

INTERNATIONAL LEGAL AID GROUP CONFERENCE  
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**NATIONAL REPORT: BRAZIL**

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**1. Country details**

The Brazilian Constitution of 1988 adopted the federalist system, ensuring political decentralization. The Brazilian Federal State is composed of the Union (central government), states (regional power), municipalities (local power) and the federal district (capital of the country, bringing together the local and regional attributes). Therefore, besides the typical level of “state governments” and “federal government” (as in the USA), municipalities are also considered part of the federation.

Currently, Brazil has 5,570 municipalities and 26 states (Acre, Alagoas, Amapá, Amazonas, Bahia, Ceará, Espírito Santo, Goiás, Maranhão, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Pará, Paraíba, Paraná, Pernambuco, Piauí, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Rondônia, Roraima, Santa Catarina, São Paulo, Sergipe and Tocantins). Moreover, Brasilia is the federal capital (federal district).

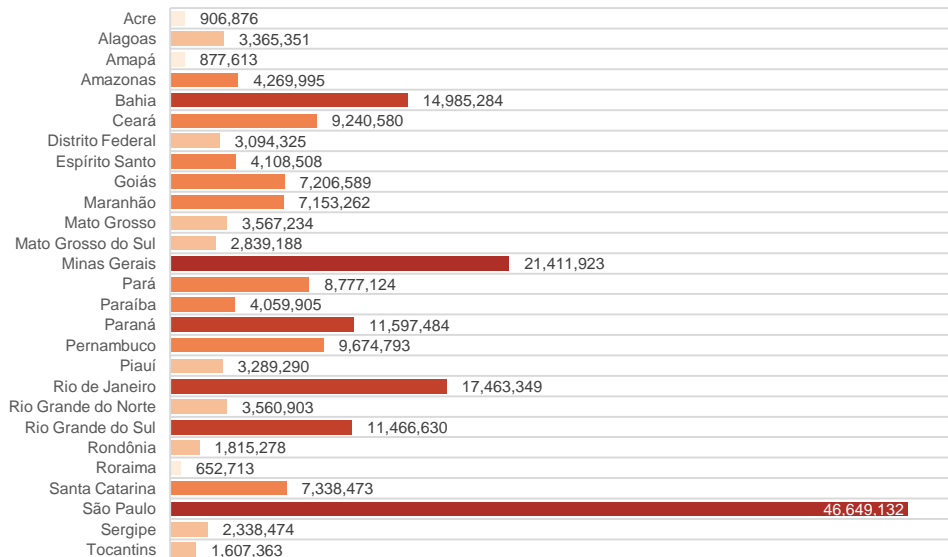
Map 1 - Brazilian states and federal district



Source: Prepared by the authors based on IBGE, 2021.

According to official projections of the Brazilian Institute of Geography and Statistics (*Instituto Brasileiro de Geografia e Estatística – IBGE*), the population of Brazil is about 213,317,639 people; With a territorial surface of 8,510,345 km<sup>2</sup>, the country has a population density of 25.1 inhabitants/km<sup>2</sup>.

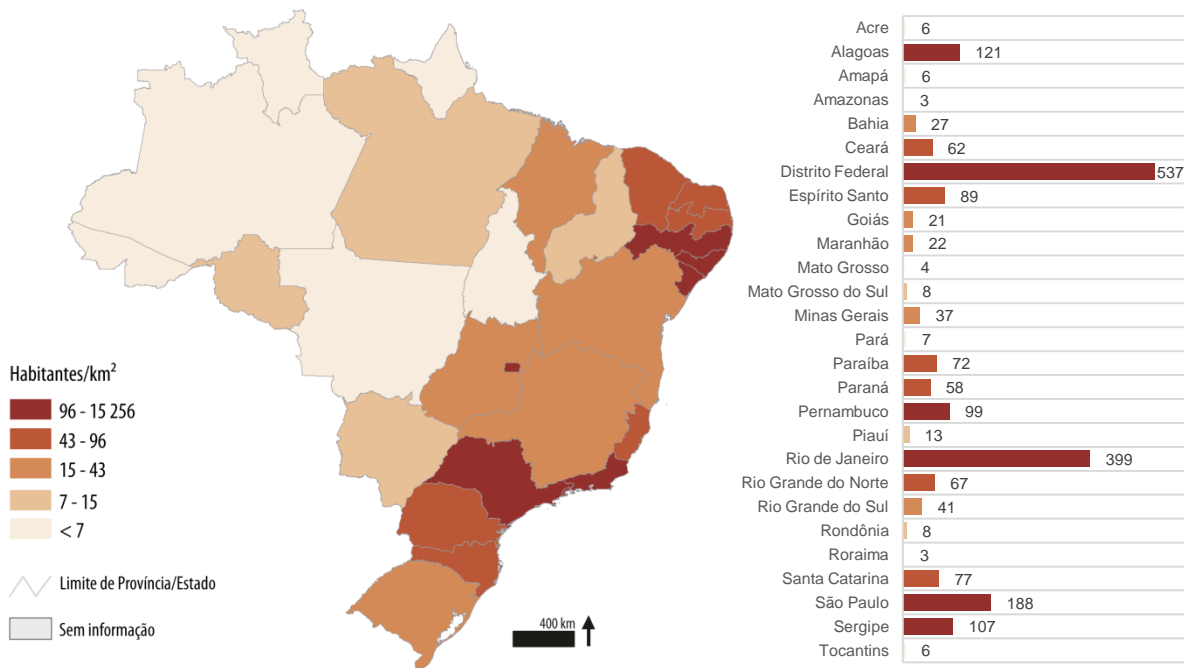
Graph 1 - Projected population of Brazil by State and Federal District



Source: Prepared by the authors based on IBGE, 2021.

As the demographic map below indicates, there is a greater population concentration in the Federal District (537 inhabitants/km<sup>2</sup>) and in the states of Rio de Janeiro (399 inhabitants/km<sup>2</sup>) and São Paulo (188 inhabitants/km<sup>2</sup>).

Map 2 - Demographic density of Brazil by State and Federal District



Source: Prepared by the authors based on IBGE, 2021.

