



ACADEMIC ARTICLE

Governance in the Brazilian Federal Public Defenders' Office

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The Public Defenders' Office is responsible for providing access to justice for vulnerable citizens. This agency needs to adopt good governance standards to achieve good performance. Although socially important, governance in this type of organization has been little studied. Aiming to fill that gap, this paper identifies and discusses standards of good governance in the Brazilian Federal Public Defenders' Office, as well as relationships between its dimensions and variables. The research included 14 in-depth interviews and building and validating a questionnaire to measure the perceptions of governance in that agency. The results show four factors of governance: Control and Accountability, Social Participation, Strategic Resources, and Access to Justice. It was observed that public defenders and administrative staff do not perceive control mechanisms to be part of governance, perceive little or no social participation in decision-making processes, and perceive that some working conditions and actions to develop the Public Defenders' Office personnel are absent. This study contributes to the advancement of the literature on the administration of justice, proposes a Public Defenders' Governance Scale, and reflects on the relationship between performance, access to justice and other dimensions of governance.

Keywords: Administration of Justice; Public Defenders' Office; Public Defender Governance Questionnaire; Justice System

1. Introduction

Organizations in the justice system, such as the Public Prosecutor, Public Attorney, Advocacy and Public Defenders' Office are responsible for initiating the action of the judiciary and, therefore, are essential to the functioning of justice. The Brazilian Public Defenders' Office is the agency responsible for providing free legal assistance to the most vulnerable citizens among the population, providing legal advice, promoting human rights, and judicial and extrajudicial defense.¹

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¹ Brazil. (2018). *Constitution of the Federative Republic of Brazil* 1998. Brasília. Access: http://www.planalto.gov.br/civil_03/Constituicao/Constituicao.htm.

This agency has been gaining relevance in Brazil. Amendments to the Constitution No. 74, dated 2013, and No. 80, dated 2014, assigned functional and administrative autonomy to the Federal Public Defenders' Office, the capacity to initiate a budget proposal, to forward bills to Congress, and established the need for expansion of the Public Defenders' Office. In this context, governance of the agency acquires greater importance. Despite this, few studies on governance of this organ could be found in a review of available literature.² To fill that gap, this study identifies and discusses standards of good governance in the Brazilian Federal Public Defenders' Office, as well as relationships between its dimensions and variables.

This study contributes to the advancement of literature on the administration of justice, which generally has a greater focus on courts and neglects other organizations in the justice system. It also proposes a governance scale by way of a questionnaire that can be useful to researchers and practitioners alike in assessing the management of public defense bodies. Additionally, underlying the discussion on governance, this article reflects on the relationships between performance, understood here as access to justice and other dimensions of governance.

2. Public Governance

The concept of governance comes from several theoretical approaches. The Agency and Transaction Costs theories and the approach of stakeholders form the basis for this concept. Similarly, the multilevel governance and policy networks approaches provide support for understanding public governance. From this perspective, governance refers to the management of relationships among several stakeholders as a means to solve conflicts that could threaten to divert the mutual gains of stakeholders.³ Another view of the concept of governance is related to a way of governing, moving from a hierarchical model to a more cooperative form, that can include several state and non-state stakeholders. These two meanings of governance deal with stakeholder relationships and the mechanisms used to manage such relationships. However, while the first concept is more related to the scope of private relations, the latter generally falls within the scope of the state, where public governance is exercised.

Public governance involves actions related to the decision-making process, the functioning of government institutions and systems, and the relationship between state and society.⁴ It is a more cooperative way of governing that includes a network of social stakeholders in order to strike a balance between public power and civil society. This concept prompts reflection on the roles of state and society in public decisions, and points to the importance of ensuring stakeholders have the conditions for participation in the decision-making process.⁵

There is an agent-principal relationship in which state organizations (agents) exercise the powers delegated to them to achieve the society's (principal) interests. That is, the purpose of public administration is the achievement of society's interests. However, the lack of resources needed to supply quality public services to all citizens has led to a shift in the role of the state, which, instead of being a provider of public services becomes a coordinator, bringing together public and private resources at low direct costs to the public budget. The state becomes less self-sufficient and more inclined to act through networks of public and private stakeholders.⁶

² Akutsu, L., & Guimarães, T. A. (2012). Dimensões da Governança Judicial e sua Aplicação ao Sistema Judicial Brasileiro. *Revista Direito GV*, 183–202.

