

**BRASILIA
REGULATIONS
REGARDING ACCESS
TO JUSTICE FOR
VULNERABLE PEOPLE**



STATEMENT OF REASONS

- On occasion of its 14th edition, the Ibero-American Judicial Summit considered to draft some Basic Regulations regarding access to justice for vulnerable people.
- All the main Ibero-American networks in the field of Justice took part in the preparatory work for these Regulations: Association of Public Prosecutors, Federation of Ombudsmen and the Union of Bar Associations



STATEMENT OF REASONS

- The judicial system must be designed as an instrument for the effective defence of the rights of vulnerable people.
- The Brasilia Regulations include recommendations for public bodies and for those who provide their services within the judicial system.



CHAPTER I: GENERAL RULES

Aim

- These Regulations aim to guarantee the conditions of effective access to justice for vulnerable people, without any kind of discrimination



CHAPTER I: GENERAL RULES

Beneficiaries

- Vulnerable people are defined as those who, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, find it especially difficult to fully exercise their rights before the justice system as recognised to them by law.
- The following may constitute causes of vulnerability: age, disability, belonging to indigenous communities or minorities, victimisation, migration and internal displacement, poverty, gender and deprivation of liberty.



CHAPTER I: GENERAL RULES

Age

- Persons under eighteen years of age are considered *children and adolescents*, except if they have reached legal age before by virtue of the applicable national legislation.
- Any child or adolescent must be subject to a special guardianship by the justice system bodies in line with their development.
- Aging can also constitute a cause of vulnerability if an *elderly adult person* finds it especially difficult to exercise their rights before the justice system, on the basis of their functional abilities.



CHAPTER I: GENERAL RULES

Disability

- *Disability* is understood here as a physical, mental or sensorial deficiency, be it permanent or temporary, which limits the ability of carrying out one or more essential activities of daily life, which may be caused or aggravated by the economic or social environment.

Belonging to indigenous communities



CHAPTER I: GENERAL RULES

Victimisation

Victim is any physical person that has suffered damages caused by a criminal offence, including physical or psychological injury, such as moral suffering and economic damages.

- The term “victim” may also include, if applicable, the immediate family or the people in charge of the direct victim.

Any victim of a crime with relevant limitations in avoiding or mitigating the damages derived from criminal offences or in their contact with the justice system or in facing the risks of suffering a new victimisation is considered to be in a vulnerable situation.

- In addition, efforts shall be made to ensure that the damage suffered by the victim of the crime is not worsened as a result of their contact with the justice system (secondary victimisation).



CHAPTER I: GENERAL RULES

Migration and internal displacement

- The displacement of a person outside the state of their nationality can be a cause of vulnerability, especially in the case of migrating workers and their families.
- A *migrating worker* is defined here as a worker who is going to carry out, is carrying out or has carried out a paid activity in a state of which he is not a national.
- *Internal migrants* may also be in a situation of vulnerability. These are people or groups of people who have been forced or obliged to escape or flee from their home or place of habitual residence, specifically as a result of or to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural catastrophes or catastrophes caused by humankind, and which have not crossed an internationally recognised state border



CHAPTER I: GENERAL RULES

Poverty

Gender

- *Discrimination against women* is understood as any distinction, exclusion or restriction based on gender,
- *Violence against women* is understood as any action or conduct, on the basis of their gender, causing death, physical, sexual or psychological damage or suffering to the woman

Belonging to a minority

- Belonging to a national, ethnic, religious or linguistic minority can be a cause for vulnerability.

Deprivation of liberty

- Deprivation of liberty is understood as that which has been ordered by a public authority, whether for reasons of crime investigation, a criminal sentence, mental illness or any other reason.



CHAPTER I: GENERAL RULES

The addressees of the content of the Brasilia Regulations are:

- a) Those responsible for designing, implementing and assessing public policy within the judicial system;
- b) Judges, Prosecutors, Public Defenders, Attorneys and other civil servants who work in the Justice Administration system in accordance with the internal legislation of each country;
- c) Lawyers and other Law professionals, as well as Societies and Associations of Lawyers;
- d) People who work at Ombudsmen bodies.
- e) Prison police officers and services.
- f) And, generally, all operators of the judicial system and those who take part in any way in its operation.



