

Access to Justice for All: Legal Aid for Vulnerable Groups in Rio de Janeiro

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Abstract

This paper examines the *Claim of Non-compliance with a Fundamental Precept* (ADPF³) No. 635, better known as “ADPF das Favelas”, filed before the Brazilian Federal Supreme Court (STF) to address the systemic violence perpetrated in the State of Rio de Janeiro against vulnerable communities, which has resulted in a high number of deaths caused by state agents (policemen). The analysis highlights the application of the theory of the *Unconstitutional State of Affairs* (Estado de Coisas Inconstitucional – ECI) within Brazilian constitutional law and evaluates the performance of the Rio de Janeiro Public Defender’s Office, from the initial drafting of the petition of this constitutional complaint, to its role in monitoring the accomplishment of the public policy measures determined by the Constitutional Court and also to its procedural role in this lawsuit — first as *amicus curiae*, and later as *custos vulnerabilis*. The transition in the Public Defender's procedural status is emphasized as essential to ensuring the effective protection of human rights in this kind of structural litigation. The study demonstrates how ADPF 635 inaugurates a jurisdictional practice aimed at social transformation, expanding the role of the Federal Supreme Court as an institutional guardian of fundamental rights and underscores the importance of the Public Defender’s active participation as a legitimate procedural representative of favela’s residents and all people that live in impoverished urban peripheries.

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³ ADPF is the acronym in Brazilian Portuguese (Arguição de Descumprimento de Preceito Fundamental).

Keywords

ADPF 635; Claim of Non-compliance with a Fundamental Precept; Unconstitutional State of Affairs; Structural Process; Strategic Litigation; Public Defender's Office; *Amicus Curiae*; *Custos Vulnerabilis*.

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Introduction

The *Claim of Non-compliance with a Fundamental Precept* (ADPF) No. 635, widely referred to as “ADPF das Favelas” or the “Favelas’ ADPF” (acronym of “Arguição de Descumprimento de Preceito Fundamental” in Brazilian Portuguese), hereinafter referred to only as ADPF 6235, has emerged as a landmark in Brazilian constitutional litigation addressing “one of the most alarming issues in Brazil: the high rate of deaths in police raids in the favelas and outskirts of the city of Rio de Janeiro.

The violence, driven by the so-called “War on Drugs”, has left a trail of death, pain and insecurity, directly affecting the most vulnerable populations in these regions”⁴. This claim was brought to challenge the public security policy of the State of Rio de Janeiro, which had long been shaped by practices that systematically violated the fundamental rights of Black people mainly the ones that live in impoverished communities. It has been recognized as a milestone and an exemplary case of what has been called structural litigation, which refers to a kind of lawsuit where the Court seeks to address systemic problems and make broader changes, not just

⁴ Excerpt from news published on the website of the NGO *Conectas Human Rights*, which is one of the civil society entities engaged in this fight to reduce police brutality. Available at: <https://www.conectas.org/en/noticias/stf-rules-on-adpf-635-regarding-police-violence-in-the-favelas-of-rio-de-janeiro/>

individual cases.

Unlike traditional litigation that focuses on resolving a specific dispute, structural litigation aims to implement comprehensive solutions that benefit a larger group of people. Through this case, we also seek to demonstrate the potential for action by the Brazilian Public Defender's Office from this transindividual perspective, in the fight for structural changes necessary to guarantee the effectiveness of human rights.

Alarming statistics revealed that between 2013 and 2019, the number of deaths resulting from police interventions in Rio de Janeiro more than quadrupled, rising from 416 to 1,810. In 2019—the year ADPF 635 was filed—over one-third of all intentional violent deaths recorded in the state were caused by police action. That same year, 44 police officers from the state were also killed, either in the line of duty or through other unnatural causes, further underscoring the severity and complexity of the crisis.

This constitutional claim was preceded by a class action filed in 2016 by the Human Rights Defense Unit (Núcleo de Defesa dos Direitos Humanos – NUDEDH) of the Rio de Janeiro Public Defender's Office. The aim of that earlier lawsuit was to obtain structural measures to curb the disproportionate and brutal use of force during repeated police operations in the Maré favela complex, whose social and humanitarian impacts had reached critical levels. However, as will be explained further below, this class action did not achieve its intended purpose.