³ Williamson, O. E. (1996). Prologue: The mechanisms of governance. In: O. E. Williamson, *The mechanisms of governance* (pp. 3–20). New York: Oxford University Press.

⁴ Grindle, M. S. (2017). Good Governance, R.I.P.: A Critique and an Alternative. *Governance: An International Journal of Policy, Administration, and Institutions*, 30(1), 17–22.

⁵ Martínez, A. C. (2005). La Gobernanza Hoy: Introducción. In: A. C. Martínez, *La Gobernanza Hoy: 10 Textos de Referencia* (pp. 11–35). Madrid: Instituto Nacional de Administración Pública.

⁶ Peters, G. B., & Pierre, J. (2000). Why the concern with governance now? In: *Governance, Politics and the State*, London: MacMillan Press Ltd.

Civil society organizations and the private sector can be seen as alternatives to the state bureaucracy and are important in the delivery of basic services to citizens. There are thus many factors to be considered in the process of modern public governance.⁷ The state is the central stakeholder of a system influencing public policies and the success of these policies depends on the ability of public managers to negotiate with several public and private stakeholders. The domination of public policies by networks is a characteristic feature of the governance model in the public sector.⁸ The growing importance of this type of arrangement for modern governance emphasizes the highly interactive nature of political processes.⁹

Political networks are patterns of interdependent social relations between stakeholders with their own goals and strategies and their interactions result from the sharing of interests.¹⁰ Contemporary governance arrangements include mechanisms for the participation and cooperation of public, semi-public, and private stakeholders in the process of public policy decision-making. The interaction between state and society occurs with the aim of producing consensus.¹¹

Resolving social problems is most effective when various stakeholders are involved. Groups that cause the problem, as well as those affected by the problem, and those who wish to resolve it, should be involved in addressing its solution.¹² Moreover, the combination of resources from both public and private sectors—as well as the continuous process of negotiation between stakeholders from these two sectors—tends to make public policies more effective.¹³ Public governance is related to the collective resolution of problems in which the state plays the essential role of intervention and legal ratification, whilst other stakeholders interact in a cooperative way to address resolving problems.¹⁴

The various forms of public governance depend on previous structural and institutional conditions to emerge. First, it is important that power is efficiently distributed in society in a non-fragmented way. Furthermore, there is a need for strong and democratically legitimate public authorities capable of representing the interests of the main social groups involved. Another important condition is authorities having sufficient resources and capacity to implement the decisions taken. It is also desirable that civil society is strong, functionally differentiated and well organized, composed of citizens with the same rights under the law, and endowed with guarantees and fundamental rights to exercise their citizenship.¹⁵ The dispersion of power and social control depends on the existence and guarantee of citizens' rights, in particular transparency and the disclosure of information about public bodies. Democracy is the key input to better governance.¹⁶

These structural conditions define principles of good governance that are fundamental to the development of this new form of governing that is based on the relationship between multiple stakeholders. The change from a state based on hierarchical command and control relationships to a state characterized by complex patterns of contingencies and dependence

⁷ Maheshwari, S. R. (2006). Good Governance: Its Theory and Practice in India. In: A. Farazmand, & J. Pinkowski, *Handbook of Globalization, Governance, and Public Administration* (pp. 313–324). Boca Raton, FL: CRC Press.

⁸ Peters, B. G., & Pierre, J. (1998). Governance without Government? Rethinking Public Administration. *Journal of Public Administration Research and Theory*, 8(2), 223–243.

⁹ Klijn, E.-H. (1998). Policy networks: an overview. In: W. J. M. Kickert y J. F. Koppenjan (eds.), *Managing Complex Networks*, London: Sage.

¹⁰ Ibid.

¹¹ Mayntz, R. (2001). El Estado y la sociedad civil en la gobernanza moderna. *Revista del CLAD Reforma y Democracia*, 21.

¹² Ibid.

¹³ See note 8, supra.

¹⁴ See note 11.

¹⁵ Ibid.