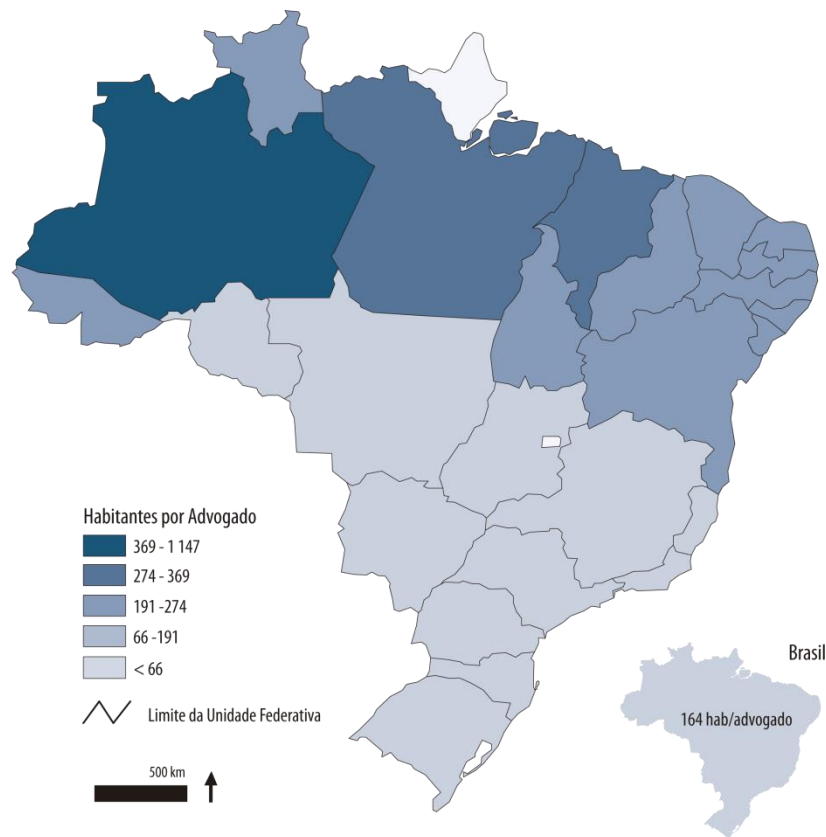
The economy of Brazil is historically the largest in Latin America and the Southern Hemisphere in nominal terms. In 2022, according to International Monetary Fund, Brazilian nominal GDP was US\$1.894 trillion, which represents the 10<sup>th</sup> largest gross domestic product (GDP) in the world.

The Human Development Index (HDI) of Brazil grew 23.6% between 1990 and 2021, going from 0.610 to 0.754. However, Brazil still occupies the 87<sup>th</sup> position in the human development ranking of the United Nations, which analyzes 191 countries and territories<sup>1</sup>.

The proportion of the poor in Brazil is significantly larger than in any developed country, and our poverty is more immediate and pressing. Many live at the margin of subsistence and cannot afford legal services, whatever the market price. **The current estimate indicates that 88.0% of the total population is eligible for legal aid services, representing 187,656,564 people<sup>2</sup>.**

Currently, Brazil has 1,300,717 active lawyers, according to the Brazilian Federal Bar Association (*Ordem dos Advogados do Brasil – OAB*)<sup>3</sup>, representing approximately 164 inhabitants per lawyer.

Map 3 - Inhabitants per lawyer in Brazil by State and Federal District



Source: Prepared by the authors based on OAB, 2022.

However, the ample provision of lawyers in the country is not enough to make access to justice a reality. After all, the high levels of poverty make the vast

<sup>1</sup> UNITED NATIONS DEVELOPMENT PROGRAMME. **Statistical update:** Human Development Indices and indicators: Brazil. [New York]: UNDP, [2022]. Available at: <https://hdr.undp.org/data-center/specific-country-data#/countries/BRA>.

<sup>2</sup> ESTEVES, Diogo *et al.* **Pesquisa Nacional da Defensoria Pública 2022.** Brasília: DPU, 2022. Available at: <https://pesquisanacionaldefensoria.com.br/download/pesquisa-nacional-da-defensoria-publica-2022-eBook.pdf>.

<sup>3</sup> ORDEM DOS ADVOGADOS DO BRASIL. **Quadro da Advocacia.** Available at: <https://www.oab.org.br/institucionalconselhofederal/quadroadvogados>.

majority of the Brazilian population unable to pay for legal services, regardless of the market price.

## **2. Legal Aid Organisation**

Following the traditional division of powers conferred by Montesquieu, the Brazilian Constitution of 1988 disciplined the organization of State functions (Title IV - "Organization of Powers"), dividing them between the Legislative Branch (Chapter I), the Executive Branch (Chapter II) and the Judiciary (Chapter III). Along with these three elementary State Powers, and within the same Title IV, the Brazilian Constitution of 1988 established a fourth organic complex, entitled "Essential Functions to Justice" (Chapter IV), comprising the Public Prosecutor's Office, the Public Defender's Office, the lawyers.

Therefore, the Brazilian Constitution of 1988 went a little beyond the traditional State Powers division, and created a fourth organic complex, which performs a fourth political function (alongside the legislative, executive and judicial functions): the justice provision function<sup>4</sup>.

In the Brazilian Constitutional System, the Public Defender's Office is not connected to the others State Powers at all, not being under subordinated to the to the Executive Branch, the Legislative Branch or the Judiciary<sup>5</sup>. As a natural consequence of this non-entailment, the Brazilian Constitution attribute to the Public Defender's Office functional, administrative and financial autonomy (Article 134, §§ 2 and 3 of the Brazilian Constitution of 1988), as well as ensuring the initiative to forward to the legislative branch proposals of laws for organization and operation of the Public Defender's Office.

Functional autonomy guarantees to the Public Defender's Office full freedom of action, being subject only to the limits imposed by the Constitution, by the law and by the conscience of its members. Due to its functional autonomy, the Public Defender's Office is protected against any external interference, guaranteeing complete freedom to exercise the defense of the rights of economically or socially vulnerable people, including litigating against the Public Power itself.

In addition, administrative autonomy allows the Public Defender's Office to independently practice administrative acts (such as: acquiring assets and contracting services, establishing the territorial distribution of points of service to the population, making the payment of the Public Defenders and support staff; draw up their internal rules). Thus, administrative autonomy prevents the Public Defender's Office from being linked to any other state structure.

Finally, financial autonomy allows the Public Defender's Office to prepare its own budget proposal, within the limits established by the applicable legislation. By doing that, the Public Defender's Office can delimit, within its own structure, the necessary resources to meet its expenses. This system creates a safeguard for the Public Defender's Office, preventing the government from using budget cuts in retaliation against the actions of Public Defenders.

