

# Public Defenders' Office of the State of São Paulo, social participation and access to justice

*Defensoria Pública do Estado de São Paulo, participação social e acesso à justiça*

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**ABSTRACT** The present study aims to analyze spaces for social participation and institutional alternatives to ensure access to justice to the rights of individuals with mental illness at the Public Defender's Office of the state of São Paulo, Brazil. It consists of an experience emergence report at said institution, conducted from 2012 to 2015, in which the authors performed semi-structured interviews with activists, professionals, and service users. For the scope of this article, we selected specific thematic content of the dialogues on social participation and access to justice. The resulting analysis identified four principal thematic axes: i) the presence of institutional spaces provided for in the regulation of social participation; ii) diverse social participation characteristics in the institution, according to the analyzed period; iii) construction of an action model to enable individual follow-up of people with mental illness; iv) monitoring, supervision, and follow-up initiatives for the implementation of mental health public policies.

**KEYWORDS** Social participation. Mental health. Public Defender Legal Service.

**RESUMO** O presente estudo tem por objetivo analisar espaços para a participação social e alternativas institucionais para a garantia de acesso aos direitos de pessoas com sofrimento mental, na Defensoria Pública do Estado de São Paulo. Trata-se de relato de experiência de imersão na referida instituição, no período de 2012 a 2015, no qual as autoras realizaram entrevistas semiestruturadas com ativistas, profissionais e usuários do serviço. Para o escopo do presente artigo, foram selecionados os conteúdos temáticos específicos dos diálogos sobre participação social e acesso à justiça. A análise dos resultados identificou quatro eixos temáticos fundamentais: i) presença de espaços institucionais previstos em regimento para a participação social; ii) características da participação social distintas na instituição, de acordo com o período analisado; iii) a construção de um modelo de atuação que possibilita o acompanhamento individual de pessoas com sofrimento mental; iv) iniciativas de monitoramento, fiscalização e acompanhamento da implantação das políticas públicas de saúde mental.

**PALAVRAS-CHAVE** Participação social. Saúde mental. Defensoria Pública.

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## Introduction

The Public Defender's Office is an innovative proposal in the Justice System that aims to increase access to justice, helping to ensure full and free legal assistance to those considered as hypo-sufficient.

Entering this institution allows access to a unique history in the struggle for human rights in Brazil. Despite its provision in the Brazilian Constitution of 1988, the Public Defender's Office was implemented in São Paulo only in 2006, resulting from the mobilization of more than 400 politically organized entities. Such peculiarity has repercussions on the presence of civil society in the struggle for access to justice from the elaboration of the institution's draft to the definition of an agenda in the ten years of its existence.

By analyzing the information from the period before the creation of the Public Defender's Office of the State of São Paulo (DPESP), it is possible to identify a history of social civil participation in answer to the 'fragility of Access to Justice', as denominated by the representatives of social movements. The 'Movement for Public Defenders' began with 300 entities and reached more than 400 during the launch of the 'Manifesto for the creation of the Public Defender's Office' in June 2002, when access to justice in the State of São Paulo became nationally and internationally disseminated by the Movement<sup>1</sup>.

*We mobilized many sectors of society, and the OAB (Order of Attorneys of Brazil) was the institution most prominent against the creation of the Public Defender's Office. The Attorney General considered that judiciary assistance was already in place, the Legal Assistance Procedure. However, we wished for a public organ to defend the population in need, which is established in the law. The greatest aggressor and author of crimes against the population is the State! We conducted many*

*movements with the Syndicate of Prosecutors for its creation. It was there that we were able to elaborate the bill for the creation of the Public Defender's Office, with our proposals. (public activist - translation).*

After the approval of the state legislation<sup>2</sup>, one questions the characterization of the participation in social movements that occurred in the different moments of the history of the DPESP. We evaluated this characterization by inviting the researcher to reflect on the theme through dialogues established with activists and professionals who have been present at the DPESP since the struggle for its implementation to the present day. We identified an initial period characterized by a symbiosis between the institution and civil society. We describe the different spaces provided in the project for social participation and control, and the characteristics of the occupation of these institutional spaces by representatives of different social movements, in addition to criticisms and concerns regarding the future of this participation.

*I see the transition from project to the effective flow and counterflow participation. We live in a kind of symbiosis, especially at the beginning of the Public Defender's Office. A crawling institution, drawing itself, and the social movement still considered a subject of this space. The Public Defender's Office is a differentiated institution when compared with other justice institutions, but is, today, a disputed institution. The model initially designed is in dispute. In my current perspective, I am unsure whether these institutionalized mechanisms will, in fact, ensure an institutional difference, as has been accorded. (ombudsman representative - translation).*

*There are paths for participation within this project, but they work poorly. Those 'public conferences' aim to limit the discussion. The 'Ombudsman' is the only organ to discuss with*

