

UNITED NATIONS HUMAN RIGHTS COUNCIL

***CONTRIBUTIONS
TO THE 52ND
SESSION OF THE
OHCHR ON THE
RIGHTS OF
PEOPLE WITH
DISABILITIES***

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Subject: OHCHR – Contributions to the 52nd session of the UN Human Rights Council on the rights of people with disabilities.

Please find below contributions by the Working Group on Assistance for the Elder and People with Disabilities (GTPID) of the Federal Public Defenders' Office of Brazil (DPU) regarding **the report to be presented at the 52nd session of the United Nations Human Rights Council**, in March 2023, on the rights of people with disabilities.

1. Objectives and principles of the policy

Question 1 – What are the main principles and objectives that govern the provision of services to people with disabilities in your State?

The Brazilian State adopts the guiding principles in the provision of services to people with disabilities that are established in the International Convention on the Rights of Persons with Disabilities, which was ratified by Brazil, approved by the National Congress through legislative decree no. 186 on June 9, 2008, and promulgated by the Brazilian President through Decree No. 6,949 on 25.08.2009. They are: a) Respect for the inherent dignity, individual autonomy, including the freedom to make one's own choices, and the independence of people; b) Non-discrimination; c) Full and effective participation and inclusion in society; d) Respecting differences, and acceptance of people with disabilities as part of human diversity and humanity; e) Equal opportunities; f) Accessibility; g) Equality between men and women; h) Respect for the development of the capacities of children with disabilities and the right of children with disabilities to preserve their identity.

The main objective pursued in the provision of services to people with disabilities is to enable them to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life, in the exact terms of art. 26 of the International Convention on the Rights of Persons with Disabilities. To guarantee that, the Brazilian legislation establishes that it is a duty of the State, society and family to ensure to the person with disabilities, with priority, the fulfillment of the rights related to life, health, sexuality, fatherhood and motherhood, food, housing, education, professionalization, work, social security, qualification and rehabilitation, transportation, accessibility, culture, sport, tourism, leisure, information, communication, scientific and technological advances, dignity, respect, freedom, family and community life, as well as other rights listed in the Brazilian Constitution, the Convention on the Rights of Persons with Disabilities and its Optional Protocol and laws and other rules that guarantee the personal, social and economic well-being of those people (art. 8 of Law no. 13,146/2015).

Question 2 – These principles and targets have been modified to explicitly consider Article 19 of the International Convention on the Rights of Persons with Disabilities concerning the right to live independently and to be included in the community (e.g., personalization of services, personal and human support, assistive technology, access to public transport, access to housing, expansion of community-based services, emphasis on personal empowerment and choice).

Yes. The law no. 13,146, promulgated on July 6, 2015, was enacted to regulate, in the Brazilian infra-constitutional legislation, the rights provided for in the Convention on the Rights of Persons with Disabilities, which was recognized in Brazil as a Constitutional Amendment according to article 5, paragraph 3, of the Brazilian Constitution.

Question 3 – Are these objectives directly linked to broader political imperatives to ensure that people with disabilities can take significant advantage of being in the community—such as employment and education opportunities, access to health care, promotion of natural or unpaid support or community goods available to citizens without disabilities? If so, how?

Yes. The provision of such goals in the Brazilian constitutional and infra-constitutional legislation derives from the Brazilian State's option to adhere to the international proposal for the fulfilment of fundamental human rights on behalf of people with disabilities by establishing rights and responsibilities incumbent on the State and society as a whole in the infra-constitutional legislation.

2. Provision of services

Question 4 – Who provides services mainly to people with disabilities (State, local government, private providers commissioned by the State, religious organizations, others, or a mix)? How do you see this mix changing, if it is a result of the United Nations International Convention on the Rights of Persons with Disabilities, in your country?

The Brazilian State establishes in its rules that the protection and promotion of human rights is a collective endeavour. The State is primarily responsible for guaranteeing basic rights. However, Brazil has been acting to propose and supervise public policies aiming to share that responsibility with public and private legal entities of all spheres.

Questions 5 – Who primarily pays for services to people with disabilities (State, local government, private providers commissioned by the State, religious organizations, others, or a combination of those actors)? How do you see this recipe changing (if it is changing at all)?

Services to people with disabilities in Brazil are provided by the State through its direct or indirect administration, as well as by civil society and private institutions. The multiplicity of service providers also stems from Brazilian legislation, which establishes the responsibility of all – State and Society – in the fulfillment of the rights of people with disabilities.

Question 6 – Describe in general terms how community service providers are paid for the services they provide (e.g., through general grants, per capita financing, on the basis of specific services provided, by other means). What changes, if any, are planned in relation to the current methodology of payment?

The services are provided directly by the State, by private institutions or religious entities. There are general grants in favour of some private institutions that meet the criteria established by law.