Recently, the Supreme Court of Brazil recognized that the Public Defender's Office is part of a fourth organic complex, constitutionally separated from the other State functions, and, consequently, has full constitutional autonomy to perform its legal aid activities:

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<sup>4</sup> ESTEVES, Diogo. SILVA, Franklyn Roger Alves. *Princípios Institucionais da Defensoria Pública*, Rio de Janeiro: Editora Forense, 2018.

<sup>5</sup> *Ibid.*

“With the promulgation of the Federal Constitution of 1988, the so-called Justice essential functions were established, alongside the traditional Powers of the Republic, and right after the chapter reserved for the Judiciary.

Thus, Title IV of the Federal Constitution establishes the Organization of State Powers: its Chapter I deals with the Legislative Branch; Chapter II deals with Executive Branch; Chapter III deals with the Judiciary; and Chapter IV, deals with the so-called Justice Essential Functions.

It can be seen, then, that, by provision of the Constitution, the Public Prosecutor's Office, the lawyers and the Public Defender's Office are institutions that do not integrate the structure of any of the three traditional Powers of the State. As Justice essential functions, they are separated from the Legislative, Executive, and Judiciary. They form, in fact, an organic complex of Constitutional Institutions or Primary Institutions of the Democratic State of Law.

Diogo Esteves and Franklyn Silva, in the book entitled ‘Princípios Institucionais da Defensoria Pública’, outline important considerations about the distinct position of the essential functions of Justice.”<sup>6</sup>

Considering that Brazil adopts the federalist system, each state and the Federal District has its own Public Defender's Office.

The Federal Public Defender's Office (*Defensoria Pública da União*) is responsible for acting before the Federal Courts, the Labor Courts, the Electoral Courts, the Military Courts, the High Courts, and the administrative bodies of the Federal Government. The Public Defender's Office of the Federal District (*Defensoria Pública do Distrito Federal*) acts before the Courts of the Federal District (in all levels of jurisdiction) and the administrative instances of the Federal District. Finally, the Public Defender's Offices of the states (*Defensoria Pública dos Estados*) act before the States Courts (in all the levels of jurisdiction) and the states administrative instances.

Image 1 - Name and logo of each Public Defender's Office in Brazil

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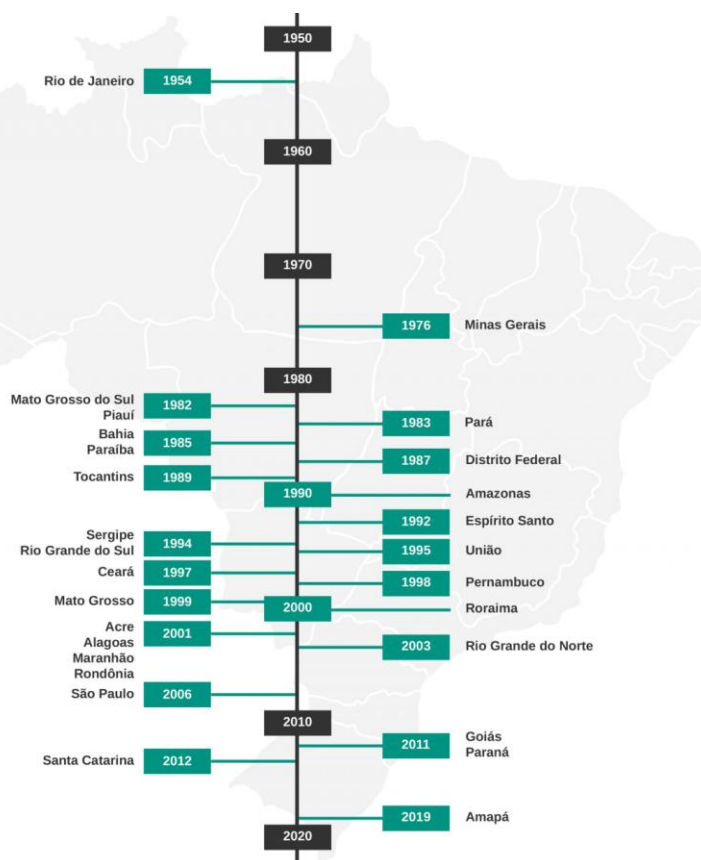
<sup>6</sup> Supreme Court of Brazil - ADI N. 5296 MC/DF - Minister Dias Toffoli, decision: 18-05-2016.



Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

Each Public Defender's Office was created at a different historical moment. The oldest is the Public Defender's Office of the State of Rio de Janeiro, created in 1954.

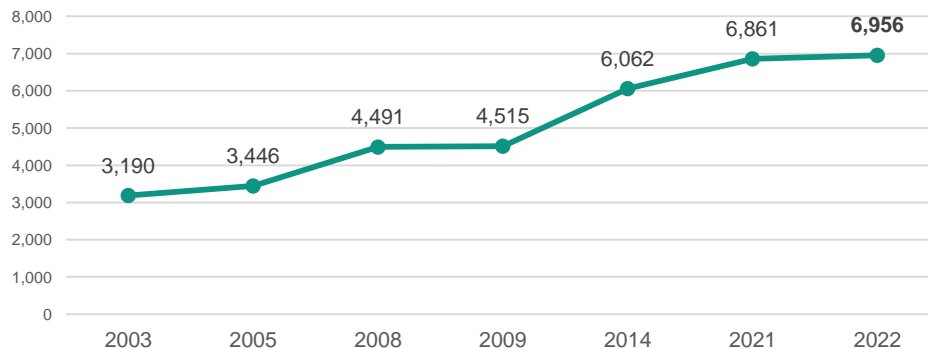
Image 2 - Historical line of creation of the Public Defender's Office in Brazil



Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

The number of Public Defenders in activity is growing at a regular pace: in 2003 there were 3,190 Public Defenders in Brazil. In 2023, this figure leaped to **6,956 Public Defenders** (corresponding to an increase of 118.1%).