*the population. There is an 'Open Moment' in the 'Upper Council' for the population. There used to be a good dialogue between them and us, which faded. I believe there are those who prioritize attending the 'Conference'. Others prioritize direct participation in the 'Specialized Nuclei'. During the 'Open Moment', I see no other movement participating. The very structure of the Public Defender's Office is extremely democratic with the structure we have created and which they are putting into practice. We need democracy; we need participation; we need justice. Therefore, we need participation in the Public Defender's Office. Democracy needs organized individuals to work. You can leave the door open, but it will not work at all. If you do not have the people organized, to come and say, 'I want this,' it's no use. I will not hold the Public Defender's Office responsible for the lack of popular participation. (political activist - translation).*

The reports from the participants in this study and analysis of the institution's project, as well as its regiment, indicate the presence of different spaces for social participation aiming to ensure access to justice for the population that lives in greater social vulnerability<sup>3</sup>. In this report, the attention is focused specifically on the analysis of the DPESP alternatives to ensure access to the rights of individuals with mental suffering.

## **Alternatives for the access to justice of individuals with mental suffering in the DPESP**

At the outset of the DPESP's work, which was explicitly focused on mental health demands, people did not have the exact knowledge of what would be accomplished. However, what they did not want to establish was evident. They did not want to build any action that could be contradictory to the

institution's mission, the increasing access to justice. They did not want any action that diverged from the institutional culture, which was based on social participation and the struggle for defending human rights. The activities were gradually established, involving individual or family care, service network contacts and actions, technical advising to public defenders by psychologists and social workers, conciliation, mediation, and conflict composition. There was an awareness of building practices without following appropriate models from other institutions. It was imperative, therefore, to remain attentive to the characteristics of the citizen who sought the service, which represented an everyday challenge to be overcome by the professionals.

In this space in which the construction of practices that could be distinguished and coherent with the institutional proposal was desired, the people who sought the Public Defender's Office were, little by little, gaining visibility for their pains, difficulties, and demands. They began to have a space for listening, for existing. The institution was able to increase the perception of the different forms of socially produced non-existences<sup>4</sup>, and was sought for the possibilities of acting on and transforming those realities.

The institution created and organized with substantial social participation, consisting of spaces provided for the continuity of this participation<sup>5</sup>, incorporated dimensions into its structure for the voices hitherto silenced, social realities made invisible, could reach the Justice System. The demands for mental health began to make themselves present, predominantly, from relatives of individuals who abused alcohol and drugs in search for the access to health services and hospitalization; individuals with mental disorders who complained of persecution or violence, presented confused thinking, and requested defense; relatives seeking the hospitalization of individuals

with mental disorders; situations involving divorce, child support or children's custody, difficulties in accessing services and public policies; situations of domestic violence or among homeless people.

The work of the professionals was internally designed in the DPESP using attendance and mediation, conciliation or extrajudicial conflict composition. We worked in parallel with the public health services network and social assistance.

Due to the frequent demand and complexity of the services, the Public Defender's Office is faced with challenges in the area of mental health, family requests for hospitalization, and interdiction of drug users or individuals with mental disorders, a challenging field in which the suppression of rights can go against the proposal to ensure rights. The performance in this area also brings other challenges. Questions on the reasons that lead families to request the suppression of the rights of their relatives or their hospitalization occur with some frequency. In this sense, other critical areas that require the action of the Public Defender's Office emerge: the control of public policies; the work of mapping and articulating the network; and the supervision of clinics or therapeutic communities. A few possibilities begin to emerge, both to act in collective demands and in articulating with the service network.

When working with the public network, one of the aspects that have been established and gains more space concerns Rights Education. Public defenders, psychologists, and social workers become a reference within the DPESP when they establish contacts with the different municipal services and engage in the activities of the Municipal Councils, Psychosocial Attention Center, Specialized Referral Social Assistance Center, and Basic Health Unit, among others. These professionals provide information and guide legal professionals and the population on possible procedures for

ensuring rights. An essential role in Rights Education initiatives has been developed by the School of Public Defense, which has assumed the theme of mental health in the organization of state and national events.

Based on the description of these activities, we verify an institutional focus on extrajudicial work and rights education, two aspects that strengthen the construction of DPESP's mental health model. At the same time, psychologists and social workers continue to technically instrumentalize defenders in judicialization cases, elaborating reports and counter-reports so they can count on psychosocial information when assessing a case. An example occurs in situations where parents lose custody of their children due to drug use or difficulties related to mental disorders. With this initiative to build an interdisciplinary defense, the insurance that these individuals will be heard and their judicial processes visible are extended.

Many cases do not spontaneously arrive at the traditional screening gate, and DPESP professionals must be aware of such demands that require dislocation. In this sense, visits to different hospitalization institutions, asylums, therapeutic communities, and work developed with homeless people deserve special mention. Spaces that harbor mental health demands and require 'alternative doors' to access justice.

The work conducted by the DPESP's with community leaders, activists, and social movement representatives is crucial and demands attention to the different needs regarding the public served by the Public Defender's Office and the performance of the different governmental agencies in the implementation of public policies.