Given this setback, it was clear that the factual situation experienced in Rio de Janeiro was so serious that it could be addressed from the perspective of recognizing an effective affront to rights and guarantees assured in the Federal Constitution, which would make it possible to apply the theory of the Unconstitutional State of Affairs, already accepted in the constitutional law of other countries.

In this paper, we will seek to demonstrate how the Public Defender's Office of Rio de Janeiro played a relevant role in ensuring access to rights and justice beyond the traditional intervention of state legal aid services in individual cases. In addition to its participation in drafting the petition of this constitutional complaint, the Rio de Janeiro Public Defender's Office also played an important role in monitoring the accomplishment of the public policy measures determined by the Constitutional Court.

The issue of the change in the procedural position occupied by the Public Defender's Office in this case will also be highlighted, that is, the institution went from the original function

of mere "*amicus curiae*" to occupy the status of "*custos vulnerabilis*", which consists of an innovative technical-legal figure recognized in Brazilian law specifically to be performed by the Public Defender's Office in the collective protection of the rights of people in a situation of vulnerability in the broadest possible sense.

The issue of the change in the procedural position occupied by the Public Defender's Office in this case will also be highlighted, i.e., the institution has changed from its original role of simple *amicus curiae* to occupy the status of *custos vulnerabilis*, which consists of an innovative technical-legal figure recognized in Brazilian law specifically to be performed by the Public Defender's Office in the collective protection of the rights of people in vulnerable situations in the broadest possible sense. In other words, in this position, the Public Defender's Office is responsible for safeguarding the rights not only of those who are in a situation of economic vulnerability, unable to hire a private lawyer, but also of any other type of vulnerability.

The big difference between this procedural position of the Public Defender's Office as *custos vulnerabilis*, developed in Brazilian legal doctrine and jurisprudence, compared to that of a mere "*amicus curiae*" is that it can act as institutional representative of vulnerable populations, being granted broad procedural powers equivalent to those of a party in the lawsuit.

1. Claim of Non-compliance with a Fundamental Precept (ADPF) as a tool for strategic litigation

The Claim of Non-compliance with a Fundamental Precept (ADPF), as provided for in the Brazilian Federal Constitution, is a mechanism of concentrated constitutional review endowed with distinct structural and functional characteristics. Its initiation is restricted to a limited set of institutional actors, and its adjudication falls under the exclusive jurisdiction of the Federal Supreme Court (Supremo Tribunal Federal – STF), in its capacity as the Constitutional Court of the Republic.

The ADPF is thus a procedural mechanism for abstract and centralized constitutional review of statutes, normative acts, and state conduct, aimed at preventing or remedying violations of the “fundamental precepts” enshrined in the 1988 Constitution. Its institutional design presupposes a centralized constitutional jurisdiction, in which the STF issues decisions with binding authority and “*erga omnes*” effect, as expressly established by statute.

Within this framework, the ADPF enables the Federal Supreme Court to exercise a direct and proactive role in responding to constitutional violations, including those involving high collective or structural impact.

This grants the Brazilian constitutional Court a more prominent function in the correction of institutional omissions and abuses, as well as in the shaping of public policies - a phenomenon that legal scholarship has identified as judicial activism, or in its more developed form, as structural litigation⁵. Among the main characteristics of structural litigation, it should be highlighted that it tackles problems that are deeply rooted in policies, practices, or systems; the goal is not just to address the immediate harm suffered by the plaintiffs, but to create lasting changes that prevent similar problems from happening again. It is also characterized by the fact that Courts often remain involved in the implementation and monitoring of the remedies ordered, guiding the process and ensuring compliance. Finally, it is important to emphasize that while related, structural litigation is not the same as public interest litigation: public interest litigation aims to protect fundamental rights and interests, while structural litigation focuses on systemic problems.

2. The Unconstitutional State of Affairs

The theory of the *Unconstitutional State of Affairs* (Estado de Coisas Inconstitucional – ECI) is a jurisprudential construct developed to address scenarios in which there are massive, systemic, and persistent violations of fundamental rights resulting from repeated acts or prolonged omissions by the State. It constitutes a constitutional-legal category that enables the Judiciary to acknowledge the existence of a structural situation of unconstitutionality that transcends isolated cases and reveals chronic institutional failures.

This theory originated in the case law of the Colombian Constitutional Court—particularly in Judgment T-025 of 2004, which addressed the situation of internally displaced persons—and has since been received in other legal systems, including Brazil. In the Brazilian context, it has increasingly been applied by the Federal Supreme Court (STF) as a tool for judicial oversight in the face of severe state omission.

