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**Notes on access to justice in a megalopolis:
São Paulo, Brazil**

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Summary

Access to justice has been recognised as a fundamental right that is essential for the enjoyment of all other rights. In Brazil this right is guaranteed to all citizens by the Federal Constitution of 1988. To guarantee the exercise of this right, the Constitution includes among basic rights, the right to full and free public legal assistance. It also mandates that state governments create a Public Legal Defence. In practice, however, full and free public legal services have not materialised.

This paper discusses how legal assistance is delivered in Brazil and in particular in the city of São Paulo. It analyses the structure and services of the Office for Legal Assistance (PAJ), which provides free legal assistance in São Paulo. The paper also provides a descriptive analysis of the types of individuals who have sought these services. One of the most significant finds reported in the paper is that the PAJ falls far short of constituting the Constitutionally required Public Legal Defence and that PAJ's approach to legal assistance is charity-oriented and conflicts with basic notions of citizenship. The paper also reports, however, that individuals that seek public legal assistance regard the legal services provided by PAJ as satisfactory and tended to trust public attorneys more than private lawyers did. Furthermore, it suggests that these individuals are aware of their rights and know that the judicial system is where one can make those rights effective.

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1 Introduction

Access to justice has been recognised by the world community as a fundamental right which is essential for the enjoyment of all other rights.¹ All Brazilians are guaranteed access to justice by the country's Federal Constitution of 1988. The right to full and free public legal assistance is granted in the Constitution as a fundamental right.² It places on state governments the duty to provide legal assistance to the needy, mandating the creation of a Public Legal Defence Office (Defensoria Publica) comprised of independent civil servants.³

In practice, however, full and free public legal services have not materialised. In the city of São Paulo, one of Latin America's largest cities with a population of 10 million, the difficulties of providing such legal services are considerable. The state government of São Paulo has not created the mandated Public Legal Defence and the legal assistance that is available – through the government's Office for Legal Assistance (PAJ) – follows a “traditional” model of legal assistance that is individualistic, charitable and paternalistic and that conflicts with basic notions of citizenship. Legal aid lawyers treat their clients as charity cases, referring to them as “os assistidos” (the aided). They also use a traditional approach to offering legal services – that is, clients demands are treated only in judicial terms and never in legal terms, which should include teaching and an increase in consciousness of citizenship. Furthermore, PAJ treats cases that involve broad social conflicts in an isolated and individual manner, without taken into account social rights and collective aspirations. Finally, PAJ does not fulfil the requirements imposed by the Federal Constitution, which mandates that agents responsible for legal aid have as their only and exclusive activity the defence of individual and collective rights of the poor citizen. In São Paulo, legal aid lawyers have as their principal responsibility the defence of the state, and not its citizens.

The objective of this paper is to understand what type and quality of access to justice the poor in São Paulo have, by analysing the activities of PAJ. This study is based on qualitative research undertaken in two phases. The first phase consisted of interviews with state attorneys and other members of PAJ and sought to identify what types of legal services are provided, the procedures used by those who defend the poor in court procedures, and the model of legal assistance that is offered. Unfortunately there are no historical data-series on the number of individuals assisted and the type of services offered available, making comparisons and a broader analysis of the study's findings difficult.

¹ Universal Declaration of Human Rights, Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by statutory law.

² Federal Constitution, 5th article, item LXXIV.

³ Federal Constitution, article 134. ‘The Public Legal Defence is an essential institution to the jurisdictional function of the State and is responsible for the judicial guidance and the defence, in all levels, of the needy, under the terms of article 5, LXXIV. A supplementary law shall organise the Public Legal Defence of the Union, of the Federal District and the Territories and shall prescribe general rules for its organisation in the states, into career offices filled, in the initial class, by means of a civil service entrance examination of tests and presentation of academic and professional credentials, with the guarantee of job tenure being ensured to its members and the practice of advocacy beyond the institutional attributions being forbidden.’

The second phase consisted of 170 interviews with individuals seeking the services of the PAJ, in order to identify their perceptions regarding citizenship rights, conflicts, and the type of interaction that they had with the institutions of the judicial system.

This paper first discusses how the legal assistance is delivered in Brazil and the particularities of its delivery in the city of São Paulo. It then analyses the screening process through which PAJ decides who will benefit from its services, and provides a descriptive analysis of the types of individuals who have sought these services.

Exercising citizenship by accessing justice is not an option for a large portion of the people of São Paulo. This is made clear by the social conditions of the population served by PAJ. The city has an unemployment rate of 19.3 per cent and a highly unequal income distribution: the richest 10 per cent hold 41.2 per cent of the income, while the poorest 10 per cent receive 1.6 per cent of the income.⁴ This scenario becomes even more shocking when one considers the impunity criminals often enjoy and a slow judiciary that has been caught in a variety of corruption scandals. PAJ's beneficiaries belong to the lowest economic stratum of the population and many live in destitution. The average family income in São Paulo is approximately US\$ 150.⁵ Women are the sole heads of many families. (The majority of the individuals interviewed were also women (77.6 per cent) and many were unemployed at the time the study was conducted.)

Contrary to expectations, the study found that the individuals that seek public legal assistance are aware of their rights – although they are usually unable to articulate those rights in legal terms – and know that the judicial system is where one can make those rights effective. The judicial system is therefore not an abstraction to these individuals. Surprisingly, interviewees regarded the legal services provided by PAJ, as satisfactory and tended to trust the public attorneys more than private lawyers.

2 Access to justice

“Access to justice” refers to the right to exercise citizenship by utilising the courts. In his classic definition of citizenship, Marshall (1967) points out that the right to justice through the judiciary is the best way to guarantee civil rights. The judicial system, for Marshall, is the locus for the solution of disputes and, above all, for the presentation of grievances about the violation of rights. Mauro Cappelletti (1988) suggests that access to justice is one of the most important rights, one through which individual rights can become effective ‘access to justice can be seen as the fundamental requisite – the most basic of human rights – of a modern and egalitarian judicial system that aims at guaranteeing, and not only proclaiming, the rights of all’ (Cappelletti 1988: 12). The rejection of this fundamental right ‘implies the rejection of all other rights’ (Santos 1989).

According to the literature on the parameters and the requirements of democratic regimes, having access to justice is regarded as one of the defining criteria of democracy, along with the effectiveness of

⁴ Source: Fundação Seade, www.seade.gov.br

⁵ Each family has on average six members.

law. I am referring here specifically to Lawrence Whitehead's (1997) *Bowling in the Bronx: the uncivil gaps between civil society and polity* and Guillermo O'Donnell's (1998) *Poliarchies and the (in) Effectiveness of Law in Latin America*. Whitehead analyses the failings of democratic states and argues that, even in countries where democracy is well established, social inequality and the lack of effectiveness of law in some contexts deny portions of the population the status of citizen. Political rights guaranteed by the democratic state are often manifested through free elections, freedom of speech, and freedom of association; however, civil rights, though also guaranteed by law, cannot be clearly verified. Frequently, these rights, along with social rights are not even perceived by the poor. Without effective civil rights there is no political participation and it makes little sense to speak of citizenship and of democracy.