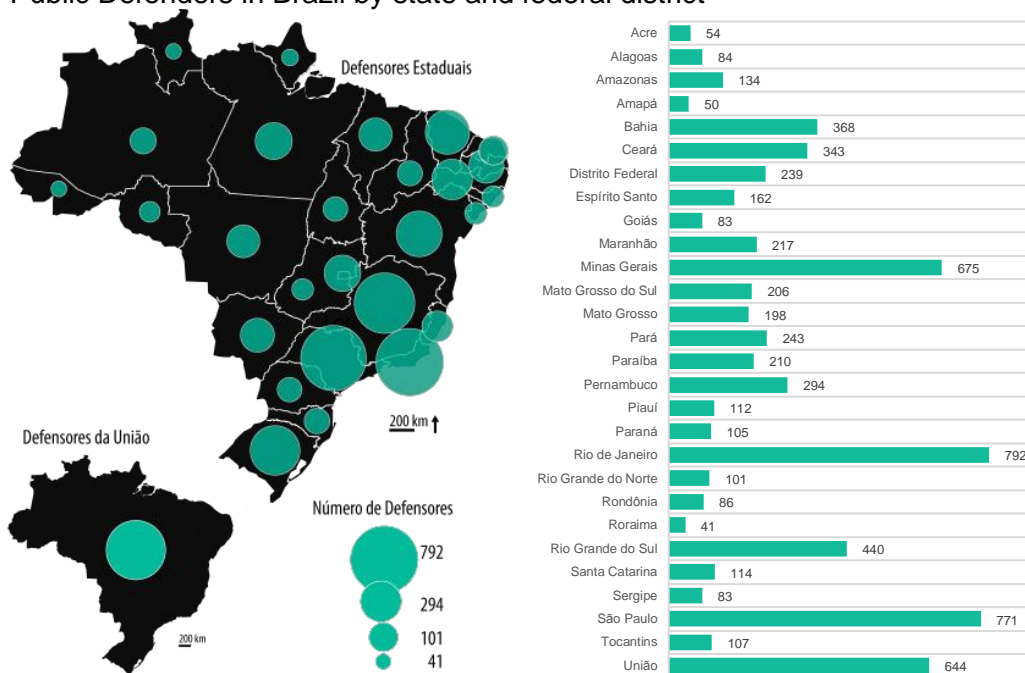
Graph 2 - Public Defenders in Brazil 2003-2022



Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

The graph below indicates the distribution of Public Defenders by state and Federal District. The numbers indicate that the State of Rio de Janeiro has the highest number of Public Defenders in absolute numbers (792 PDs), followed by São Paulo (771 PDs) and Minas Gerais (675 PDs).

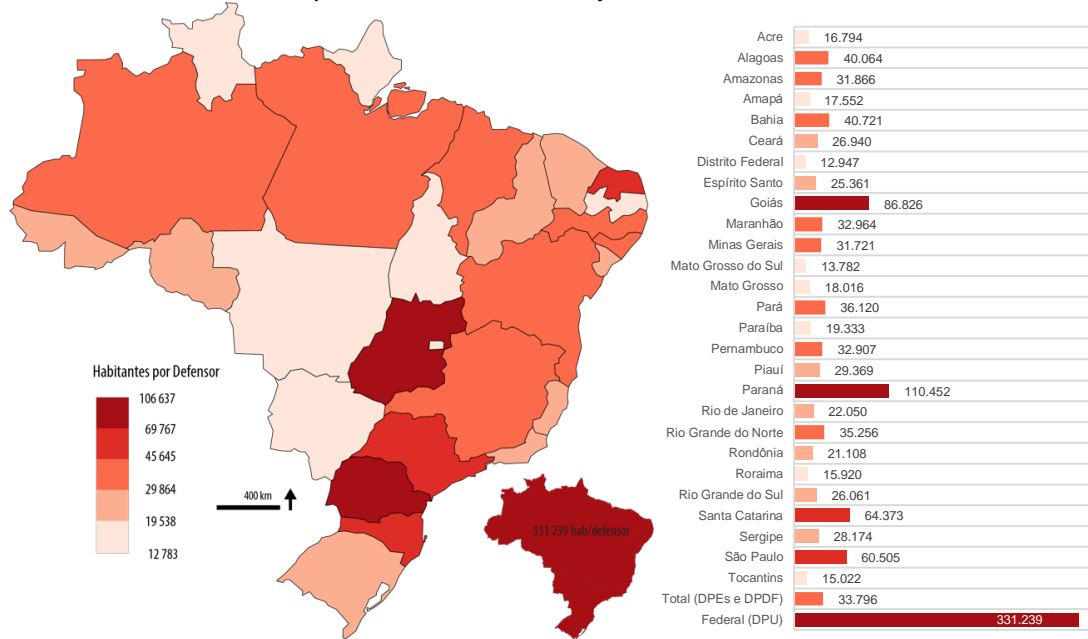
Map 4 - Public Defenders in Brazil by state and federal district



Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

Considering the country's demography and the number of Public Defenders, the data reveal that, within the scope of the Public Defenders' Offices in the states and the federal district, Brazil has a ratio of 1 Public Defender for every 33,796 inhabitants. Analyzing the ratio between population and Public Defenders in the Federal Justice System, the lack of Public Defenders is even more worrying, with a ratio of 1 Federal Public Defender for every 331,239 inhabitants.

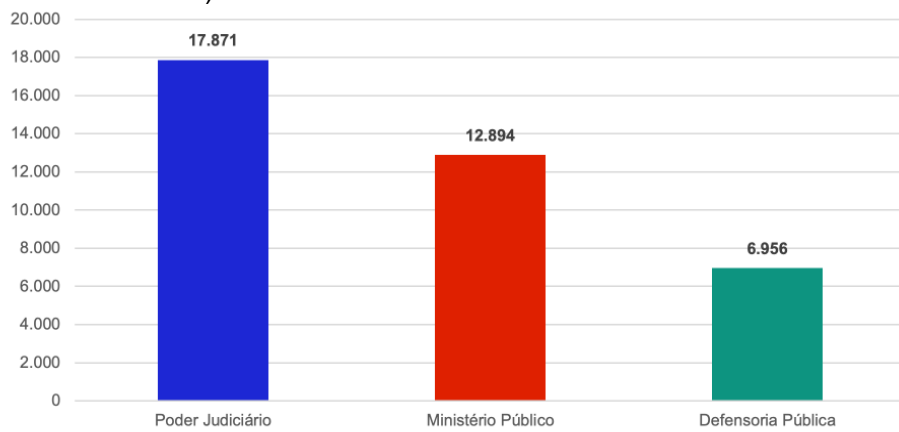
Map 5 - Ratio of inhabitants per Public Defender by state and federal district



Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

Despite the growth presented by the Public Defender's Office over the last two decades, the comparative analysis reveals a significant difference between the number of members of the Public Defender's Office, the Public Prosecutor's Office and the Judiciary. Currently, the staff of Public Prosecutors is 85.4% larger than the staff of Public Defenders.