⁵ For a brief overview of this modality that has been called "structural litigation", see: OSNA, Gustavo. Solving complex problems: 'practicalism' and 'structural litigation'. In: Administrative Law Review, Rio de Janeiro, v. 279, n. 2, pg. 251-277, May/Aug. 2020. Available at: <https://periodicos.fgv.br/rda/article/download/82013/78919/179831>

The incorporation of the Unconstitutional State of Affairs theory has been instrumental in enabling the STF to intervene in structural litigation involving critical areas such as the prison system, public security, and access to health care. A landmark case in this regard is ADPF 347⁶, in which the Court recognized that the Brazilian penitentiary system is in an unconstitutional state of affairs⁷, characterized by overcrowding, degrading conditions, and the failure of public policies. By adopting this classification, the Court not only declared the unconstitutionality of specific acts or norms but also issued structural injunctions aimed at inducing systemic, coordinated change among the branches of government—thus assuming an active role in overcoming entrenched violations of rights.

The configuration of an unconstitutional state of affairs typically involves several key elements: the widespread violation of fundamental rights; the temporal persistence of the situation; repeated omission by state authorities responsible for addressing it; the disproportionate impact on historically marginalized groups; and the ineffectiveness of conventional legal mechanisms in remedying the issue.

Upon recognizing this framework, the Judiciary shifts into a structural litigation logic, in which it issues progressive, inter-institutional measures to transform the unconstitutional factual scenario. These measures may include not only negative injunctions—declaring certain acts and norms unconstitutional—but also positive orders requiring affirmative steps to enforce the rights in question.

Although the ECI theory has been criticized on grounds of judicial activism or for allegedly encroaching upon the prerogatives of the Legislative and Executive branches, it is firmly grounded in the constitutional duty of the Judiciary to ensure the effectiveness of fundamental rights. This is particularly imperative in contexts involving populations that have historically been neglected or excluded by state policies.

The adoption of the ECI framework reflects a corrective and dialogical stance on the part of the Judiciary in the face of enduring institutional dysfunction. Rather than overstepping its role, the Court assumes its constitutional responsibility to safeguard the foundational

⁶ Supremo Tribunal Federal, ADPF 347. <https://portal.stf.jus.br/processos/detalhe.asp?incidente=4783560>. For a better understanding of the case, we suggest reading the following article: SOMBRA, Thiago, ADPF 347 and the 'Unconstitutional State of Affairs' of Brazil's Prison System (ADPF 347 E O 'Estado De Coisas Inconstitucional' Do Sistema Prisional Brasileiro) (September 5, 2016). Espaço Jurídico Journal of Law, 2016, Available at SSRN: <https://ssrn.com/abstract=2835208>

⁷ See: “ADPF-347: the prison system in the defendant’s dock”. Available at: <https://www.conectas.org/en/litigiopt/adpf-347-the-prison-system-in-the-defendants-dock/>

commitments of the 1988 Constitution, especially when public power systematically fails to do so.

3. Claim of Non-compliance with a Fundamental Precept No. 635 (ADPF 635)

The Claim of Non-compliance with a Fundamental Precept No. 635 (ADPF 635), as already indicated also known as the “Favelas’ ADPF,” stands as one of the most emblematic contemporary examples of the use of concentrated constitutional review to confront an unconstitutional state of affairs arising from systemic institutional violence in Brazil. Filed by the Brazilian Socialist Party (PSB, acronym in Brazilian Portuguese), together with several black movements, mothers and family members of victims of police violence, favelas, as well as civil society organizations, the claim was brought before the Federal Supreme Court in 2019. Its purpose was the reduction of police brutality in the favelas of Rio de Janeiro.

As highlighted on the website of the NGO *Conectas Direitos Humanos*: this claim was “initially inspired by the Maré public civil lawsuit, filed by the Rio de Janeiro Public Defender’s Office for the adoption of protocols meant to reduce police lethality during operations, the *ADPF das Favelas* seeks the adoption of structural measures that can curtail and reverse public security policies historically guided by racism and violence against black and favela territories”⁸.

At the core of the constitutional controversy raised in this lawsuit lies the alleged violation of several fundamental precepts of the 1988 Brazilian Constitution, notably the rights to life, physical integrity, human dignity, equality, and full access to justice.