One of the access doors of the institution for the leaders to speak out is the Ombudsman, which exercises a political articulation role in these demands. Another door essential to the demands of mental health is the Specialized Nucleus of Citizenship and Human Rights.

Thus, we exemplified the main aspects

that could contribute to reflect on the work model being built by the DPESP, as well as the institutional spaces to address the subject of mental health. The objective of this analysis is the search for plural and concrete possibilities, simultaneously utopian and realistic alternatives that are presently built through healthcare activities<sup>4</sup>. Based on the analysis of what is being constructed today, and the experiences made available in the development of proposals that include the different forms of non-existence related to the mental health demands, it is possible to consider different alternatives for the actions performed by the DPESP in this area.

The focus of analyzing the DPESP's performance from a perspective of access to justice in the broad sense and the observation of practice reports in different acting areas illustrates the acknowledged proposal of 'wave movements' to overcome the obstacles to access<sup>6</sup>. The institution simultaneously executes the different forms of confronting the obstacles: by individual defense actions for those who do not have the resources, first wave; collective actions in the face of violations of the rights of vulnerable groups, second wave; and investment in extrajudicial procedures and conflict mediation, third wave.

The legal assistance described in the first Cappelletti wave is demonstrated through the action of building defenses that include social reality, the range of socioeconomic and emotional difficulties of individuals who have remained historically excluded from the traditional justice system and society.

On the other hand, the work that focuses on collective demands related to the right to locomotion of individuals with disabilities, the fight against the different forms of violence experienced by individuals who live in the streets, actions moved against municipalities to fulfill the implementation of public health and social assistance policies, as well as the follow-up of the proper implantation of mental health

services according to the deinstitutionalization policy are examples of the performance of the Public Defender's Office directed at collective mental health, as described by the second Cappelletti wave.

Based on the understanding that the access to justice has a broader meaning than access to the judiciary system, which represents the possibility of seeking alternatives for the peaceful resolution of threats or impediments to rights, one can consider that work-based practices of qualified, in-depth listening, and the emphasis on mediations, conciliations, or out-of-court conflict composition, are built to provide the exercise of citizenship with more worthy conditions of existence. The work done by the DPESP's within the public service network, focused on rights orientation, possibilities of referral, partnerships, and practices of rights education, is moving in the same direction. The society is now involved in different initiatives seeking to remove the obstacles access rights. The fulfillment of the described practices makes it possible to identify constant searches for overcoming barriers that hinder the access to justice for the population served by the Public Defender's Office. The rights education with public service professionals, the joint activities with the service network, and the performance with the general community to guide on the rights and services are examples of actions that characterize the expansion of the classic conception of litigation justice actions. Such practices illustrate the third Cappelletti wave.

It is thus exemplified that performance of the DPESP's follows the proposal to increase the access to justice for the population that most needs state intervention due to resource constraints. However, such principles cannot be analyzed unrelated to a context of extreme inequality and the public and private interests that remain on a constant collision course. This reading does not naively believe in a utopian path of



universal access. The ambitious objectives of the DPESP, configured in the scope of its area of operation, added to the socio-economic difficulties faced by a significant portion of the population, place the proposed project of access to justice in the position of particular concern.

In any case, it is remarkable the contribution of the DPESP to the construction of a model of action that allows the individual accompaniment of people with mental suffering gaining access to rights so far denied. It enables individuals to monitor the implementation of mental health services so that the proposed deinstitutionalization policy is fulfilled not only by expanding the services but also in its monitoring and inspection. The delay in the implementation of public policies adjusted to the demands, the constant impasses caused by a hybrid healthcare system, segmented in interests and disputes between public and private initiatives, have extended the conditions of social non-existences. This scenario perpetuates the practice of violence in irregular institutions to which many are still referred, often with the ignorant consent of the public power regarding the real conditions of these clinics or therapeutic communities. This situation is aggravated by the threat to which the current project of the Brazilian Unified Health System (SUS) is submitted.

## Final considerations

The analysis proposed in this report identified institutional initiatives aimed at ensuring the rights of individuals with mental suffering in the DPESP. These alternatives were made possible by the existence of an institution with eminently democratic principles, created with the great mobilization of civil society. However, considering the unquestionable knowledge that the institution was established with the presence of civil society, one cannot ignore the self-criticism of those involved in the emptying of social participation in the conquered spaces. Added to this finding is the history of the violations of rights and stigmatization experienced by a portion of the population, outlining the difficult trajectory of reaching the conditions of human dignity for those who live with mental suffering. There is much work ahead!

## Collaborators

Bernardes EM (0000-0003-2002-1362)\* has contributed with the elaboration of the essay in the following activities: 1) conception and data analysis; 2) critical review of the content; and 3) approval of the final version of the manuscript. Ventura CA (0000-0003-0379-913X)\* has contributed with the following activities: 1) conception and data analysis; 2) critical review of the content; and 3) approval of the final version of the manuscript. ■

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