¹⁶ Pereira, L. C. B. (2001). New Public Management Reform: Now in the Latin America Agenda, and Yet... *International Journal of Political Studies*, 117–140.

on external stakeholders depends on the trajectory of institutional relations specific to each national context.¹⁷ Good governance of public organizations involves the identification and definition of responsibility, effective understanding of stakeholder relations and interests related to resource control and division of results as well as the effectiveness of public policies, the legitimacy of procedures, and their control by citizens.^{18,19}

2.1. Governance in Public Defender's Offices

The Public Defender's Office is a permanent instrument of the democratic regime. This agency is responsible for legal guidance, promotion of human rights, and defending the individual and collective rights of socially vulnerable people. There are 28 Public Defender's Offices in Brazil; one is the Federal Office and object of this study, the other the 27 Public Defender's Offices of the Brazilian states. There is a division of powers between these agencies. The Federal Office acts at the national level before the Federal Justice, High Courts, and administrative bodies of the Union, whereas the States' Offices provide legal assistance in administrative instances and in all jurisdictional levels of the States and may act before the High Courts in cases of judicial appeal.

The Federal Public Defender's Office is chaired by the General Public Defender who is responsible for administrative decisions. The General Public Defender also leads the Superior Council, a board composed of nine public defenders. This board is responsible for the normative decisions within the Public Defender's Office.²⁰ Currently, this Office has offices in 71 locations around the country, from which it serves more than 600 thousand users annually.²¹

In the justice system, the concept of governance has mainly been associated with factors such as independence, accountability, access to justice, structure, and strategic resources.²² In the specific case of the Public Defenders' Office, governance is related to similar factors: organizational resources, strategy, stakeholders, organizational structure, control, accountability, and access.

Organizational resources include the various types of resources controlled by the organization to enable the design and implementation of strategies. An important point in the study of governance is the efficient allocation of resources, which is fundamental for compliance with decisions and achievement of objectives.^{23,24} In fact, the central justification for the autonomy and functioning of organizations of justice is precisely the ability to provide resources.²⁵ The ability to implement plans and strategies is also related to governance. The building of an organization's strategy, with a definition of objectives, setting of priorities, and creation

¹⁷ Peters, G. B., & Pierre, J. (2001). Developments in intergovernmental relations: towards multi-level governance. *Policy & Politics*, 29(2), 131–135.

¹⁸ Marques, M. C. (2007). Aplicação dos Princípios da Governança Corporativa ao Setor Público. *Revista de Administração Contemporânea*, 11–26.

¹⁹ Rose-Ackerman, S. (2017). What Does "Governance" Mean? *Governance: An International Journal of Policy, Administration, and Institutions*, 30(1), 23–27.

²⁰ Brazil. (1994). *Supplementary Law No. 80, which organizes the Federal Public Defenders' Office, and the Federal District and Territories Public Defenders' Office, and prescribes general norms for its organization in the States, and provides other measures*. Brasília.

²¹ Brazil. Federal Public Defender's Office. (2018). *Assistência Jurídica Integral e Gratuita no Brasil: um panorama da atuação da Defensoria Pública da União* (3 ed.). Brasília: DPU

²² See Feld & Voigt, 2003; Bevir, 2008; Beers, 2012; Akutsu & Guimarães, 2012 and 2015; Akutsu et al. (2017).

²³ Williamson, O. E. (1991). Economic Institutions: Spontaneous and Intentional Governance. *Journal of Law, Economics, and Organization*, 7(0), 159–87.

²⁴ See note 11, *supra*.

²⁵ Martin, W. S. (2014). Court Administrators and the Judiciary: partners in the delivery of justice. *International Journal for Court Administration*, 6(2), 3–18. <http://doi.org/10.18352/ijca.158>

of coalitions with stakeholders, ensures coherence in public policies.²⁶ The Brazilian Federal Public Defender's Office is seen as an agency with a high level of autonomy, but low levels of capacity.²⁷