Question 7 – How are service principles and goals communicated to the service system (e.g., through laws, service standards, staff training, funding incentives, means to compensate/penalize service providers and/or to assess the quality of services)? Please elaborate.

The Brazilian State regulates actions to achieve the principles and goals of service through laws and infra-legal normative acts. It also seeks to enable state and non-state agents to recognize and meet the needs of people with disabilities through courses and workshops. The quality of services is measured from the evaluations that occur before and after they are provided.

Question 8 – What new services, including support to families, have been added to the set of services available to advance principles consistent with Article 19?

Each federative unit, in its sphere of competence, must adopt standards and initiatives to implement the principles defined in art. 19. Regarding the Federal Public Defenders' Office, which is an institution responsible for full, free legal assistance to those in need in Brazil at the federal level, the creation of a specific Working Group to meet the demands related to people with disabilities enables the development of training initiatives for the external and internal public. This measure contributes to the knowledge and exercise of the rights specified in art. 19.

Question 9 – What practices, if any, have been adopted/encouraged to promote greater use of technology to personalize support for people with disabilities (e.g., telehealth, remote monitoring, adaptive communication, artificial intelligence, etc.)?

Telemedicine has had a wider reach due to the COVID-19 pandemic, thus enabling people with disabilities to have their health needs met even without leaving their homes.

Question 10 – How are caregivers (e.g., family members, other informal caregivers) recognized and supported?

The Brazilian State provides some support to them, such as free pass in public transport for companions of people with disabilities and priority service to people with disabilities and their companions (Law no. 14,364, promulgated on June 1st, 2022).

Question 11 – Do you have a service tailoring policy for individual needs? How is the policy implemented? (e.g., through individual planning requirements, etc.)?

The Federal Public Defenders' Office seeks to adapt its workflows to the needs of each group assisted, adapting its planning to the individual demands made by the people affected by its actions.

Question 12 – Describe how much control people with disabilities have over the services they receive (for example, choice of who offers support, choice of where they live and with whom they live, control over budgets).

The autonomy of the disabled person is recommended by the legislation of the Brazilian State, as shown in art. 4, paragraph 2, art. 6, art. 11, art. 13, art. 18, paragraph 1, art. 31, art. 34 and art. 76 of law no. 13,146/2015.

Question 13 – In some disability support structures, service users or their families have an allocated budget that is returned so that they have control over how funds are used to acquire eligible disability support. Do you have or envisage a policy for refunding the user of the service? Describe it.

In the services provided by the Federal Public Defenders' Office, there is no transfer of financial resources to the users.

Question 14 – If funds are transferred to the user, what types of support are available to assist them? How are administrative tasks minimized? Is the individual given broad discretion as to how funds are to be spent?

See question 13.

Question 15 – Have you adopted any “positive wealth accumulation” strategies (e.g., innovative trust funds) to supplement social provision? Describe it.

The Federal Public Defenders' Office does not work with this kind of fund.

3. Monitoring and Supervision

Question 16 – Describe the types of data you collect about people with disabilities who receive services (e.g., number of users, types of disabilities, use of services, costs per person, quality of life outcomes, health outcomes, incidence of abuse, neglect, and exploitation). Is this data collected and reported only in aggregate, or can it be disaggregated per person?

The Federal Public Defenders' Office (DPU), through the Working Group on Assistance to the Elderly and Persons with Disabilities (GTPID), participates in the preparation of the Unified Data Registry of Persons with Disabilities of the State of Espírito Santo. This product is the result of the partnership established between the DPU, the State of Espírito Santos' Public Ministry of Labour, the Fiscal Audit of Labour Inspector in Espírito Santo, and representatives of CONDEF and SETADES.

The Unified Data Registry of People with Disabilities of the State of Espírito Santo aims to collect, process, and share some data of people with disabilities and rehabilitated by the INSS to enable the inclusion of people with disabilities and rehabilitated by the INSS in the labour market.

The existence of a National Registry of Inclusion of People with Disabilities is mandated in art. 92 of Law 13,146/2015. However, considering that it has not yet been implemented at the national level, the initiative takes place at the local level, within the scope of the State of Espírito Santo.

Question 17 – How do you enforce the regulations that apply to service providers (law, regulations, incentives)? What do these regulations mainly focus on? How are they measured?

Within the scope of its administrative structure, the Federal Public Defender's Office observes the rules regarding accessibility to its premises and quotas for the admission of its employees. In the execution of its services of assistance to people with disabilities, it intervenes in the formulation and improvement of public policies and education in rights through its working groups and by the local actions of Public Defenders in their respective spheres of activity.

Question 18 – Do your compliance rules make it possible to disqualify these providers who violate the rules of applying for future state support?

Yes.