Graph 3 - Comparative analysis between the number of members of the Public Defender's Office (*Defensoria Pública*), the Public Prosecutor's Office (*Ministério Público*) and the Judiciary (*Poder Judiciário*)

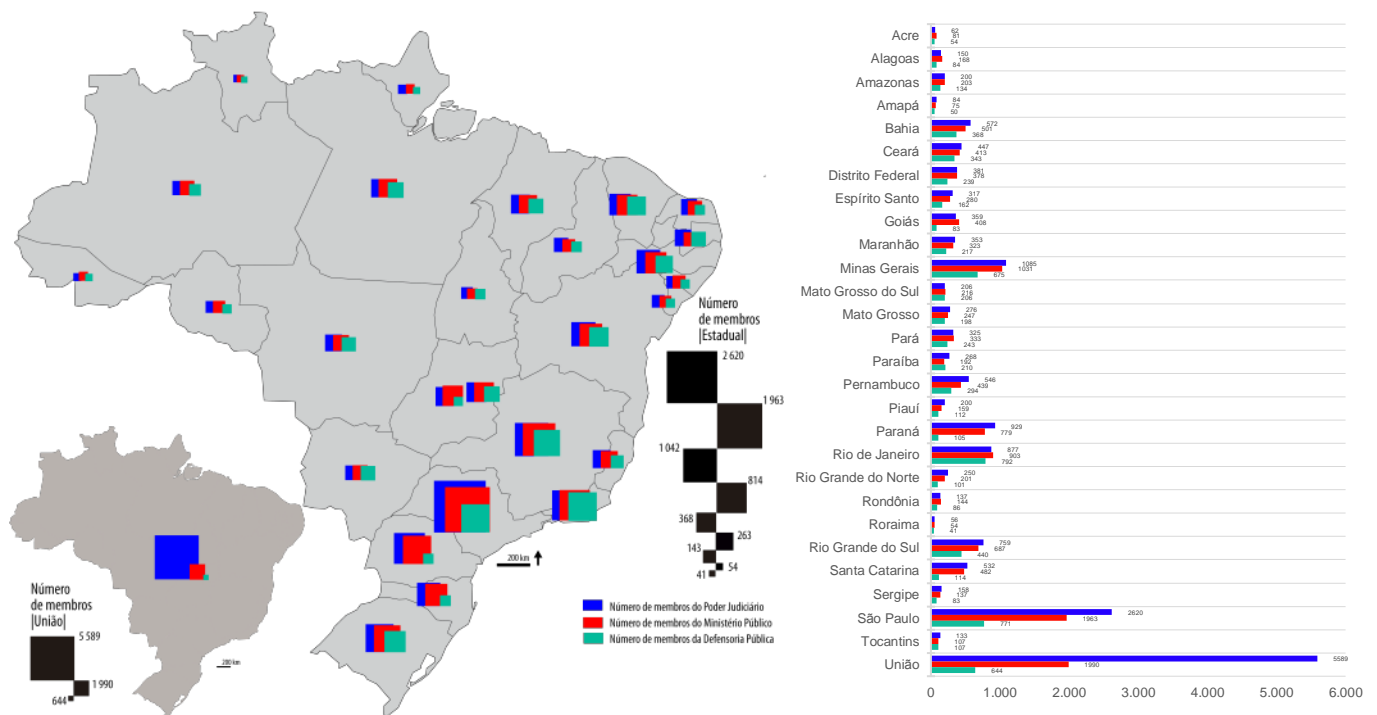


Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

Likewise, the comparative analysis between the number of members number of members of the Public Defender's Office, the Public Prosecutor's Office and the Judiciary by state reveals that the iniquity between the institutions that make up the Brazilian Justice System exists throughout the country, to a greater or lesser extent.

Map 6 - Comparative analysis between the number of members of the Public Defender's Office (*Defensoria Pública*), the Public Prosecutor's Office (*Ministério Público*) and the Judiciary (*Poder Judiciário*) by state and federal district





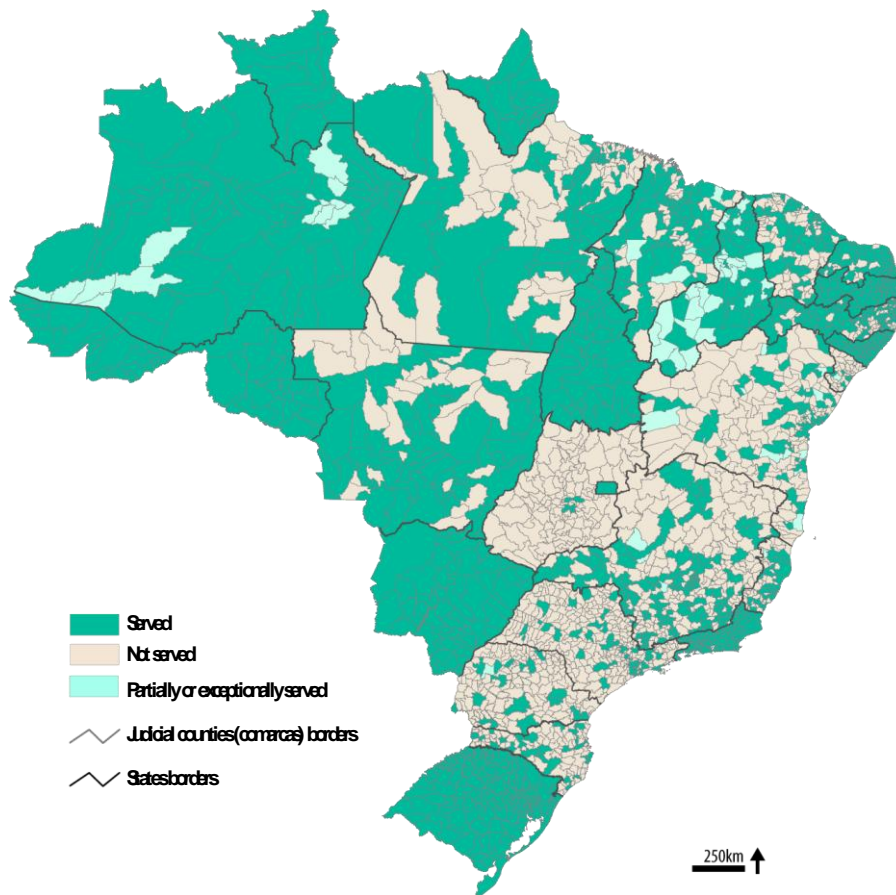
Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

So, although the Brazilian Public Defender's Office has a very extensive and somewhat advanced normative basis, reality shows that its practical implementation is still far from satisfactory.