Stakeholder interaction is fundamental to good governance in an intentional, conscious, and deliberate way.²⁸ The nature of the relationship between an organization and its stakeholders is important in the choice of strategy, since groups or individuals interested in the performance of organizations can influence and be influenced by them, depending on the possession of critical resources.²⁹ These stakeholders organize themselves into networks of relationships that can influence the delivery of public services.³⁰ These social networks involve stakeholders of different types—public and private, individual and organizational—that act in the most varied federative levels and with different scopes of action.³¹ The broad representation of stakeholders at the highest level of judicial agencies is a fundamental element of governance for justice organizations.³²

Organizational structure is another factor linked to the concept of governance. It should be noted that an organization itself can be considered a governance structure whose design influences the balance between the power of employees and managers, and also contributes to the control of the principal over the agents.^{33,34} It also highlights the autonomy of bureaucracy as relevant in this context, since highly institutionalized political systems have bureaucracies with a high degree of autonomy. However, an appropriate degree of autonomy does not imply that bureaucracies are isolated from society or decision-making processes contrary to the public interest.³⁵

Mechanisms of control aim to mitigate the potential opportunistic behavior of agents, thereby avoiding risks and inhibiting opportunistic actions.³⁶ In the public sector, internal measures of administrative control could help to reduce abuses and inefficiencies.³⁷ This factor is linked to accountability, which covers issues related to transparency, answerability, and enforcement imposed on managers so as to allow control of the principal over the agent. Answerability encompasses two dimensions; one informational, linked to transparency, relating to the agent's reporting on their actions, the other explanatory and related to providing an agent's justification for the motivations behind their actions. Enforcement, in turn, is linked to the reward of good behavior, and punishment of the bad.³⁸ Justice organizations need a

²⁶ See note 8, and note 5, *supra*.

²⁷ Bersch, K., Praça, S., & Taylor, M. M. (2017). State Capacity, Bureaucratic Politicization, and Corruption in the Brazilian State. *Governance: An International Journal of Policy, Administration, and Institutions*, 30(1), 105–124.

²⁸ See note 23, *supra*.

²⁹ Frooman, J. (1999). Stakeholder Influence Strategies. *Academy of Management Review*, 191–205.

³⁰ See note 8, *supra*.

³¹ Hooghe, L., & Marks, G. (2003). Unraveling the Central State, but How? Types of Multi-level Governance. *American Political Science Review*, 97(2), 233–243.

³² Bunjevack, T. (2011). Court Governance In Context: beyond independence. *International Journal For Court Administration*, 4(1), 35–46. <http://doi.org/10.18352/ijca.68>.

³³ Williamson, O. E. (1998). Corporate Finance and Corporate Governance. *The Journal of Finance*, 43, 567–591.

³⁴ Lashgari, M. (2004). Corporate Governance: theory and practice. *The Journal of American Academy of Business*, 46–51.

³⁵ Fukuyama, F. (2013). What Is Governance? *Governance: An International Journal of Policy, Administration, and Institutions*, 26(3), 347–368.

³⁶ Jensen, M. C., & Meckling, W. H. (1976). Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of Financial Economics*, 3, 305–360.

³⁷ See note 5, *supra*.

³⁸ Schedler, A. (1999). Conceptualizing Accountability. In: A. Schedler, L. Diamond, & M. F. Plattner, *The Self-Restraining State: Power and Accountability in New Democracies* (pp. 13–28). Boulder, Colorado: Lynne Rienner Publishers.

higher level of transparency and accountability to increase efficiency and performance, and to provide for their independence.^{39,40}

Access to justice is another essential factor for good governance of the Public Defender. The reason this organization exists is to enable access of the most vulnerable citizens to justice. Governance mechanisms are geared towards producing results that benefit stakeholders in a balanced way.⁴¹ A measure related to the capacity to deliver public services is important; it should not be used as a single measure of governance, but instead combined with others.⁴² This dimension is linked to an increase in the provision of legal assistance services through the expansion of the public defender system.⁴³

3. Methodology

Governance measures set standards of behaviour for organisations and therefore tend to shape how policymakers see the world.⁴⁴ Such measures can be based on secondary data and stakeholder perceptions. There are authors who question the accuracy of governance measures based on perceptions, but as the concept is still emergent for Public Defenders' Offices and there is insufficient data for the construction of a measure based only on secondary data, we used a methodology based on perception in this study.⁴⁵

The identification of dimensions of good governance in the Brazilian Public Defenders' Office involved interviews with managers of that agency and content analysis of those interviews. Between May and June 2015, 14 defenders and civil servants of the highest rank of that agency were interviewed, based on a semi-structured script (See Appendix). The number of interviews was defined by theoretical saturation and the contents transcribed and analyzed using categorical content analysis, following the guidelines suggested by Bardin.^{46,47} The governance factors for analysis were defined *a priori* based on the literature and included Organizational Resources, Stakeholders, Control, Access to Justice, Strategy, Accountability, and Structure.