Guillermo O'Donnell (1998: 44) talks about the existence of 'gaps in the principle of the rule of law'. He suggests that Latin-American states – despite the fact that their democratic regimes have formal guarantees – show deficiencies in the application of law which can be summarised as follows: (1) flaws in the legislation, allowing for discriminatory treatment of women and other minorities, leading to a process that cannot be regarded as fair; (2) discretionary application of the law and criminal impunity; (3) a relation between the state bureaucracy and citizens that is established according to the social status of the latter in a sharply hierarchical system; (4) access to the judiciary and to a fair trial does not exist in a manner that addresses the grievances of all groups equally; (5) individuals endure 'pure and simple' illegality as a daily routine (O'Donnell 1998: 45). What one may conclude from O'Donnell (1998: 52) is that the ineffectiveness of the judicial system is not only a legal problem, but above all represents a form of 'fragmented and low intensity citizenship' that results from the difficulties some states have in implementing basic rights. In the case of Latin America, formal guarantees of civil, political, and social rights exist, but due to socio-economic inequalities and to matters related to the structure of the state, such rights are not even known by the public at large. Thus, it is possible to identify areas O'Donnell (1998: 46) calls "brown zones," where there is a notorious absence of the state, and particularly of its legal dimension. These areas, which are similar to the "uncivilized zones" described by Whitehead, correspond to 'sub-national systems of power that, unnoted by most theories of the state and democracy, have a territorial base and an efficient informal legal system coexisting within a regime that, at least at the core of the national polity, is poliarchic' (46).

Access to justice for all levels of society, Whitehead and O'Donnell highlight, is a substantial challenge to democratic regimes in general and, in particular, to recent democracies such as in Brazil. In the context of Brazil, when we speak of legal assistance, we are speaking of the very possibility that the poor have to access the judicial system, and we are also speaking of citizenship and the performance and success of democracy.

3 Legal assistance in Brazil

The model of legal assistance adopted in Brazil has passed through two main phases, which follow the political history of the country and its concept of citizenship. Prior to 1988 legal assistance was regarded as charity. Despite being formally recognised at the constitutional level since 1934, enacting legislation was only passed in 1950 (Act 1060). That Act, however, failed to specify how free legal services would be provided or who would be responsible for them.⁶ The Constitution of 1988 fundamentally changed the nature of legal assistance. Also called the “Citizen Constitution”, this legal document established in the Brazilian judicial system guarantees to make citizen rights prevail. Among these rights is the right to have access to justice, as established by the 5th article, item XXXV: ‘the law shall not exclude from consideration of the Judicial Power harm or threat to rights’.

The same article guarantees the exercise of this right, assigning to the state the duty to offer legal assistance (5th art., item LXXIV).⁷ By defining free judicial services as legal aid, the Constitution included not only the provision of free advocacy services, but also the gratuity of all other fees and expenses involved in the defence of rights. Included among these services are the provision of information, consultation, and legal counselling, as well as access to pre-prosecution conciliation procedures aimed at a consensual solution of inter-subjective conflicts.

The Constitution of 1988 also established for the first time that legal aid should be “full and free”. Thus, the duty of the state to provide legal assistance acquired greater breadth and a new meaning, representing a victory for society. According to the terms of the constitution, the poor are been granted access to judicial institutions, at all its jurisdictional levels. The state should offer legal counselling in an all-encompassing manner, in order to overcome not only the economic barriers to accessing legal institutions, but also the social and cultural barriers to equality in the exercise of the right to justice. As Kazuo Watanabe observes, ‘(..) effective equality presupposes, above all, a cultural equality, through information and counselling, allowing one to fully understand one’s right. Next comes the problem of parity of arms used in judicial disputes’ (Watanabe 1994: 88).

This principle was reinforced by the decision, at the constitutional level, to create the Public Legal Defence and its inclusion among the essential functions of the Brazilian Justice system, along side the Public Prosecution and the Attorney General.⁸ Article 134 defines the Public Legal Defence as the ‘essential institution for the judicial function of the state, which shall be responsible for judicial counselling

⁶ The Constitution of 1934 regarded legal assistance within the array of Individual Rights and Guarantees, recognising, therefore, the provision of this service as a duty of the state, to be provided by attorneys. The Federal Constitution of 1937 did not mention the right to judiciary assistance, which only regained its constitutional status in 1946.

⁷ Federal Constitution of 1988, 5th article, item LXXIV: ‘the state will provide full legal assistance which will be free for those who demonstrate to have insufficient financial resources’.

⁸ Federal Constitution of 1988, Title IV, Chapter IV – *On Justice’s Essential Functions* (articles 127 and 135).

and defence, at all levels, of the needy (. . .) in the Union, Federal District, Territories, and the States'.⁹ The Constitution therefore, offers legal support for the creation of a specific institution to exercise this function, assigning to it the same guarantees and prerogatives that other institutions essential for the functioning of the justice system enjoy.¹⁰

Many positions at the Public Legal Defence, either at the federal or state level, have not yet been filled however, and in some states such as São Paulo and Santa Catarina, the Public Legal Defence has not been established at all.¹¹ In April 2000 Public Legal Defences were active in the following states: Acre, Alagoas, Amapá, Amazonas, Bahia, Ceará (which began its activities in 1997), Espírito Santo, Federal District, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Pará, Paraíba, Paraná, Piauí, Rio de Janeiro, Rio Grande do Sul, Sergipe, Tocantins, Rondônia, and Pernambuco (which started in 1998).

The functioning of each of these Public Legal Defences and the procedures for carrying out their activities vary according to region, the obstacles in accessing justice that have to be surmounted, and the necessities of the population.

The ways in which the Public Legal Defences were created also varies. In some states, the public defenders positions were occupied by members of the Attorney General who were, until then and according to Law 40/81 providing legal assistance to the poor. This was the case of the Public Legal Defence of Piauí, Mato Grosso, Rio de Janeiro and Pará. In the states of Espírito Santo, Mato Grosso do Sul and Ceará, the positions of the Public Legal Defence were filled by former members of the Public Prosecutor's Office, the institution responsible for providing assistance in those states.

