total amount of R$ 130.00 (one hundred and thirty Reais), for each group of 4 people per family unit;

4) Supply of basic furniture[[17]](#footnote-17) necessary for houses rented to temporary housing for families, according to a list drawn up by consensus by the parties, observing the specific needs of each family;

5) Payment of expenses for the accommodation of domestic animals (PETs) belonging to the homeless families, in private establishments suitable for this purpose, with due vaccination, application of anti fleas and vermifuge, until the respective owners can have them again with them;

6) payment of expenses for the renting of a building for the provisional operation of the Primary School that serves the community, which should be located in a place to be defined by a parent and teacher commission, for the duration of the interdiction of the school building and, in parallel, the purchase of furniture and school supplies, according to a list drawn up by the School Board (the City Mayor also expressly made a commitment to ensure the continuity of the school's regular functioning, on a full- time basis, according to the claim of the community);

7) Cost of school transportation expenses for students and professionals working at the school to the place that was to be rented for the provisional operation of the school. These obligations must be maintained until the eventual cessation of the total ban on the beneficiary families´ dwelling or until definitive reallocation to another dwelling, in the case of those who had their house destroyed.

Finally, it seems reasonable to acknowledge that the simple reading of the numerous obligations expressly assumed by the company that manages the Highway, in the TAC (conduct adjustment agreement) signed only one day after the accident, demonstrates unequivocally that a very effective result has been achieved to ensure the fulfillment of the immediate needs of the victims of the episode. Such a result would hardly be achieved were it not for the intervention of the Public Defender's Office, which fulfilled exemplarily its role of guaranteeing full access to rights and to justice for the vulnerable people. This would be practically impossible if the model of legal aid service adopted in Brazil was that of the "judicare", dependent on private lawyers, who normally can only act in individual cases, and do not have the prerogatives and guarantees granted to public defenders, in their capacity as state agents invested with legal and constitutional powers to act in this type of situation.

1. **Fragilities of the system: current and future difficulties faced by the Public Defender's Office**

Despite the positive results, there is still much to be done to optimize the legal aid system in Brazil. The system has flaws and there are difficulties and weaknesses to be faced.

The Public Defender’s Office activities are permanently threatened by a risk of constriction. The structural flaws and in services’ coverage have as their other side the overload of work of public defenders. A significant part of the defenders’ work gets absorbed by a highly-bureaucratized justice system (individual civil litigation, criminal case, not allowing desirable and necessary investments in areas in the need of extra working hours and preparation (collective and public interests litigation and raising awareness to extrajudicial conflicts’ resolution. It also must be mentioned the existence of initiatives in order to enhance the aid provided by the Public Defender’s Offices directly targeted at pertinent thematic. These caucuses tend to contribute to a more qualified answer.[[18]](#footnote-18)

In comparison to other government branches of the judicial system, the Public Defender’s Office still lacks in its structure nationwide. The total number of public defenders in the country is merely a third for the number of judges and a half for the prosecutors. This poses a question of considerable relevance should it be considered that, in 2017, the number of eligible potential clients for legal aid service delivered by PDO was of 170 million people[[19]](#footnote-19).

These weaknesses also reflect in the future unfolding of the concrete case analyzed above, that is, in the purpose of reaching adequate solutions to meet not only the immediate needs, but the future full and integral reparation of material and psychic damages suffered. This is because definitive liability for damages will depend on a complex procedure for the production of expert technical evidence, which will hardly occur in a friendly, consensual procedure: it will be necessary to handle contentious judicial measures. And, as was at first glimpsed, a controversial point referred exactly to the jurisdiction competence of the case: as we feared, the lawsuit filed by the City Hall was redistributed to the Federal Court. And, the problem is that, in Petrópolis (as well as in several other cities), the Federal Public Defender´s Office is not yet installed: only they (not the State PDO) would have the legal attribution to act in favor of the victims in the contentious stage that will unfold. It will then be necessary to appoint private lawyers to represent the victims, due to the lack of federal public defenders in Petrópolis.