Currently, the Brazilian territory has 2,598 judicial counties (*comarcas*). Given the insufficient number of Public Defenders, only 1,231 *comarcas* are regularly served by the Public Defender's Office, representing 47.4% of the total. Due to the institutional effort to guarantee access to justice for all, another 69 *comarcas* are partially or exceptionally served by the Public Defender's Office, representing 2.7% of the total number.

Despite the efforts made by Public Defenders across the country, currently 1,298 *comarcas* are still not served by the Public Defender's Office, representing 50% of the total. Within this amount, in 276 *comarcas* (10.6%) the legal assistance service is provided by private lawyers, through a provisional agreement with the Public Defender's Office.

Map 7 - Judicial counties (*comarcas*) served by the Public Defender's Office

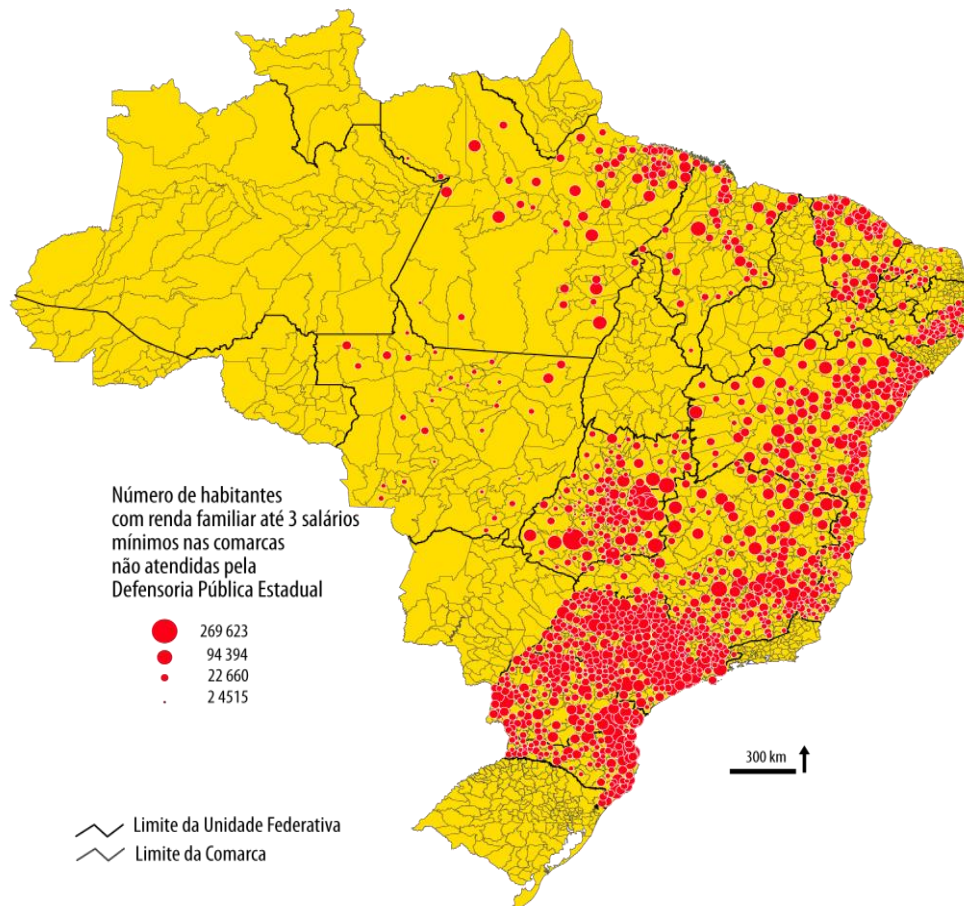


Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

Considering Brazil's population projection calculated for 2022, currently 160,338,814 inhabitants have potential access to legal aid and legal advice services provided by the Public Defender's Office, representing 75.2% of the country's population.

However, the most relevant data for planning strategic actions to overcome the challenge of access to justice is precisely on the opposite side of the equation. Currently, 52,978,825 inhabitants do not have access to the legal aid or legal advice services provided by the Public Defender's Office. Within the number indicated, 48,467,198 are economically vulnerable inhabitants with a family income of less than 3 minimum wages (USD 762.24), who potentially cannot afford to hire a private lawyer. Therefore, considering that the formal recognition of rights by the legal system does not directly imply their practical effectiveness, at least 24.8% of the Brazilian population is potentially prevented from claiming their own rights through the Public Defender's Office. In such cases, if a Public Defender is not available it is mandatory that the court appoints provisionally a *pro bono* lawyer to represent the citizen because, as is typical in most civil law countries, normally the citizen has no right to "litigate-in-person" (appear personally in court, without counsel) and so must be represented by a lawyer.

Map 8 - Population with family income of less than 3 minimum wages without access to legal aid or legal advice provided by the Public Defender's Office



Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

Seeking to end this disparity, in June 2014 the Brazilian Parliament approved a new constitutional amendment legislating that within eight years each judicial county (*comarca*) should have at least one Public Defender; the constitutional amendment also stipulates that the number of Public Defenders should be proportional to the effective demand for legal aid services and to the population that is eligible for legal aid in a given area. However, the eight-year term expired last year, and the constitutional rule has not yet been fulfilled.

### 3. Budget and Spend

Annually, the Public Defender's Office prepare its budget proposal, following the rules and limits imposed by Brazilian legislation. Afterwards, the proposal is sent to the Chief of Executive Branch, who consolidates all annual budget proposals from all State Functions and sends them to the Legislative Branch for review and voting.

It is important to note that the Chief of the Executive Branch cannot modify the budget proposal formulated by the Public Defender's Office, and it is only up to him to forward the proposal to the Legislative Branch. According to the Supreme Court of Brazil (*Supremo Tribunal Federal - STF*), "the Chief of the Executive Branch is not allowed to reduce the budget proposal of the Public Defender's Office when it is compatible with national legislation. All measures that result in the subordination of the Public Defender's Office to the Executive Branch must be considered unconstitutional, since they imply in violation of its functional, administrative and

financial autonomy”<sup>7</sup>. Therefore, any cuts in the budget can only be made during the annual budget vote at the parliamentary level, in the exercise of activities that are exclusively for the Legislative Branch.