The Public Legal Defence of Rio de Janeiro stands out in the provision of free legal services. Created in 1975, and the first of its kind, its members had an important role in the National Constitutional Assembly of 1987: they proposed the concession of constitutional status to the Public Legal Defence because it was regarded an essential Justice institution of the justice system.¹² Rio de Janeiro has today the largest number of public defenders, comprising 579 attorneys. It is engaged not only in aiding demands for individual rights, but also in inter-subjective rights. Moreover it addresses the demands that emerge out of the "movement for access to justice",¹³ by recognising the claims of the poor where these take place – in poor neighbourhoods – and shaping the demands into struggles for public policies. This is the

⁹ Federal Constitution of 1988, article 134: 'The *Public Legal Defence* is the essential institution for the judicial function of the state, which shall be responsible for judicial counselling and defence, at all levels, of the needy, according to the 5th article, item LXXIV. Sole paragraph: a complementary law will organise the *Public Legal Defence* of the federal government and the *Federal District* and of the Territories and will provide general norms for its organisation in the States, through public careers, filled, at its initial levels, through public examinations, assuring to its members job stability and forbidding [to public defenders] the exercise of legal activities besides their institutional duties'.

¹⁰ Federal Constitution, article 135.

¹¹ The *Public Legal Defence* of the federal government is responsible for prosecutions at the federal level and has 31 defenders.

¹² Members of the *Public Legal Defence* of the state of Rio de Janeiro actively participated in the discussions held in the Sub-Commission on the Judicial Power and the General Attorney. See Diary of *Sub-Commission on the Judicial Power and the General Attorney* of the National Constitutional Assembly, 1987.

¹³ The concept of the "movement for the access to justice", defined by Mauro Cappelletti in the 70s, corresponds to the reforms judicial systems undertook in order to expand to citizens the access to justice (Cappelletti 1975).

case of the Centre for the Defence of Consumer Rights that assists collective actions on behalf of the interests and rights of consumers, and of the Centre for Land and Housing that, active since 1989, seeks to settle urban land legal disputes in the state of Rio de Janeiro.

4 Legal assistance in the state of São Paulo

In the state of São Paulo, contrary to the requirements of both the federal and state constitutions, the Public Legal Defence has not been created yet. Free legal services are provided by the PAJ, an institution connected to the Public Prosecutor's Office, which is responsible for defending the state.

The creation of the Public Legal Defence in the state of São Paulo has been a contentious issue among public attorneys for a long time. When the draft bill, which was to become the Law of the Public Prosecutor's Office, was being debated at the beginning of the 1980s, this polemic already divided the opinions of the state's public attorneys. The issue was hotly debated during the National Constitutional Assembly in the mid-1980s. In 1990, the Law School of the University of São Paulo launched a campaign under the slogan 'Public Legal Defence – a matter of justice', in order to promote discussions on a draft bill creating the Public Legal Defence in the state of São Paulo.

In general the state's public attorneys are against the creation of the Public Legal Defence. It is noteworthy in this regard, that not one public attorney from the state of participated in the discussions of the Sub-Commission on the Judicial Power and the Attorney General of the National Constitutional Assembly, where the creation of the Public Legal Defence was debated.¹⁴

In interviews for this research the São Paulo attorneys working with the PAJ, revealed that they regard themselves as public defenders, as prescribed by the Federal Constitution of 1988 and the National Law of the Public Legal Defence. When asked to about the role of the Public Legal Defence and its highest political power as compared to the PAJ, only three public attorneys said that it was necessary to debate these issues at the Public Prosecutor's Office and society. For them, the Public Legal Defence could offer more autonomy to develop the activities of the judiciary assistance, to expand its services, and to strengthen the professional career of public defenders who often endure the *PGE's* interference.

Although the activities in the Public Finance area supposes independence in relation to the PGE, interference takes place in our structure and organisation – lately, we have experienced some cases of “ex officio” transference, (. . .) because there are some people in [the area of] litigation who think it is feasible to reduce the number of public attorneys of the PAJ, [they argue that] they are in need of staff in litigation, [that] one can sack a public attorney from the PAJ, because [The Public Prosecutor's Office] has a contract with the OAB [Brazilian Bar Association] to cover any services that cannot be provided directly by PAJ and therefore the population will never be without judiciary

¹⁴ Diary of *Sub-Commission on the Judicial Power and the General Attorney* of the National Constitutional Assembly (1987).

assistance. With the creation of the Public Legal Defence, this type of interference would end and we could expand our larger staff beyond what we have today.

(Attorney, area of civil law)

What would change with the Public Legal Defence is the name and on increase in the power that we would have to decide about issues that we address. The Public Legal Defence would have the same budgetary autonomy as the General Attorney has today, and you could do [things] that today we depend for on the PGE.

(Attorney, area of civil law)

The creation of the Public Legal Defence would mean the possibility of expanding the legal aid services. It was give us autonomy and the same guarantees that other careers have. (. . .) If we had independence, budgetary and administrative autonomy, and [if we could] be released of this burden which is to be attached with the other part of the PGE, we could improve our services.

(Attorney, area of criminal law)

The other interviewees, all females, shared unanimous opinion as to the creation of the Public Legal Defence in São Paulo, expressing the point of view that it would represent a deterioration of legal assistance and a weakening of the career, including a decline in wages. For example, they observed:

I don't think that the creation of the Public Legal Defence or even the separation of the PAJ from the PGE would improve the service, I even think that this might lead to salary caps and undermining of the service.

(Attorney, civil law)

It is extremely important for the PAJ to remain in the PGE, it is a historical factor, the PGE created this service to attend the public, the citizen, to defend the public interests, to give the public is of the public's interest, I don't see an extreme need for the Public Legal Defence as a separate institution, especially because we have autonomy to enter with legal cases against the state.

(Attorney, area of public finance)

For us, the Public Legal Defence already exists in practice, the PAJ is the Public Legal Defence. It is a smooth thing, the Public Legal Defence already exists, it has existed for many years, and it is well organised.

(Attorney, area of public finance)

If the Public Legal Defence is be created, the service will be the same, respond exactly to the same demands that we have now, and [we will be] doing what we have been doing. Thus, it is only a matter of name, here it is called PAJ, there it will be called Public Legal Defence, but the service will be the same, if not worse.

(Attorney, area of civil law)

The experiences of other countries with State-paid legal aid – a model similar to the one implemented in São Paulo – have shown these services to be constrained by political influence.¹⁵ Attorneys suffer political pressures in order to prevent them from acting against the state, in prejudice to their role as providers of legal assistance and protectors of the rights of the poor. Because of this pressure, many countries have abandoned this model and created an independent institution, provided with an independent career and administrative autonomy. There is no reason to believe that political pressures on activities of attorneys do not exist in São Paulo. Despite the fact that the PAJ has an area of Public Finance and that it was involved in some landmark cases against the state, such as in cases of the “Massacre do Carandiru”¹⁶ and the explosion of the fireworks warehouse in Pirituba,¹⁷ the independence of the Office cannot be taken for granted. In addition, due to the slowness of the judicial system, it is possible for a lawyer who has worked as a private lawyer against the state to act, later on his career, as an attorney in defence of the state in the same case.