We observed the occurrence of the dimensions in the interviews, their frequency and order of appearance, as well as the association between them. Considering the frequency of dimensions in the interviews, the total number of occurrence of the themes, and the order of occurrence, it was possible to group the dimensions in terms of their relative importance according to the interviewees' perceptions. The most important group included the Organizational Resources, Stakeholders, and Control dimensions. The intermediate group consisted of Access and Strategy and the group of least relative importance included Accountability and Structure.

Some dimensions were observed at least once in all or almost all interviews, such as Control and Access, which occurred in all interviews, as well as Organizational Resources and Stakeholders, which appeared in eleven and ten interviews, respectively. On the other hand, some dimensions,

³⁹ See note 25, supra.

⁴⁰ See note 32, supra.

⁴¹ See note 18, supra.

⁴² See note 35, supra.

⁴³ Madeira, L. M. (2014). Institutionalization, Reform and Independence of the Public Defenders' Office in Brazil. *Brazilian Political Science Review*, 47–78.

⁴⁴ Merry, S. E. Measuring the World Indicators, Human Rights, and Global Governance. *Current Anthropology*, v. 52, n. 3, 2011.

⁴⁵ Apaza, C. R. Measuring governance and corruption through the worldwide governance indicators: critiques, responses, and ongoing scholarly discussion. *Political Science and Politics*, v. 42, n. 1, pp. 139–143, jan. 2009.

⁴⁶ Thiry-Cherques, H. R. (2009). Saturação em Pesquisa Qualitativa: estimativa empírica de dimensionamento. *Revista Brasileira de Pesquisas de Marketing*, 20–27.

⁴⁷ Bardin, L. (2011). *Análise de Conteúdo*. São Paulo: Edições 70.

such as Accountability and Structure, occurred infrequently—appearing in only a few interviews. It was also confirmed that the subjects that occurred more frequently in the interviews also contained a greater number of units of records. That is, in addition to being remembered by all or almost all the interviewees, they were stated several times in each interview.

Subsequently, a questionnaire was built. It was composed of items that represented concrete operations and behaviors, through which the dimensions of good governance are expressed in the Public Defender's Office. The items were written according to the following criteria: (a) each item was to be expressed in only one behaviour; (b) the sentences had to be clear and intelligible to the target population; and (c) the item must be consistent with the attribute to be measured.⁴⁸ In addition, an effort was made to ensure that the set of all items related to an attribute covered its entire dimension, as Pasquali,⁴⁹ Fowler⁵⁰ and Gisselquist⁵¹ suggest.

An initial version of the questionnaire with 84 items was built. As the theoretical, semantic, and empirical validation steps were accomplished, the number of items was reduced, so the final version of the scale contained 32 items. The theoretical and semantic validation stages were intended to identify whether the questionnaire represents the governance construct. For this purpose, an analysis was carried out to assess the behavioral adequacy of the attributes, the relationship between items and attributes, their relevance to the theoretical context, and the clarity of the language used. This stage was carried out with nine experts in the field of public administration.

The second validation procedure involved the semantic evaluation of the questionnaire with the target population. Twelve individuals were selected from all strata of the target population and a pilot questionnaire was applied. The understanding of the items was observed and possible doubts of interpretation were discussed. The number of participants was defined during the process, observing the criterion of confirmation of the theoretical saturation point.⁵² The time taken to respond to the questionnaire and the difficulties in its completion were also observed.

After these steps the questionnaire was sent between February and March 2016 to public defenders and administrative staff of the Federal Public Defender's Office, using the Google Drive Forms tool. The questionnaire was adequately answered. There were no records with the same score for all items, indicating that the form was filled in seriously. Only one of the records did not respond to any item, which shows that Google Drive has recorded all submissions, even one in which there was not a single response.