The initial petition presented to the Supreme Court argued that police operations routinely conducted in a violent manner, even in the vicinity of schools, hospitals and other sensitive public spaces, were being carried out without proper standards of necessity, proportionality, or external oversight. These were forms of police operations with clearly discriminatory, segregationist and aggressive characteristics, which would never be tolerated - due to their absolute inconsistency with the constitutional standards of the legal system - if carried out in urban areas inhabited by the middle or upper classes of society.

This lack of control and abusive conduct perpetrated by police forces were resulting in recurring fatalities, very often of citizens without any involvement in crimes, including children

⁸ See: <https://www.conectas.org/en/noticias/stf-rules-on-adpf-635-regarding-police-violence-in-the-favelas-of-rio-de-janeiro/>

and adolescents⁹, and fostered a permanent feeling of fear, terror and insecurity. The gravity of the situation pointed to the existence of a de facto state of exception in which fundamental rights were systematically neglected in favelas and low-income neighborhoods, under the pretext of combating drug trafficking and other forms of organized crime.

By admitting ADPF 635, the Supreme Court recognized the procedural adequacy of such Claim as a means to address structural rights violations and deemed the allegations of widespread constitutional breaches to be *prima facie* plausible.

Early in the litigation, the Court issued a series of precautionary measures aimed at curbing state violence and safeguarding the lives of vulnerable populations. Among the most significant decisions - on the occasion of the most serious period of the COVID-19 pandemic - was the ruling that police operations in these communities were to be conducted only in exceptional circumstances, with prior written justification and immediate notification to the Public Prosecutor's Office which is constitutionally responsible for carrying out external control and monitoring of police activity.

The Court also prohibited the use of helicopters as shooting platforms and mandated the presence of ambulances during planned operations involving foreseeable risk of confrontation. Furthermore, it required the preservation of crime scene evidence and photographic documentation of forensic examinations - procedures already mandated by Brazilian law but frequently ignored in practice.

Additional precautionary orders issued by the Court established restrictions on operations near schools and healthcare facilities and compelled the Rio de Janeiro State to prepare an effective plan to reduce police lethality, to be developed in consultation with civil society and institutional actors, including the Public Defender's Office. The STF further ordered the implementation of body cameras on police uniforms and in vehicles, as a mechanism for external oversight in order to promote greater transparency and accountability in policing practices.

⁹ According to a UNICEF report: "Firearm-related deaths in Brazil accounted for 84% of all cases of lethal violence against children and adolescents between 2021 and 2023. In the state of Rio de Janeiro, this percentage rose to 96% of the deaths for which this information was recorded in police reports—although such data was available in only half of the cases. These figures are part of a national study released this semester through a partnership between the United Nations Children's Fund (UNICEF) and the Brazilian Public Security Forum". See: "UNICEF e Comissão da Criança e Adolescente do Rio debatem violência". Available at: <https://www.unicef.org/brazil/comunicados-de-imprensa/unicef-e-comissao-da-crianca-e-adolescente-do-rio-debtem-violencia#:~:text=De%20acordo%20com%20o%20levantamento,19%25%20entre%202022%20e%202023.>

4. Antecedents: The Class Action Concerning the Maré Favela

The Class Action concerning the Maré Favela Complex¹⁰, filed in 2016 by the Human Rights Defense Unit (Núcleo de Defesa dos Direitos Humanos – NUDEDH) of the Rio de Janeiro Public Defender's Office, stands as a pioneering milestone in the legal struggle against police forces institutional violence in Rio de Janeiro's favelas and played a decisive role as a direct antecedent to ADPF 635.

This collective action resulted from a consolidated trajectory of engagement by the Public Defender's Office in contexts of systematic rights violations, in close coordination with civil society organizations active in the Maré favela complex.

The purpose of filing this class action was to meet the urgent need to respond to routine abuses perpetrated during police operations in this community, which disproportionately affected residents not involved in armed conflicts—especially children and adolescents.

The Maré Class Action (or “ACP da Maré”, from the acronym Ação Civil Pública da Maré) sought concrete measures to restrict the disproportionate use of force and to regulate police operations. Among the key requests were: the prohibition of nighttime incursions for the execution of warrants; the mandatory presence of ambulances to provide immediate assistance to potential victims hit by gunshots; the installation of cameras and GPS devices in police vehicles; the compulsory drafting of incident reports following residential searches; and the prohibition of relying solely on anonymous tips as grounds for invasions.