Under these conditions, legal assistance cannot be regarded as a typical activity of the Public Prosecutor’s Office. ‘The typical activity of the office’, Denari (1984: 99) observes, ‘is to represent, assist, and advise the state, in court or outside it. (. . .) Regarding judiciary assistance, this is not a typical activity of [attorneys of the state’s] careers, for it is not a matter of representing the state, but of assisting the private individual’.

Though attorneys believe that the matter is only one of terminology, in reality the PAJ faces limitations in the exercise of its activities for being connected to the Prosecutor’s Office. The fact that the attorneys providing legal assistance were hired initially to defend the interests of the state, is by itself a good reason to raise suspicions about the extent of their autonomy. These attorneys are exposed to possible political pressures in their activities in the area of judiciary assistance. It was because of this

¹⁵ Cappelletti (1975). Cappelletti observed this influence in United States, Canada and Australia during the functioning of *judicare*.

¹⁶ The episode known as the “*Massacre do Carandiru*” took place in 1992, when 109 inmates of *Casa de Detenção de São Paulo* were killed by the military police during a prisoners’ rebellion.

¹⁷ PAJ acted through a public civil action in defence of homogeneous individual rights in only one occasion. This was in 1996, in the case of the explosion of a fireworks warehouse in the neighbourhood of Pirituba, São Paulo. In this case, a public civil action was issued in favour of the victims’ families, who requested financial and moral compensations from the state of São Paulo.

concern that the Constitution of the State of São Paulo excluded legal assistance¹⁸ from the institutional functions of the Prosecution Office, and assigned this function to the Public Legal Defence.¹⁹

The Public Prosecutor's Office has 936 attorneys, selected through public examination, which work in three departments: General Litigation, whose function is to represent the state in court; the Consultancy, which provides judicial reports on prosecutions involving the state's administration; and the PAJ, which offers free judicial services in the areas of civil law, work relations law, and criminal law. A total of 411 attorneys are assigned to the General Litigation, 114 to the Consultancy, and 339 to the PAJ.²⁰

The PAJ is divided into two areas: Civil Law and Criminal Law. Its duties include providing legal assistance and extra-judicial counselling to residents of the state of São Paulo in need of assistance in the areas of Family Rights and Heritage, Civil Law, Consumer Rights, Work Relations, Criminal Law, Civil and Criminal Special Courts, as well as in the courts specialised in Public Registry, Public Finance, and Federal Justice.

The attorneys who work at the PAJ enter their career by passing a public examination for candidates of all departments of the Public Prosecutor's: General Litigation, Consultancy, or the PAJ. Until 1989, candidates had to choose the department in which they wanted to work when they registered for the public examination; once approved they would go directly to this area, regardless of their performance in the exam. Since 1991, however, after passing the exam, attorneys choose their preferred area according to their grades in the exam and to the number of positions available.

In the capital of the state, São Paulo, the PAJ has 202 attorneys in charge of legal cases. In 26 cities inland, the 137 attorneys located in 12 regional offices provide assistance in the areas of Criminal and Civil Law.

The number of attendances²¹ has been growing; in 1995 there were one million attendances; in 1998, those were 1,591,125, among which 719,827 referred to Civil Law and 389.158 to Criminal Law cases (see Table 5.1).²²

¹⁸ The Constitution of the State of São Paulo, article 99 reads: 'The typical institutional functions of the *Prosecution Office* are: I – to represent the State in court and in other contexts; II – to provide judicial advise and consultation to the Executive and to the Administration in general; III – to represent the finances of the State in its relations with the Independent Auditing Office; IV – to provide judicial consultation and to supervise the Commerce Board of the State; V – to provide technical-legislative advise to the Governor of the Sate; VI – to register, control, and to collect debts in favour of State; VII – to propose *Ação Civil Pública* representing the State; VIII – to provide legal assistance to Municipalities, in accordance to the law; IX – to impose sanctions not regulated by specific law; X – to exercise other functions as determined by law'.

¹⁹ The Constitution of the State of São Paulo, article 103, caption: 'The *Public Legal Defence*, an institution essential for the exercise of the judicial function of the State, is responsible for providing judicial counselling and to defend the needy, in all matters'.

²⁰ This data refers to April, 2000.

²¹ "Attendances" refer to all activities developed by PAJ, including consultations and procedures regarding legal actions.

²² In the civil area, between January 1998 and January 1999, the PAJ provided 275,367 attendances, proposed 19,634 legal actions, participated in 38,817 hearings, issued 557 injunctions, presented 2,830 second appeals, and has written 7,328 replies at the appealing level (Office for Judiciary Assistance). On average, each attorney working in the civil area of the PAJ has proposed 200 actions in 1998.

In the criminal area, on the same period, each attorney, participated on average in 1,160 hearings: they provided 160,000 attendances, participated in 118,260 hearings; 2,769 jury trials; presented 3,276 *habeas corpus* requests; elaborated 22,932 appeals; and requested 5,554 criminal revisions (Office for Judiciary Assistance).

This large volume of work, on the one hand, indicates that the population lacks other forms of obtaining legal assistance and, on the other, the lack of commitment of public attorneys toward their clients, which seems to be reflected in the inefficiency of the services being provided by the PAJ.

The PAJ's Civil Law department has 99 attorneys who provide assistance in the areas of Family and Heritage, Work Relations, Public Finance (cases involving the state, municipalities and the Union, as well as cases regarding the federal justice), Civil Law and Military Law, in addition to executing administrative activities. In the remaining areas attorneys are distributed in the following manner: five attend Public Finance actions; one is assigned to actions on Work Relations and one to actions regarding Military Law.

The PAJ also assists the activities conducted by the Civil Small Claim Courts. In this case, the services will be provided when the interested part is a beneficiary of free legal assistance and the following conditions are present: the cause is worth between 21 and 40 minimum monthly salaries (in September 2002, the minimum monthly salary represents US\$ 64,51),²³ the opposing party has a lawyer; the opposing party is an organisation; or a judge has recommended legal assistance due to the complexity of a case.

Assistance in civil cases begins when the individual seeks legal assistance or when an action has been instituted. In contrast to the procedures in the criminal area, attorneys working on civil causes provide judicial counselling constantly. Many individuals arrive at the PAJ only for counselling or to get more information regarding their rights.²⁴

The PAJ has 102 attorneys working in the criminal area. This part of PAJ involves Criminal Justice, including the criminal divisions and criminal executions courts; jury trials, and the Children and Youth Lower Courts, as well as the Electoral Justice. In addition, these attorneys provide services at the Department of Police Investigations (DIPO), assuring the proper conduct of criminal investigations.