1. **Final Remarks**

This case serves as an important example of the institutional performance of the Public Defender’s Office in Brazil. The usage of different tools and actions manage to promote access to justice. It is also capital to ensure civil society’s participation in the definition of goals and forms of action to be carried out by the public defenders.

It seems to be worth mentioning also that such initiative and measures taken by the State Public Defender’s Office of Rio de Janeiro in safeguarding victims’ rights was possibly only due to the Brazilian legal aid model’s typical features of legal assistance and access to justice “carried through public defenders established as civil servants who dedicate exclusively in legal aid services to those in situation of vulnerability”.

Aside from this, autonomous and independent status ensured by the Brazilian Constitution to public defenders were also indispensable to the fact that not unusually their actions confront interests and determinations directly emanated from government authorities.[[20]](#footnote-20).

This would not mean, however, that the legal aid system in Brazil is a flawless one. On the contrary: there are numerous difficulties and limitations to be overcome. It must be added to this the importance of our mentioning of the frailties presented by the institutional system, as above. Much still need to be done, and this is strongly aimed by the representatives of the PDOs that are deeply conscious that legal aid model must suffer some adaptations in order to achieve its progress.

It is important also not to forget the institution’s role in an economic crisis’ scenario. During that period it is adamant to ensure legal aid to those who cannot afford it. It is undeniable that the demand for Public Defender’s Office tends to suffer a significant increase during troubled periods. An easy-spotted example is the one related to the social division of labour, when, while there isa crisis, many citizens become unemployed; the several impacts caused by this new status tend to increase the perception of legal assistance as a resort to smooth the compulsory features brought by a decrease in average living standards.

Finally, this action in a more proactive and extrajudicial way allows not only the satisfaction of the immediate legal needs, but also creates a closer relationship with the public power, which facilitates the resolution of conflicts.

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13. It is most commonly referred that there are two dimensions of the “problems or “juridical problems” faced by individuals: The former refers to the objective dimension, when there is a concrete damage, palpable in one’s life such as income reduction, to one’s property, body damage etc. The latter regards the subjective dimension of the problem people claim to suffer, like stress, anxiety, disturbance and every sort of issue that somehow has an intimate and psychological damage. [↑](#footnote-ref-13)
14. Soon after learning about the occurrence of an accident of great collective impact, a team of “Defensores” (public defenders) goes to the place to carry out an inspection and evaluation of the situation, with the intention of also identifying and establishing direct contact with the people whose rights have been harmed. [↑](#footnote-ref-14)
15. This possibility would bring great harm to their parents who, in the majority , have to work all day and have no one to leave their children with [↑](#footnote-ref-15)
16. This amount is a little bit higher than the minimum monthly wage established by the Brazilian Government. [↑](#footnote-ref-16)
17. This list was composed by the following items: Cooker, gas cooker, refrigerator, washing machine, blender, table with chairs, kitchen cupboard, set of pans, set of cutlery, set of dishes, set of glasses, double / single bed and or crib, cupboard for bedroom, set of sheets, blanket, set of towels, shower, sofa, 32 inch television. [↑](#footnote-ref-17)
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20. Although public defenders are civil servants, the PDO is not hierarchically subordinate to the Executive. Public defenders are selected by a competitive public examination, after which they gain permanent tenure, facing dismissals only in the most exceptional situations, and are prohibited from practising law outside these institutional parameters. In this way, the Constitution aimed to create a stable and reliable network of public defenders, comprised of qualified legal professionals who devote themselves exclusively to the provision of legal aid to the poor and empowered to act even against the interests of other government agencies or government if necessary. The autonomy of the PDO has been further strengthened by Constitutional Amendment 45, enacted in 2004.” WEIS, Carlos. The Brazilian Model of Legal Aid: Characteristics of the Public Defender’s Office since the Constitution of 1988. In: FOLEY, Conor (edit.). Another System is Possible – reforming Brazilian Justice”. Available at:

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