The Public Defender's Office's role in the Maré Class Action must be understood in the context of the so-called second wave of renewal of the legal and operational configuration of the Brazilian PDO, initiated by Complementary Law No. 132/2009¹¹. This legislation expanded its mandate beyond individual access to justice, incorporating the promotion of human rights and the collective defense of vulnerable groups rights.

¹⁰ The Maré Complex is officially recognized as a neighborhood composed of 16 favelas, located in the North Zone of the city of Rio de Janeiro. According to data from the 2022 Demographic Census, Maré has a population of 124,832 residents, distributed across approximately 47,000 households.

¹¹ This institutional reconfiguration of the Brazilian Public Defender's Office operated by Complementary Law 132/2009 was the subject of a paper presented by Cleber Alves and Andrea Carotti at the 2010 International Conference of the Legal Services Research Centre (the abstract was published in the brochure of the event under the title "Legal Reforms for Legal Aid Delivery in Brazil: Independence, Accountability and the Reduction of Social Inequalities") and was subsequently presented at the National Access to Justice & Pro Bono Conference 2013, held in Melbourne, promoted by the Law Institute of Victoria, (the correspondent paper published under the title "Legal Aid Delivery in Brazil: new roles for the Office of Public Defenders" in the website of the event. See the programa t: https://www.probonocentre.org.au/wp-content/uploads/2015/11/683_LPP_NatAccessToJustice_Program_LowRez.pdf).

This new institutional profile enabled the Public Defender's Office to file structural collective actions, entering the field of strategic litigation. The Maré Class Action exemplifies this line of action, in which the institution assumes a leading role in constructing systemic solutions to large-scale violations, particularly in territories marked by racial, social, and urban inequality.

Although some preliminary measures of protection were granted by virtue of this class action, in 2017 - resulting in concrete outcomes such as a reduction of lethality and mitigation of the social impacts of police operations, especially concerning the functioning of schools, health facilities, and to the residents' mobility – the final judicial decision on the merits, rendered in June 2019, denied the claims. The appeal filed by the Public Defender's Office against this sentence remains pending and has been stayed until the final decision of the Federal Supreme Court in ADPF 635.

The legacy of the Maré Class Action, however, extends beyond its immediate procedural effects. The experience gained in this previous case directly informed the conception and formulation of ADPF 635.

The Rio de Janeiro Public Defender's Human Rights Defense Unit (NUDEDH) contributed to drafting the initial petition for the ADPF, transposing to the perspective of federal constitutional law the discussion of the legal issues and requests previously outlined in the Class Action, such as the installation of body cameras in police uniforms and the development of a police lethality reduction plan. The distinction, however, lies in the broader scope and the emphasis placed by the ADPF on the structural and constitutional dimensions of the public security crisis in Rio de Janeiro State.

More than the formal similarity of the claims, it was the participatory methodology adopted in the Maré Class Action that provided ADPF 635 with a solid foundation of social mobilization and democratic legitimacy. The previous action functioned as a laboratory of collective construction and articulation among institutional actors, civil society, and local residents, giving visibility to rights violations and strengthening social oversight of police conduct. The exhaustion of local legal remedies, and the denial of the Class Action by the first instance Court, further reinforced the need to find a way to bring the matter directly before the Federal Supreme Court in pursuit of a structural and definitive response.

5. Structural Process as a Technique for Social Transformation

The main difference between the structural litigation and conventional/ordinary litigation¹² lies in its dynamic and adaptive nature. In structural litigation, judicial decisions may be revised in light of changes in factual reality and public policies, and judicial enforcement is not limited to the punctual execution of orders, but involves ongoing dialogue among the judiciary, public authorities, and civil society, to ensure the effective implementation of appropriate and necessary measures for the observance and realization of rights.

In ADPF 635, the Federal Supreme Court, by granting precautionary measures and later re-evaluating them in the context of motions for clarification (a kind of appeal called “embargos de declaração” in Brazilian Law), adopted this logic of adaptation and dialogue. The holding of a public hearing, with the participation of experts, civil society representatives, and victims of state violence, demonstrates the Court’s commitment to the principle of democratic participation in the construction of structural solutions.

The measures ordered - such as the obligation to develop a police lethality reduction plan, the regulation of home searches, and the implementation of body-worn cameras—do not constitute isolated directives, but form a set of interrelated provisions intended to reshape state practices in the field of public security. The interdependence of these measures demands planning, financial resources, training of public agents, and continuous oversight.