The Brazilian Constitution and Criminal Law procedures assure the right and conditions to defend oneself (in Portuguese, *o princípio do contraditório e ampla defesa*). That is, they mandate that the accused be permitted to defend himself against the charges brought against him. This requires that adequate legal assistance be available. Therefore, the beneficiaries of legal assistance in the criminal context are not only those who cannot afford a lawyer, but those whose financial condition cannot be determined in a timely manner and defendants in absentia legal. The PAJ's Criminal Law department also coordinates the services provided to inmates in the state of São Paulo. This service is provided at the *Casa de Detenção de São Paulo*, as well as in other prisons and public jails.

Because the PAJ does not have sufficient attorneys to assist prisoners held in the jails of police districts, a palliative solution has been the organisation of "*mutirões*" as the concentrated activities involving several attorneys is called. Once a year, during a weekend, the PAJ organises a "*mutirão*", in which the attorneys of the criminal division visit jails at police districts, gather data on the number of prisoners, analyse their records, and follow through with appropriate measures, such as release on own recognisance, transference to other prison, or request of transfer for a conditional release.

²³ In October 2001, the minimum monthly salary represents US\$ 74.

²⁴ In 1998, from a total of 44,656 attendances provided by PAJ in the civil area, 12,590, or 28.19 per cent, were counselling activities.

In the criminal area assistance usually begins with the formal appointment or designation of an attorney by a judge. If it has been proved that the defendant is financially able to hire a lawyer, the judge establishes the lawyer's fees (in accordance with the Brazilian Bar Association criteria), to be paid at the end of the trial in favour of the state's finances. In this area, the service of judicial counselling is almost non-existing. This is the case because when the attorney reaches the beneficiary or is assigned to a defendant, in most cases, the beneficiary has already been charged with a crime.

5 The "screening process": access to justice in São Paulo

Any person who requires free legal services in the city of São Paulo and who seeks the PAJ, either at the regional courts or at the office's headquarters, must go through a preliminary screening process provided in an office near the central court. Whether one needs a simple information, judicial counselling, wants to file an action, or to request assistance in prosecutions already underway, every beneficiary should be initially attended by the "screening process". The screening process encompasses attendances in the areas of civil, family, and public finance law, upon requests from the public. In this regard, it does not include the services provided by the PAJ in the areas of criminal and child & youth law, because the beneficiaries are not only those lacking resources, but also those who are defendants in absentia or those who have not hired a private lawyer.

Because it is a service that depends on the requests from the public, it is possible to identify the issues involving the exercise of the right to have access to justice, the way the legal assistance is provided, and who are the people seeking the free service. As Boaventura de Souza Santos points out, 'it is in regard to civil justice (. . .) that one can talk about demand, whether real or potential. And that one can identify to what extent the right to have access to justice has become an effective right, a right whose negation would mean that of all other [rights] as well' (Santos 1989: 45).

Although they do not correspond to the total number of attendances of the PAJ, the number of attendances of the screening process illustrate which services are requested. The screening process constitutes the only way in which poor individuals who seek legal aid have direct interaction with the PAJ. For these reasons, this area was chosen as the target of a specific analysis in the development of this study. I would like to highlight that the analysis that will be presented here serves only to present an approximate picture and to measure part of the activities developed by the PAJ. It does not consider work procedures, nor the attendances in the area of criminal and child & youth law that take place in the criminal divisions, usually when a criminal prosecution is already under way.

The analysis of the screening process sought to identify the activities public attorneys and legal interns provide. The objectives were: (a) to identify the model of legal assistance provided to the poor; (b) to perceive the type of involvement that the public attorneys establishes with their activities and clients; and (c) to obtain a profile of the public attorneys at the PAJ.

Finally, individuals seeking the services of legal assistance were interviewed. The objectives were to find out: (a) how the clients entered in contact with the PAJ and how they perceived the services; (b) the

most common disputes they brought to the PAJ; (c) the knowledge of their rights; and (d) their perceptions of the Justice system.

The data on the attendances at the screening process are classified according to the type of service. Services registered by the screening process include: simple judicial guidance or information and the identification of claims that can become court cases. In addition to these registered attendances, there are those classified as “returns”. In these cases, the claimant already have gone through the screening process, but forgot the advice he initially received or he already has an action underway, but he cannot remember the number of the process or who is the attorney taking care of the action. Finally, there are dismissals for not meeting the financial requirement. In 1996, between February and December, the screening process recorded 41,504 cases. In 1997 it recorded 53,250 and in 1998, 50,8893 cases.

There are no data on the attendances prior to 26 February 1996, and the PAJ only began to collect data on a monthly basis starting in July 1996, as presented in Table 5.1.²⁵

Table 5.1 Attendances by PAJ (July–December 1996)

	Registered	Accepted	Dismissed	Consultations	Returns	Total **
Jul/96	4,397	2,373	489	1,591	229	4,626
Ago/96	4,134	2,100	434	1,600	90	4,224
Set/96	3,882	2,081	336	1,465	88	3,970
Oct/96	4,216	2,512	268	1,436	295	4,511
Nov/96	4,354	2,289	329	1,736	389	4,743
Dec/96	2,872	1,550	201	1,121	162	3,034
Total	23,855	12,905	2,057	8,949	1,253	25,108

Source: Office for Judiciary Assistance
 ** Registered plus returns

In 1997, of the 53.250 cases that went through the screening process, 26.062 were accepted, which roughly represents the same number of new actions conducted by the PAJ in the same year. Month by month, the attendances in 1997 can be observed in the Table 5.2:

²⁵ The data correspond to those provided by the PAJ. From 1999 onwards, due to administrative changes introduced by the *Public Prosecutor’s Office*, the attendances began to be recorded according to a procedure that does not permit comparisons with the data from previous years.

Table 5.2 Attendances by PAJ (1997)

	Registered	Accepted	Dismissed	Consultations	Returns	Total **
Jan/97	4,010	2,267	309	1,745	311	4,321
Feb/97	3,902	1,579	444	2,332	453	4,355
Mar/97	4,250	2,523	253	1,474	481	4,731
Abr/97	4,374	2,736	226	1,412	525	4,899
May/97	3,800	2,219	508	1,357	224	4,024
Jun/97	3,490	2,002	208	1,280	648	4,138
Jul/97	4,686	2,768	297	1,621	540	5,226
Ago/97	4,212	2,306	223	1,681	683	4,895
Set/97	4,260	2,376	256	1,628	635	4,895
Oct/97	4,287	2,276	181	1,830	690	4,977
Nov/97	3,532	1,828	149	1,555	602	4,134
Dec/97	2,259	1,182	99	978	396	2,655
Total	47,062	26,062	3,153	18,893	6,188	53,250

Source: Office for Judiciary Assistance

** Registered plus returns

Finally, in 1998 the number of attendances reached 50,893 cases, an increase of 22 per cent as compared to 1996, when the screening process inaugurated its activities.