CHAPTER II: EFFECTIVE ACCESS TO JUSTICE FOR THE DEFENCE OF RIGHTS

Legal culture

- Actions aimed at providing basic information on the rights of vulnerable people shall be promoted,

Legal assistance and public defence has to be provided

1. As regards legal consultation regarding any issue that may affect the legitimate rights or interests of the vulnerable person, even if a trial has not been initiated;
2. As regards defence, to defend their rights in the proceedings in every kind of jurisdiction and in all legal courts;
3. As regards the provision of legal assistance to the arrested.
 - Legal assistance has to be provided not only in the criminal jurisdiction
 - Legal assistance must be free for those people who are in a position where they are unable to pay



CHAPTER II: EFFECTIVE ACCESS TO JUSTICE FOR THE DEFENCE OF RIGHTS

Right to an interpreter

- The use of an interpreter shall be guaranteed when the foreigner does not know the language

Review of procedural requirements and procedures as a means of facilitating access to justice

- Procedural regulations shall be reviewed to facilitate the access of vulnerable people,
- Measures shall be promoted for the simplification and dissemination of the requirements demanded by law in the practice of certain acts, in order to facilitate the access to justice of vulnerable people,
- Oral hearings shall be promoted in order to improve the conditions under which legal actions are held
- Promotion of easy-to-handle forms for the exercise of certain actions
- Accepting evidence in advance of the trial
- Procedures should be adapted to allow advance evidence-taking for vulnerable people
- Measures shall be adopted to avoid backlog and to guarantee a prompt judicial resolution, as well as the fast execution of the resolution



CHAPTER III: EXECUTION OF JUDICIAL PROCEEDINGS

- Conditions aimed at guaranteeing that vulnerable people be duly informed with regard to the relevant aspects of their intervention in the judicial proceedings will be promoted
- When a vulnerable person takes part in a judicial action, in any condition, will be informed on the following issues:
 1. The nature of the judicial action in which they will be participating
 2. Their role within that action
 3. The type of support they may receive with reference to the specific action, as well as the information on the body or institution that can provide it
 4. The rights they may exercise during the process



CHAPTER III: EXECUTION OF JUDICIAL PROCEEDINGS

Specific provisions regarding the victim

- Victims will receive information regarding the following elements of the jurisdictional process:
 - Possibilities of obtaining relief for damages suffered
 - Place and manner in which they may present a report or a document by which they exercise an action
 - Giving effect to their report or document
 - Relevant phases in the development of the process
 - Resolutions issued by the judicial body
- Simple and easily understandable terms and grammatical structures will be used in notices and summons
- Simple terms and syntax will be used in court resolutions



CHAPTER III: EXECUTION OF JUDICIAL PROCEEDINGS

Conditions of the appearance

- In order to mitigate or avoid emotional tension or anxiety, every effort will be made to avoid the victim coinciding with the person accused of the crime in the court premises, as well as their confrontation during judicial proceedings, ensuring the victim is protected visually.
- To said effect, it may be useful to use the videoconference system
- Special attention will be paid in those cases in which the person is subjected to the danger of reiterated or repeated victimisation, such as victims threatened in cases of organised crime, minors who are victims of sexual or physical abuse, and women who are victims of violence within their families or couples.



CHAPTER III: EXECUTION OF JUDICIAL PROCEEDINGS

Accessibility of disabled people

- Accessibility will be provided for disabled people when celebrating proceedings in which they have to intervene; in particular, every effort will be made to overcome architectural barriers, making it easier to access and to be present in the judicial premises



CHAPTER III: EXECUTION OF JUDICIAL PROCEEDINGS

Participation of children and adolescents in judicial proceedings

- In judicial proceedings where minors must take part, it is important to take into account their age and general development, as well as observing the following:
 - The acts shall be celebrated in an appropriate court or room.
 - The language used must be simple, making it easier to understand.
 - Any unnecessary formalities must be avoided,
- In any case, it is forbidden to take and disseminate images related to children and adolescents, given that it could affect their personal development in a serious way.



CHAPTER IV: EFFECTIVENESS OF THE REGULATIONS

International Organisations and Cooperation Agencies are called upon to:

- Continue providing their technical and financial assistance for strengthening and improving access to justice.
- Take into account the contents of these Regulations in their activities and to incorporate them across the different programmes and projects to modernise the judicial system in which they participate.
- Promote and collaborate in the development of the aforementioned spaces for participation

A Monitoring Committee has been set up to follow up the implementation of the Brasilia Rules



IMPLEMENTATION OF THE BRASILIA REGULATIONS

A Monitoring Committee has been set up to follow up the implementation of the Brasilia Rules

So far Argentina, Costa Rica, Spain, Mexico, Paraguay and Uruguay have already started with the implementation of the rules



LINKS TO ACCESS THE FULL DOCUMENT

Spanish

- http://www.cumbrejudicial.org/eversuite/Templates/Cumbres/swf/doc_suno/reglas_acceso_justicia_vulnerables.pdf

Portuguese

- http://www.cumbrejudicial.org/eversuite/Templates/Cumbres/swf/doc_suno/REGRAS_DE_BRASILIA_PT.pdf

English

- http://www.cumbrejudicial.org/eversuite/Templates/Cumbres/swf/doc_suno/reglas_brasilia_en.pdf

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