In view of the importance of monitoring these measures, during 2023 and 2024 the Rio de Janeiro Public Defender’s Office submitted detailed reports to the Supreme Court, identifying both progress and shortcomings in the implementation of the body camera monitoring program for police officers. The reports highlighted difficulties in accessing footage, systemic failures, non-use or improper use of the equipment by officers, among other aspects that contributed to the improvement of the public policy implemented in the state under order of the Supreme Court.

This work was acknowledged on several occasions by Justice Edson Fachin, the rapporteur of the case, who in his final opinion stated:

“The participation and monitoring by the Public Defender’s Office of the State

¹² One of the pioneering academic works that outlined a systematization pointing to the emergence of a non-ordinary form of litigation to deal with institutional and structural issues was the article written by professors Theodore Eisenberg and Stephen C. Yeazell, published in 1980 in the Harvard Law Review under the title: “The ordinary and the extraordinary in institutional litigation”. Available at: <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1488&context=facpub>

of Rio de Janeiro has been fundamental and decisive. The institution has provided technically precise and detailed contributions regarding the design and implementation of the program (eDoc 927, 1103), identifying potential inconsistencies with the General Data Protection Law and proposing management improvements to the Military Police's Internal Affairs Office" (p. 109).¹³

It seems important to highlight that the information gathered by the Human Rights Defense Unit of the Rio de Janeiro Public Defender's Office is mostly based on the work of public defenders with criminal law assignments, who continuously feed data into the internal electronic platform known as Sistema Verde. This institutional coordination, combined with the use of technological tools for data processing and analysis, is essential to enable qualified monitoring of public security policies and the defense of human rights, allowing the Public Defender's Office to act strategically and in an evidence-based manner.

This is a relevant exemplary situation that demonstrates one of the main virtues of this specific model of state Legal Aid service provided by the Public Defender's Office in Brazil, classified as "staff model", which combines actuation in the sphere of individual cases ensuring the right to adversarial proceedings and full defense for the parties involved in a given lawsuit, and also in the transindividual or collective sphere, in a broader perspective, seeking to confront and overcome systemic violations of rights, as well as aiming at the implementation of rights in cases of omissions by those responsible for implementing them, whether public bodies or private individuals and entities.

6. The Public Defender's Office and Its Institutional Evolution Toward Strategic Litigation

Traditionally conceived as an institution responsible for providing free legal assistance to the economically disadvantaged³⁶, the Public Defender's Office has, over the past decades, undergone a process of expansion in its institutional functions. This shift has been driven by legislative and constitutional reforms, such as Constitutional Amendment No. 80/2014³⁷, which enshrined the promotion of human rights as a core function of the institution, and Complementary Law No. 132 of 2009, which, among other innovations, granted the Public Defender's Office

¹³ Justiça Global. ADPF 635. Min. Edson Fachin final opinion <https://www.global.org.br/wp/wp-content/uploads/2025/02/635-Voto.pdf>

standing to file class actions and to petition international human rights protection systems.

In the context of ADPF 635, the Public Defender's Office of the State of Rio de Janeiro has paradigmatically demonstrated its institutional evolution toward strategic litigation³⁸. The institution's role was not limited to representing individuals who were victims of police violence; rather, it sought, in a strategic manner, to act upon the structural transformation of public security policies, in accordance with the principles of human dignity, equality, and non-discrimination³⁹.

Through its Human Rights Defense Unit (Núcleo de Defesa dos Direitos Humanos – NUDEDH), the Public Defender's Office actively participated in drafting the initial petition, preparing briefs, and submitting technical materials that supported the claims advanced in the ADPF. Its expertise, developed through concrete cases of rights violations in favelas and peripheral urban areas, was fundamental in giving factual substance and empirical depth to the allegations of the existence of an Unconstitutional State of Affairs.

Moreover, in engaging in strategic litigation, the Public Defender's Office incorporates into its traditional role of legal assistance elements of institutional advocacy and social mobilization, establishing dialogue with social movements, international human rights bodies, and both internal and external oversight institutions for police activity.

This approach reflects an expanded understanding of access to justice, which is no longer limited to formal access to the judiciary but also includes active participation in shaping public policy. Its involvement was significant in prompting the Court to recognize the need for structural remedies and in fostering a more informed and qualified public debate on public security policy in Rio de Janeiro.