Table 5.3 Attendances by PAJ (1998)

	Registered	Accepted	Dismissed	Consultations	Returns	Total **
Jan/98	4,132	2,636	142	1,354	371	4,503
Feb/98	3,419	2,583	118	718	404	3,823
Mar/98	5,151	4,212	132	807	347	5,498
Abr/98	3,644	2,821	128	895	325	3,969
May/98	3,567	2,040	134	1,393	569	4,136
Jun/98	3,578	2,111	120	1,347	520	4,098
Jul/98	4,717	3,233	193	1,291	435	5,152
Ago/98	3,722	2,275	153	1,294	731	4,453
Set/98	3,664	2,222	132	310	549	4,213
Oct/98	3,504	2,135	104	1,265	744	4,248
Nov/98	3,567	2,221	140	1,206	778	4,345
Dec/98	1,991	1,212	69	710	464	2,455
Total	44,656	29,701	1,565	12,590	6,237	50,893

Source: Office for Judiciary Assistance

** Registered plus returns

The analysis of the attendances at the screening process provides a way to evaluate the importance of legal counselling within the legal assistance service. According to the data provided by the PAJ, about 35 per cent of the attendances were limited to legal counselling and did not lead to court cases, either because there was no cognisable claim, because the statute of limitations on any possible claim had run, or because the client had only sought legal counselling.

At the screening process, individuals are registered and then seen by a public attorney, who then evaluates the problem presented, provides basic information, analyses the justiciability of the claim, and, if necessary, suggest a legal case to be presented to an appropriate court.

According to an administrative decree of the Prosecution Office, the criterion to check whether one is entitled to receive free legal assistance is a monthly income of US\$ 223²⁶ or less, taking into account any special circumstances of the client. This amount may vary according to the particularities of each client, such as whether the client had to support a large family or an ill family member, or if the client cannot demonstrate that he/she is in a difficult financial situation, but has an urgent need to solve a problem. It is clear that, being a flexible criterion, their application often depends on the “goodwill” of the attorney or of the intern doing the attendances, vary widely from case to case.

The working hours of the screening process are from 8 to 12 am; everyone arriving before 10 am is dealt with on the same day. Attendance is made by ten attorneys and ten interns who, working in a rotation system, provide information and answer questions in all legal areas. In this first phase of the legal assistance process, and in case a legal action is feasible, the attorneys provide the required counselling in order to inform the client about her rights and the documents she should provide before she is attended by the attorney responsible by the appropriate judicial area. Often, individuals who seek the PAJ need information or services that are beyond the Office’s scope of responsibility, such as, for instance, soliciting retirement benefits, or even problems involving health assistance or educational services. When this is the case, the attorney explains why the problem cannot be solved through the PAJ and, then, informs the client to which agency or department he can take his problem.

The environment of the screening process is informal; in most cases, attorneys and legal interns try to use simple and accessible language, avoiding legal jargon. Of course, this varies according to each attorney – some strive to be fully understood, while others do not care whether their clients understand their rights or the procedures involved in their legal actions.

Normally, at the first contact with the PAJ, the attorneys ask the client his reasons for seeking legal assistance, explaining afterwards whether it is possible to initiate an action to solve the problem through the courts. In many cases it is not possible to initiate a legal action. If that is the case, those attorneys who are more committed to their work, go a step further and explain in detail what had happened in other similar situations and what might happen in the case presented. In this sense, the attorneys act as social workers and as “psychologists” during the screening process, trying to solve problems that sometimes are not pertinent to judicial matters.

²⁶ Administrative Act of the PGE n° 479/94.

Adopting the typology presented by Celso Fernandes Campilongo, the judicial services provided by the PAJ is traditional,²⁷ characterised by individualised services, without much involvement of the attorneys with their “clients”, or with the demands presented. Some attorneys seek to become more involved with the problem presented by the client, but a hierarchical relationship between the attorney and the assisted still prevails, one in which the former has the knowledge and the latter is regarded almost as a “beggar” requesting a “favour”.

The attorneys working at the PAJ in São Paulo were interviewed in order to identify their professional profile.²⁸ As in the case with the interviews of those seeking the PAJ, it is not possible to make generalisations about the profile of the PAJ attorneys based on this data. The data provide only indication of a possible profile.

Most attorneys interviewed made similar comments regarding their relation to the Public Prosecutors Office. Most stressed that they worked in an independent and autonomous fashion. All interviewees sought to demonstrate that they were committed to their activities. In this regard, some interviewees made statements in which their commitment in providing justice to the poor were highlighted:

Our work is one of the basic services which the state must provide to the public, (. . .) it is an important public service for the enjoyment of citizenship (. . .) We are the opportunity the poor have for justice.

(Attorney, criminal law)

The fact that the attorneys worked in different legal areas seemed to have no influence on the interviewee’s relation to the organisation and its services. The only aspect that called attention is that the attorneys specialised in Criminal Law thought that this area should be a priority for the PAJ, because it provided services to those who would otherwise be completely unaided in legal proceedings.

In general, attorneys interviewed highlighted the quality of the services provided the PAJ. All of them sought to present themselves as being aware of the difficulties the public has in understanding the judicial system and, for this reason, said that they were committed in making Law accessible to their clients:

²⁷ The definition of the traditional model as individualist, charitable, and paternalist is presented by Celso Fernandes Campilongo (1994) in his discussion of legal assistance in the city of São Bernardo (state of São Paulo). The author identifies two ideal types of free legal aid: the traditional and the innovative. The traditional type is characterised by charity, paternalism, and individualism; the innovative type is characterised by information on knowledge and the exercise of rights and by community self-organisation. According to this latter model, the main focus of legal assistance is in informing the public about the exercise of citizens rights, in order to help the poor access justice. In this model, the phase that precedes legal actions has great importance, expanding legal assistance beyond free legal services by seeking alternative and informal ways to solve grievances.

²⁸ Interviewees were chosen randomly. In total, eight interviews were made: three men (one in the area of Children and Youth, another one in Criminal Law, and one in Civil Law) and five women (two in the Public Finance area, another two in Civil Law, and the other was head of a division when the interview took place).

Few people have enough education to understand how justice works. For this reason, it is important that we explain: 'you have to read carefully this paper I am handing to you. It has important information. At the hearing you have to bring witnesses, who are people who saw what happened. One should not arrive late at the hearing (. . .)' This nontechnical information is more important than our work as advocates.