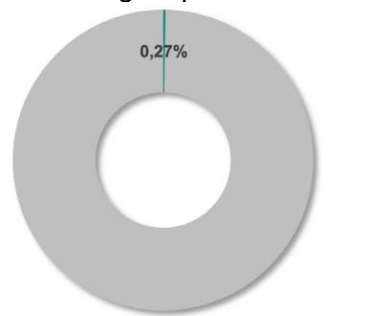
After forwarding the budget proposal to the Legislative Branch, parliamentarians conduct the analysis and voting of all proposals, editing the Annual Budget Law – which contains the government’s annual collection estimate and how resources shall be distributed.

Following the guidelines of the Annual Budget Law, every month the Executive Branch (responsible for collection of taxes) must pass on to the Legislative Branch, the Judiciary, the Public Prosecutor’s Office, and the Public Defender’s Office, the equivalent of 1/12 of the yearly budget.

In 2022, the budget of the Brazilian Public Defender's Office totalled BRL 7,152,309,527.00, equivalent to **USD 1,375,725,281.00**. Thus, Brazil has a per capita expenditure on the Public Defender's Office of BRL 33.53, equivalent to USD 6.44.

The entire budget approved for the Public Defender's Office in the year 2022 corresponds to only 0.27% of the total fiscal budget. In practice, the calculation reveals that for every USD 100.00 (one hundred dollars) of the fiscal budget, only USD 0.27 (twenty-seven cents) are allocated to the Public Defender's Office.

Graph 4 - Percentage of the total fiscal budget spent on the Public Defender's Office

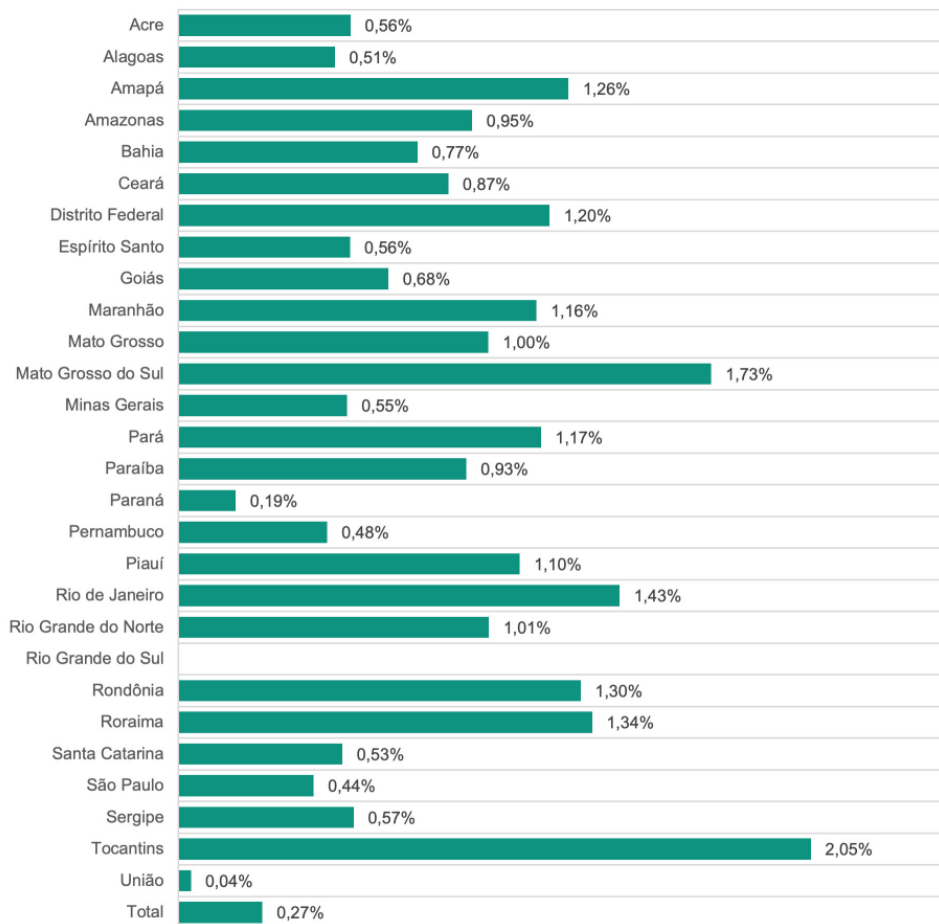


Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

The chart below shows the percentage of the total fiscal budget spent on the Public Defender's Office by state and federal district, individualizing the budget situation of each Public Defender's Office in Brazil.

Graph 5 - Percentage of the total fiscal budget spent on the Public Defender's Office by state and federal district

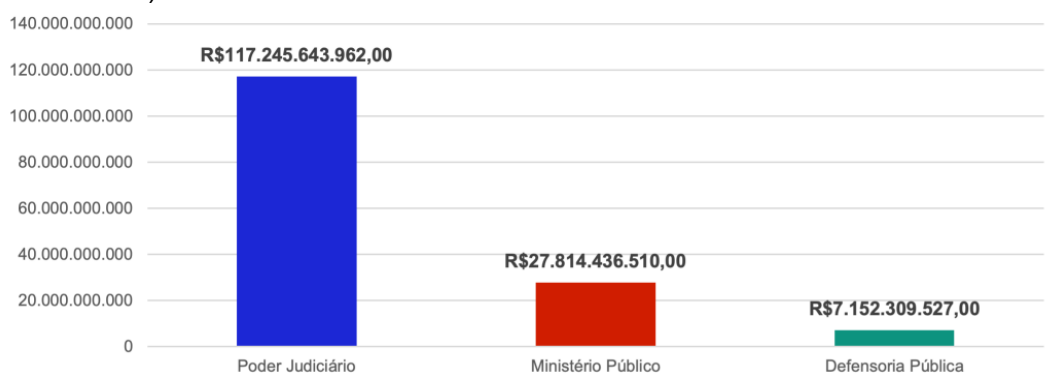
<sup>7</sup> Supreme Court of Brazil - ADPF N. 307 MC/DF – Minister Dias Toffoli, decision: 19-12-2013.



Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

A comparative analysis between the Public Defender's Office, the Public Prosecutor's Office and the Judiciary reveals the imbalance between the financial framework of the institutions that make up the Brazilian Justice System. In 2022, the amounts allocated to the Public Defender's Office were 288.9% less than the budget of the Public Prosecutor's Office and 1,539.3% less than the budget of the Judiciary.

Graph 6 - Comparative analysis between the budget of the Public Defender's Office (*Defensoria Pública*), the Public Prosecutor's Office (*Ministério Público*) and the Judiciary (*Poder Judiciário*)



Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

#### 4. Scope, Caseload and Eligibility

The Brazilian Constitution of 1988 establishes that “the State shall provide full and free legal aid to those who prove insufficient resources” (Article 5, LXXIV)<sup>8</sup>.

The expression “full and free legal aid” has broad connotations, covering all and any legal services. Therefore, the Brazilian Constitution ensures legal aid and legal advice for all types of civil and criminal cases.

Recently, the Supreme Court of Brazil (*Supremo Tribunal Federal – STF*) expressly acknowledged that “it is the constitutional duty of the State to offer free legal aid to those who do not have the means to hire lawyers, and the Public Defender’s Office was elected, by the Constitution, as the only State organ predestined to the ordinary exercise of this competence”<sup>9</sup>. In addition, the Supreme Court of Brazil has already ruled that “any governmental omission to create and maintain the Public Defender’s Office constitutes a severe attack on the dignity of the human being and serious disrespect for the Constitution”<sup>10</sup>.

In Brazil, each Public Defender's Office has normative autonomy to define its eligibility parameters. In general terms, the economic eligibility criteria for civil legal aid ranged from 1 (one) to 5 (five) minimum wages (from USD 254.08 to USD 1,270.38); most Brazilian states (16 states) adopt the parameter of 3 (three) minimum wages (USD 762.24) as the prevailing economic eligibility parameter.

Furthermore, 20 Brazilian states have eligibility parameters not linked to the economic criterion, providing legal aid and legal advice to people in situations of non-economic social vulnerability. The following groups are considered vulnerable, regardless of economic criteria: women victims of domestic or family violence; elderly; people with physical or mental disabilities; indigenous populations and quilombolas; over-indebted consumers; victims of discrimination based on ethnicity, color, gender, origin, race, religion or sexual orientation; victims of torture, sexual abuse, human trafficking or other forms of serious human rights violations; persons deprived of liberty; migrants and refugees; homeless people; drug users; collectors of recyclable materials and workers in a situation of slavery.

In criminal cases, there are no eligibility parameters for legal aid services. If the accused does not hire a private lawyer, a Public Defender will automatically be appointed to promote his criminal defense.

In 2019, the Public Defender's Office granted 19,522,126 legal aid and legal advice, representing an increase of 450.3% in relation to the number of services registered in 2003. In 2020, even in the face of the health measures adopted to contain the spread of the SARS-CoV-2 coronavirus, the Public Defender's Office granted 13,181,256 legal aid and legal advice to the vulnerable population. In 2021, there was an increase of 24.7% in relation to the amount indicated in the previous year, as a reflection of the gradual normalization of judicial activities.

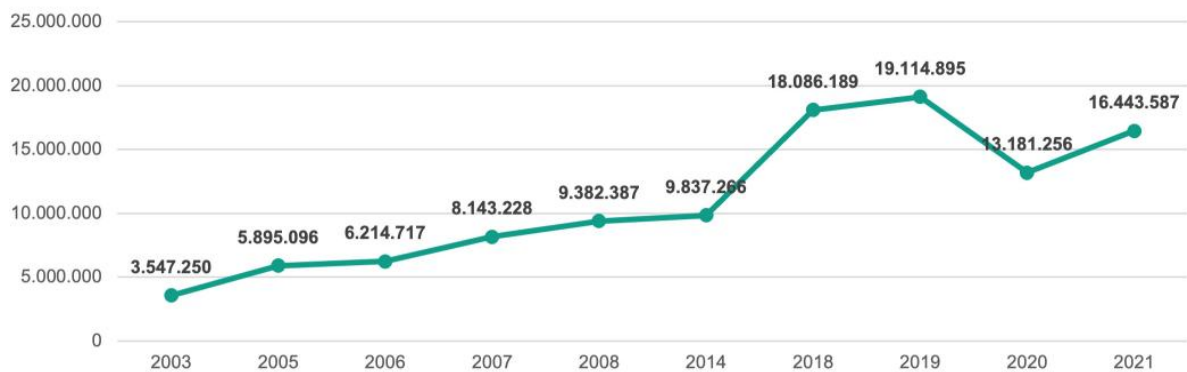
Graph 7 - Number of legal aid and legal advice provided by the Public Defender’s Office

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<sup>8</sup> Article 5, LXXIV of the Brazilian Constitution. Portuguese original version: “o Estado prestará assistência jurídica integral e gratuita aos que comprovarem insuficiência de recursos”.

<sup>9</sup> Supreme Court of Brazil – ADI N. 4.270/SC – Minister Joaquim Barbosa, decision: 14-03-2012.

<sup>10</sup> Supreme Court of Brazil – ADI N. 4.163/SP – Minister Cezar Peluso, decision: 29-02-2012.



Source: ESTEVES, Diogo *et al.* Pesquisa Nacional da Defensoria Pública 2022. Brasília: DPU, 2022.

## 5. Quality Assurance

The selection of the members of the Public Defender's Office in Brazil takes place through a rigorous public competition, in which the candidate is submitted to various tests of theoretical and practical knowledge. In addition, the academic and professional titles of the candidate are considered, in order to guarantee the selection of the best professionals.

Due to the high remuneration of the position, in comparison with the remuneration of the other professions in the market, the competitions for admission to the Public Defender's Office are extremely crowded, attracting the attention of a huge range of law professionals.

To guarantee the quality of services and constant dialogue with beneficiaries of legal aid, the Public Defender's Office has a special body called Ombudsman's Office (*Ouvidoria*). The Ombudsman's Office is an auxiliary body of the Public Defender's Office, responsible for promoting the quality of services provided to the population (Article 105-A of Complementary Law N. 80/1994). In 2021, the Ombudsman's Office provided 64,961 calls throughout the country.

In addition, the conduct of Public Defenders is supervised by the General Internal Affairs (*Corregedoria Geral*) of the Public Defender's Office. However, quality assurance mechanisms are still underdeveloped.