Furthermore, the experience of the Public Defender's Office in ADPF 635 illustrates that institutional participation in strategic litigation demands planning, technical specialization, inter-institutional coordination, and a strong political commitment to the defense of human rights.

7. From *Amicus Curiae* to *Custos Vulnerabilis*: The Procedural Role of the Public Defender

As previously noted, the Public Defender's Office of the State of Rio de Janeiro began its participation in ADPF 635 as *amicus curiae*, offering technical and legal input to the Federal Supreme Court.

Subsequently, considering the relevance of the subject matter and the need for a more forceful role in defending populations made vulnerable by police operations, the Public

Defender's participation was converted into that of *custos vulnerabilis* - a procedural figure that grants expanded powers, comparable to those of the parties, to actively defend the rights of the most affected social groups.

The distinction between the procedural roles of *amicus curiae* and *custos vulnerabilis* is essential for understanding the role of the Public Defender's Office in ADPF 635 and, more broadly, within the context of structural litigation in Brazil. While the *amicus curiae* is a mere Court collaborator, offering technical and legal insight without formally joining the case as a party, the *custos vulnerabilis* acts as a true judicial defender of vulnerable groups, with broad prerogatives of intervention similar to those conferred upon the original parties.

The *amicus curiae*, as set forth in Article 138 of the Brazilian Code of Civil Procedure, performs an essentially informative function: it offers the court qualified perspectives on the subject matter in dispute, without, however, replacing or representing either party. Its role is limited: although it may submit briefs, deliver oral arguments, and participate in public hearings, it may not independently file appeals or request the production of evidence unless expressly authorized to do so.

By contrast, the figure of *custos vulnerabilis* - developed in Brazilian legal scholarship based on the practical experience of the Public Defender's Office and recognized by the Federal Supreme Court in landmark decisions, such as ADPF 709 concerning the protection of Indigenous communities during the COVID - 19 pandemic - grants the institution broader procedural powers. As *custos vulnerabilis*, the Public Defender's Office acts in its own name (as an autonomous State body), responsible for seeking the effectiveness of the rights of citizens in vulnerable situations, whatever they may be: not only the role of overcoming economic and financial barriers that prevent them from hiring a private lawyer, mainly to protect the collective interests of such vulnerable groups. To reach this goal, when acting as *custos vulnerabilis* the Public Defenders's Office may file appeals, submit autonomous motions, produce evidence, and directly influence the outcome of judicial decisions.

In analyzing related precedents, the Federal Supreme Court has already established criteria for admitting the Public Defender's Office as *custos vulnerabilis*: (i) the existence of vulnerability among those for whom judicial protection is sought; (ii) a high degree of legal defenselessness concerning the interests at stake; (iii) submission of the request by public defenders with appropriate subject-matter jurisdiction; and (iv) thematic relevance of the

intervention to the institution's legal mandate.

Furthermore, the participation of the Public Defender's Office as *custos vulnerabilis* reinforces substantive due process in structural litigation. The institutional presence of the Public Defender ensures that structural decisions—which have diffuse impact on large populations—are rendered with effective consideration of the interests of vulnerable groups, thereby promoting the democratization of constitutional adjudication and expanding the deliberative space within judicial proceedings.

Thus, the conversion of the Public Defender's role from *amicus curiae* to *custos vulnerabilis* does not merely represent a procedural formality, but rather reflects a fundamental political and legal choice: the recognition of the centrality of protecting the vulnerable in proceedings of high complexity and profound social relevance.

8. The Final Decision in ADPF 635: Structuring the Control of Police Lethality and Strengthening Institutional Oversight

The final judgment of Claim of Non-compliance with a Fundamental Precept (ADPF) 635, delivered in April 2025, in a session that is already considered historic for the STF and even for Brazilian law, established constitutional guidelines related to public security, the reduction of police lethality, and the reinforcement of democratic oversight of state activity. The case was decided by a *per curiam* opinion, reflecting a collective and multidimensional effort to address a complex structural dispute.

The Court acknowledged the seriousness of the public security crisis in the state of Rio de Janeiro, both due to the impact of armed and territorially entrenched criminality and the persistence of violent practices by state agents/police forces affecting both civilians and public officials. However, while recognizing institutional progress in the years following the filing of the case - such as the implementation of body-worn cameras, the creation of operational protocols, and improved coordination with the Public Prosecutor's Office - the Supreme Court in his recent decision refrained, at this stage, from formally declaring an unconstitutional state of affairs.