(Attorney, public finance area)

In the interviews, it was possible to identify a charitable approach that characterises the legal assistance model of the PAJ: all interviewees referred to the public as the "assisted"²⁹ and admitted that the provision of free judiciary services involved, among other things, providing "charity" to those who receive nothing from the state:

Here we do a bit of everything. We are social workers, psychologists, and advocates as well (. . .) Nutty people are all around. For this reason you have to provide this service as if you were doing charity.

(Attorney, civil law)

All interviewees pointed out problems in providing legal assistance services, such as lack of resources and staff, insufficient number of attorneys, and excessive workload. It was felt that these factors were an impediment to the expansion of the services provided. Regarding the barriers to accessing justice, it was possible to identify two different ways of thinking. Some interviewees regarded the formality and the hierarchy of the legal system as the main barrier faced by the poor seeking justice:

I think that to have greater access would be central to simplifying the judicial system. The terminology should be more simple, the procedures made less theatrical, allowing the fellow to understand what is going on.

(Attorney, criminal law)

Justice should be concerned with the quality of its services: a person should hit the court and be well attended by the functionary, getting the right information in an accessible language.

(Attorney, civil law)

Other interviewees, however, pointed social and economic problems as the barrier to accessing justice:

The problem of access to justice is a problem rooted in society, one of information, of schools, of the families, the neighbourhoods, of spreading the word that people have rights. I don't know to

²⁹ This terminology called my attention when I participated in the seminar 'Structure, Implementation, and Activities of *Public Legal Defence*: successes and difficulties', promoted by *Public Legal Defence do Rio de Janeiro School*. During debates, public defenders would refer to the public who seek legal assistance as "clients", instead as the "assisted". This seminar gathered public defenders from of the states of Espirito Santo, Mato Grosso do Sul, Rio Grande do Sul, Pará, Piauí, Rio de Janeiro and members of *Public Legal Defence of Union*.

what extent reforming the judicial system, making it less formal, is going to reach people who live in the poor neighbourhoods, who live far away, who do not have access even to schools.

(Attorney, Public Finance area)

Surprisingly, the fact that judicial institutions are usually located far away from poor suburbs was not regarded by interviewees as an important barrier to accessing justice. All attorneys interviewed disagreed with the implementation of a mobile court, which aims to facilitate the access to justice to the poor by taking judiciary services to the distant neighbourhoods of São Paulo. They argued that:

It is not necessary to move the court near to one's home, because if one has the need, one comes and seeks [for judicial institutions]. Access to justice is a matter of information.

(Attorney, public finance)

In order to identify who are the individuals seeking the services provided the PAJ, how they see the judicial system and the PAJ's services, and why they are requesting judiciary assistance, this study undertook 170 interviews between January and April of 2000. Interviewees were chosen, according to the order of arrival at the screening process.³⁰ From the total 170 individuals interviewed, 77.6 per cent were women (132) and 22.4 per cent were men. Women seem to predominate in this type of public service.

The majority of the women interviewed were unemployed at the time of interviews. The ones who had steady employment were house-cleaners or domestic servants. A large portion of them lived in "*cortiços*"³¹ close to the downtown region. Those who lived in the city's peripheral neighbourhoods usually did not participate in local associations and were not aware of the services provided by the state in these parts of the city. The women, most of the time, came to the screening process in the company of female friends or close relatives and of their small children. The majority was aged between 25 and 40 years old. Men, on the other hand, were in lesser number, the majority were older than 45 years old, and were unemployed or retired. Few came with company.

The study showed that the first contact with the free legal services provided by the PAJ occurred in one of two ways: by recommendation of friends and acquaintances who already knew the service or through information provided by the regional courts around the city. The institution does not promote any organised and deliberate action to publicise its services. According to Table 5.4, 48.6 per cent of the interviewees said that they came to learn about the PAJ through friends and 30.17 per cent through regional courts.

³⁰ A closed questionnaire was used for the interview. The sample is not statically representative of the population of individuals seeking the services of PAJ.

³¹ Degraded houses shared by several families.

Table 5.4 How did you learn about this service?

	No of citations	Per cent
Friends	87	48,60
Lawyers	9	5,03
Neighbourhood associations	4	2,23
Fliers, announcements	0	0,00
Tool-free service 0-800	1	0,56
Consumer Protection Agency	3	1,68
Police offices	4	2,23
Courts	54	30,17
Other	17	9,50
Total	179	100,00

In this regard, it was possible to observe that the PAJ and its attorneys are part of an urban legend. Interviewees, for example, explained that ‘We know that, when one has a problem to solve, one only needs to come here’.

The toll-free information service offered by the PAJ was not identified as one of the main ways that the public learned about the legal assistance services. Only one among the 170 interviewees spontaneously mentioned the 0-800 number as the way of getting in touch with the PAJ. Introduced in 1996, this service offers basic legal information on the functioning of the PAJ and seeks to ease the attendance at the screening process and to expand the access to legal information. Despite the importance that this service could have, facilitating the contact of the PAJ with the public, it seems to have few users. When asked whether they were aware of the tool-free information service, only two interviewees, among 170, said they were.

Among those who were interviewed, 22.94 per cent had already used the PAJ before. Most said that they appreciated the service and, for this reason, had come back in order to solve other problems. One interviewee, for example, said ‘Here they take good care of the case. When I got divorced, I had no problem at all. Here it is good because the attorney understands that what we need has to be [provided] fast, otherwise the husband takes away my children’.

Some were able to remember the name of the attorney who attended them before, implying not only that they liked the PAJ’s services, but also that they had established a relationship of trust with the attorney and the PAJ.

Asked if they had attempted to seek help from other people before taking their problem to the PAJ, 43 individuals answered “yes” and 127 answered that they went directly to the Office in order to know what could be done. Among the 43 who had sought other people, 25 saw a lawyer. Among these, 16 saw private lawyers. The interviewees who had seen private lawyers, or who had used paid advocacy services, appeared suspicious of these services, which reinforced the positive view of the services provided by the PAJ. Some of their comments included:

I could not afford to pay what the lawyer asked for. He said that my problem was difficult, that it would take a long time.

The other lawyer? I paid him and it was for nothing. I don't even know what he used the money for. (. . .) It took a long time and afterwards he got away with my money and with my document.

My friend got her divorce here. It was fast. She went to the hearing and all was solved. (. . .) I had paid a lawyer and up to today I have nothing. That is why I am here.

The perception of the judicial system was not as negative as one might suppose. Sixty-three interviewees, or 37.06 per cent, had already participated in a trial or had been in a court. Among these, 49 individuals, or 77.78 per cent, had initiated legal cases. Among the interviewees who had already participated in a trial, or who had been in a court, 38 individuals, or 60.32 per cent, had used the PAJ, another indication of the approval of its services.