4. Re-forming the market: challenges and opportunities

Question 19 – Describe the main challenges you face in trying to reform your service and support system for people with disabilities. Barriers may include labour shortages, inadequate resources, lack of knowledge and training, weak infrastructure, and/or a history of institutionalization.

The Federal Public Defenders' Office is not yet endowed with a budgetary structure that is sufficient for the execution of its services. The budget available is still below the needs of the institution, which translates into not reaching the entire national territory for its services.

Question 20 – How are the COVID-19 pandemic and its consequences reshaping the service market? Explain in terms of changes in service expectations among service recipients and in relation to impacts on available services.

The pandemic compelled the remodelling of the service structure in the provision of public and private services, which adapted and improved remote service structures. In the Federal Public Defenders' Office, the remote channels of service to citizens, with or without disabilities, were improved, aiming to minimize the damages caused by the pandemic in the execution of the public service of legal assistance to people in need.

Question 21 – Do you proactively seek new types of service providers with new business models that emphasize people-centric practices?

The Federal Public Defenders' Office, through its working groups, seeks to establish partnerships with other public and private institutions that aim to adopt people-centric care models.

Question 22 – Do you encourage service providers to take a “corporate and human rights” approach to their efforts?

The professionalization of service providers aimed at people with disabilities is a practice that enables the best execution of functions. The Federal Public Defenders' Office acts in the dissemination and education in human rights for the improvement and training of internal and external agents with this objective.

Question 23 – How to encourage new innovative providers focused on people to enter the market? Describe it.

The establishment of fiscal incentives for the admission of professional service providers to people with disabilities with a focus on people is a possibility. It should be noted that people with disabilities themselves can act as service providers, with the recognition of their potential in the exercise of their autonomy, with support.

Question 24 – Do minimum wage laws apply to this sector? Is there a career progression framework for workers in this sector?

The minimum wage is constitutionally guaranteed to all workers in the Brazilian State (art. 7, IV, Federal Constitution/1988). Career progression depends on the job and salary planning of the companies that provide such services. Discrimination against workers with disabilities is forbidden, if they are the ones performing such services (art. 34 of Law no. 13,146/15).

5. Reform Process

Question 25 – What lessons have been learned to create a momentum, while minimizing resistance, for systemic change consistent with Article 19?

Raising awareness among civil society and public service providers themselves on behalf of people with disabilities must be a constant endeavour. Dialogue to embrace diversity, as part of human diversity, must be present in all spheres of action, although coercive measures for law enforcement are still necessary.

Question 26 – Did you take the initiative to reimagine services that include service users (for example, did you order a Task Force?).

Yes. The Federal Public Defenders' Office has been working to create and reimagine existing projects to improve people with disabilities' quality of life.

Through the project “Effective Professional Rehabilitation: networking and dignity for the worker”, developed by the DPU's Working Group on Assistance to the Elderly and Persons with Disabilities, we act to structure a joint action of public and private institutions to achieve better results in the reintegration of people with disabilities into the labour market after submission to the INSS professional rehabilitation program.

In the project “Homes for the Elderly: Spaces for Rights, Dignity and Solidarity”, the DPU acts to improve the conditions of care of long-term institutions for elderly people with or without disabilities, to enable the guarantee of rights for the benefit of this vulnerable group.

Question 27 – How do you request input from people with disabilities and family members in policymaking, program oversight, strategic planning, etc. (e.g., national advisory boards, regional/local forums, surveys, webinars, etc.).

The Federal Public Defender's Office organizes and participates in events to know and understand the demand of people with disabilities when it establishes a direct dialogue with the recipients of public policies. One example is the participation in the seminar on “Awareness of Violence against the Elderly”, held on 18.06.21 and organized by the Chamber of Deputies, the Webinar “Knowing the spectrum of autism: levels of support to people with ASD and its legal consequences”, held on 30.08.22, the participation in the Information Group held by INSS and DPU on 02.09.22, for dialogue with people with disabilities undergoing the professional rehabilitation program for re-entry into the labour market; participation in the Reconecta Event, held by the Public Ministry of Labour on 20.09.22 and aimed at the inclusion of people with disabilities in the labour market.

Question 28 – What are the two or three strategic objectives to improve the quality, availability, and effectiveness of services to people with disabilities in your State?

The Federal Public Defenders' Office has the strategic objective of expanding education in rights for disabilities, as well as extending the discussion, creation, and execution of legal theses and objects to be replicated both within the Federal Public Defenders' Office itself and elsewhere, the care of people with disabilities and the guarantee of rights for the benefit of this vulnerable social group.



Document electronically signed by **Lidiane da Penha Segal, GT Coordinator**, on 03.10.2022, at 08:33 a.m., according to paragraph 2 of art. 10 of Provisional Presidential Decree No. 2.200-2 (August 24, 2001).



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