Among the core determinations of the judgment were measures related to transparency and institutional monitoring. The State of Rio de Janeiro was ordered to improve the collection and public disclosure of data on police lethality, including the introduction of new indicators on

excessive use of force and deaths with unidentified perpetrators.

The National Council of the Public Prosecutor's Office (CNMP) was tasked with publishing biannual reports and coordinating a working group, with civil society participation, responsible for ongoing monitoring of the ruling for a minimum period of two years.

With respect to operational guidelines, the Court did not confirm most of the precautionary measures previously issued and lifted the exceptional standard imposed during the COVID-19 pandemic. Nonetheless, it reaffirmed the requirement that legal parameters governing the proportional use of force be strictly observed. It upheld restrictions on judicially authorized home searches, which must now take place exclusively during daytime hours, be formally justified through a detailed incident report, and be subject to subsequent judicial oversight. The Court further determined that police operations in areas with schools and healthcare units must strictly adhere to proportionality standards, especially when carried out during school entry and exit hours. The use of such facilities as police bases was admitted only in cases of extreme necessity.

On the investigative front, the decision strengthened the independence of forensic services by assigning to the Public Prosecutor's Office the responsibility for investigations into intentional homicides involving state agents. The Court established protocols for crime scene preservation, photographic documentation of forensic evidence, and the mandatory performance of autopsies in cases of deaths resulting from police interventions. It also required prioritization of cases involving child and adolescent victims, with the designation of on-call prosecutors for their investigation.

At the federal level, the Court required the Union to initiate federal police inquiries into criminal organizations operating across state lines and ordered the release of federal funds - including from the National Public Security Fund - to ensure compliance with the measures adopted. The Court also recommended joint actions by the Union and the State for weapons and ammunition control and for strengthening official forensic services.

Despite the breadth of its determinations, the Court denied some of the requests made in the initial petition, such as the prohibition of helicopters being used as firing platforms and the requirement that judicial search and seizure warrants include detailed specifications, thereby upholding the validity of general warrants. It also rejected the request to lift confidentiality over police operational manuals.

In sum, although the Supreme Court did not formally declare an unconstitutional state of affairs, the judgment in ADPF 635 produced a binding normative framework that - if effectively implemented - may bring about institutional reorganization of public security policy in the State of Rio de Janeiro.

9. Final Considerations

ADPF 635 marks a milestone in the consolidation of the structural process as a tool for transforming Brazil's institutional reality, particularly in confronting police lethality and systematic state violence in marginalized territories. By adopting a dialogical, progressive approach grounded in the protection of fundamental rights, the Federal Supreme Court not only acknowledged the seriousness of the public security crisis in the State of Rio de Janeiro but also imposed a normative model for reorganizing institutional practices, centered on transparency, external oversight, and democratic accountability for the use of force.

Within this framework, the role of the Public Defender's Office of the State of Rio de Janeiro - especially through its Human Rights Defense Unit (NUDEDH) - proved both decisive and exemplary. From its early efforts in the Class Action concerning the Maré favela, to its direct participation in drafting the initial petition in ADPF 635, and ultimately to its procedural role as *custos vulnerabilis*, the Public Defender's Office has demonstrated an institutional evolution guided by strategic litigation, the qualified defense of collective interests, and the promotion of human rights as an essential dimension of access to justice.

The concrete experience of the Public Defender's Office in monitoring the body-worn camera policy - based on data drawn from the daily criminal justice work of its defenders—illustrates the strength of an institutional model committed to the production of technical knowledge, political engagement, and the enforcement of legality through constitutional mechanisms. The Federal Supreme Court's explicit recognition of the Defender's contribution to improving the audiovisual monitoring program of police activity attests to its technical legitimacy as a state institution dedicated to the protection of vulnerable populations.

Far from being a mere supporting actor in the judicial process, the Public Defender's Office reaffirmed itself as a protagonist in the construction of a public security policy that respects constitutional limits and human rights.

Its role in ADPF 635 not only contributed substantially to both precautionary and final

decisions, but also redefined expectations regarding state conduct in contexts of institutionalized violence. This experience reinforces the role of the Public Defender's Office as an institution essential to justice and to substantive democracy - done that is committed not only to the formal defense of rights, but to the transformation of the very structures that have historically perpetuated exclusion, racism, and violence in Brazil.

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