Sixty-one interviewees said they had an acquaintance or a friend who is a lawyer. One hundred and twenty interviewees said they knew the location of the court closest to their homes, and 102 said they knew the location of the court closest to their work.

Nevertheless, it may be difficult to adequately measure the perception that the interviewees have of their rights and of the role of the judicial system in solving their grievances. As Santos (1996: 50–1) argues, 'The process through which a conflict emerges is much less evident at first sight than one might imagine. Behaviour contrary to a norm is not sufficient, by itself, to unleash conflict. The large majority of behaviours of this type occur without the individuals prejudiced becoming aware of the damage or being able to identify who caused it, without being aware that the damage violates a norm, or even whether is possible to react against the damage or against the person who caused it'. He adds, 'once the damage, the person who caused it, and the violation of norms that it implies are recognised, this does not mean, necessarily, that conflict will emerge. Thus there are great conceptual and methodological problems involved in the study of perceptions and appraisals of rights'.

It is clear that the interviewed PAJ clients, despite their lack of legal knowledge, were aware of their rights. They also knew that the court was the place where they could realise these rights, even though they did not know how they could go about doing so. For example, interviewees explained:

I have come here because I have the right to visit my daughter (. . .)

I've been living there for more than 30 years. Therefore, the house is mine. (. . .) I want to get the documents right (. . .). I have already been to the police station and the court, but they said I need a lawyer. Then I came here to learn how I can do it.

Those who seek the services of the PAJ do so largely for assistance in traditional areas of law; 66.66 per cent of the interviewees had claims in the area of Family Law, 12.57 per cent had housing claims and 5.46 per cent compensation and debt actions. (see Table 5.5). Few individuals who sought assistance did so

with a view to accessing social or collective rights, or “new rights” such as environmental or consumer rights. The fact that collective demands could not be identified in the interviews made with PAJ clients may be explained by the fact that the PAJ rarely takes on such cases. On the other hand, if as Boaventura dos Santos has suggested, the fact that courts are located in the central areas of cities, away from poor neighbourhoods, represent a barrier in the access to justice, our data does not allow us to sustain this argument.³² It is not possible to conclude that the geographical location of judicial institutions makes them less known and represents a real impediment for the poor to have access to justice in São Paulo.

Table 5.5 Why are you here? What problems are you trying to solve?

	No. of replies	Per cent
Family	122	66.66
Housing/rentals	23	12.57
Compensations and debts	10	5.46
Consumer	9	4.92
Neighbours	7	3.83
Work	5	2.73
Crime	3	1.64
Other	4	2.19
Total	183	100.00

When asked why they had been in a court before, most answers were related to individual demands: 49.21 per cent of the interviewees had been in court due to family matters; 19.05 per cent due to employment relations matters, and 12.70 per cent due to matters related to housing and rental (see Table 5.6).

Table 5.6 For what reason have you been in court before?

	No. of replies	Per cent
Family	31	49.21
Work	12	19,05
Housing/rentals	8	12.70
Crime	3	5.46
Compensation and debt	10	4.76
Consumer	2	3.17
Neighbours	0	0.00
Other	2	3.17
Do not remember	1	1.59
Total	183	100.00

³² Santos (1989).

6 Final comments

In other states of Brazil, where the Public Legal Defence has been created, there are signs that this institution has become an important political actor, capable of defending the rights of the poor, as well as assuming the role of an intermediary between citizens and the state.³³ The Public Legal Defence is acquiring new roles in making collective demands in, among others, the areas of health, education, and housing; expanding the number of individuals it assists; changing the relationship between the judiciary and the poor; and supporting the initiatives of community movements, which indirectly contribute to the realisation of citizens rights.³⁴

The PAJ, contrary to the focus of the Public Legal Defence, provides services only to the individual, thereby detaching social demands from their contexts. This approach impedes the judiciary from becoming the arena where social conflicts can be mediated. As a consequence, legal aid, as provided by the PAJ, resembles the traditional model of legal services – charitable, paternalistic, and individualist.³⁵ Despite the fact that some PAJ attorneys make an effort to treat their clients in an informal way, in the majority of cases, the relationship between the actor responsible for the provision of legal assistance and the client is hierarchical and formal, with the prevalence of technical terms, and where services are still defined as a form of charity.

The activities and the legal services offered by the PAJ are closer to the definition of legal assistance and not to the definition of *juridical assistance*, as established by the Federal Constitution of 1988. The PAJ is not explicitly concerned in attending the expectations of the poor regarding the access to justice, which is not limited to the “right to present a legal action” or the gratuity of judicial fees.

Though the attorneys interviewed demonstrated concern for the effectiveness of the rights of poor citizens, specially by explaining how the judicial system and its institutions function, the type of services offered, which focus on the isolated individual and which relies on traditional approaches in the protection of rights, impede a commitment between the agents providing the service and its beneficiaries. In this regard, attorneys remain unaware of the collective or social character of the demands that the poor put forward, what generates difficulties for improving access to justice and the full exercise of citizen’s rights. As Cappelletti (1991: 237) observes: “The right to have access to justice’s institutions, in accordance with the principles of the contemporary state, will only be properly exercised if mechanisms allowing the defence of collective interests are adopted”.

We can conclude that PAJ clients have an awareness and perception of their rights, though in an incomplete form. Interviewees were unable to define these rights and to build a logical connection between the duty of the state and their citizen rights. Therefore, the perception of rights expressed itself as a matter concerning isolated individuals and intertwined with emotions – as if rights had more to do with emotions than with the rational logic of citizenship.

³³ This is the case, for example, in Rio de Janeiro and Bahia, and Paraná. For a detailed discussion see Moraes (1999) and Cunha (2000).

³⁴ Cohen and Arato (1995).

³⁵ Campilongo (1994).

Social barriers to justice clearly exist. Not long ago Celso Fernandes Campilongo (1994: 73) observed that ‘The complexity of the judicial universe and its functioning, the extremely technical vocabulary, the dress code that reinforces hierarchy, the formality and pomposity surrounding the agents of justice, build a natural distance between the poor and the justice system’.

The PAJ clients, however, do not see justice as an abstraction. The interviewees had already been in contact with the judicial system, either by participating in cases or by being in touch with the justice system’s agents. Interviewees had a positive evaluation of the PAJ. The free legal services were regarded as satisfactory, which can explain why many returned for more additional legal services.

Notwithstanding its limitations and difficulties, the poor seem to identify with the justice that is offered to them through the PAJ, which has become the *locus* for presenting their grievances. This identification, however, exists only so far as the poor do not have their collective rights protected and, for this reason, cannot present demands in this regard. One may even argue that this identification is not related to their social class status, but is based on an individual and hierarchical relationship, which does not contribute to strengthen the notion of citizenship.

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