The database with the responses to 393 questionnaires was analyzed using the statistical software R (free). The main socio-demographic characteristics of the sample coincide with the Federal Public Defender's Office global workforce profile; namely, the prevalence of young adult males.⁵³ There is a prevalence of males in the age group of 25 to 34 years. 46% of the sample were public defenders and 54% of technical workers; 54.3% were male and 45.7% female.

In 15 questionnaires, 31 or fewer of the 55 items (56.0% of the questionnaire) were complete, and the pattern indicated that they had been abandoned before completion. After these records have been excluded, the questionnaire with the lowest number of items answered had 34 answers. However, the respondent filled out all the fields of the socio-demographic

⁴⁸ Hanblenton, R. K., Swaminathan, H., & Rogers, D. J. (1991). *Fundamentals of Item Response Theory*. Newbury Park, California: SAGE Publications.

⁴⁹ Pasquali, *Instrumentação Psicológica: fundamentos e práticas* (p. 568). Porto Alegre: Artmed.

⁵⁰ Fowler, F. J. (2014). *Survey Research Methods*. Los Angeles: SAGE Publications. Fifth edition.

⁵¹ Gisselquist, R. M. (2014). Developing and evaluating governance indexes: 10 questions. *Policy Studies*, 35(5), 513–531.

⁵² See note 46, above.

⁵³ See note 21, supra, pages 28–30.

information and even left a commentary on the questionnaire. That is, there was no evidence that the survey participants left the questionnaire before they had completed all they had hoped to. The presence of outliers was identified. The method used for this purpose was the Mahalanobis distance, which can detect unusual patterns of response.⁵⁴ Five outliers were found and excluded from the sample.

In the end, there were 370 questionnaires answered, which corresponds to a ratio of 6.7 respondents per item. This number exceeds the sample standard stated by Pasquali who suggests 5 to 10 individuals per item and at least 200 respondents, and Tabachnick and Fidell who suggest samples of at least 300 participants for analysis of discrimination. Field, Miles and Field clarify that a sample of more than 300 subjects will probably provide a stable factorial solution.^{55,56,57}

In this database, 41 items had non-response rates of less than 5%. The remaining 14 items had between 5.1% and 9.4% non-responses. The items with the highest percentage of non-responses belong, for the most part, to the Control dimension. For the definition of correlation and covariance matrices necessary for the analysis, the pairwise method of treatment of missing data was used, in which the data are excluded only from the calculations involving the missing variable.

4. Results and Discussion

The variables were not distributed normally or homogeneously. However, the violation of these data distribution requirements does not lead to erroneous statistical conclusions, especially if the sample size exceeds five individuals per item, when the distribution of the means tends to normal.⁵⁸ In order to avoid any deviation, the extraction method used in the exploratory factor analysis was the Principal Axis Factoring, best suited for samples with non-normal distribution.⁵⁹ The Exploratory Factor Analysis and Principal Component Analysis techniques were used to identify groups of variables. These techniques have three main uses: to understand the structure of a set of variables, to build a questionnaire to measure a latent variable, and to reduce a set of data to a more manageable size while retaining as much information as possible.⁶⁰

The Kaiser-Meyer-Olkin (KMO) test was used to measure the suitability of the sample for these statistical analyses, which indicated a very adequate adjustment. That is, the measurement of sample adequacy (MSA) was 0.96. The Bartlett sphericity test was performed on the correlation matrix to assess whether that matrix differs from identity. A significant test indicates that the correlation matrix is not equal to the identity matrix, with significant relationships between the variables. The Bartlett sphericity test is highly significant for this data set ($\chi^2 = 11052.35$, and $p\text{-value} = 0$). Thus, exploratory factorial analysis is appropriate.⁶¹ Considering the KMO and the Bartlett test for the correlation matrix, the data are adequate for the analyses.⁶² Both analyzes were performed with "oblimin" oblique rotation, which

⁵⁴ Field, A., Miles, J., & Field, Z. (2012). *Discovering Statistics Using R*. London: SAGE.

⁵⁵ See note 49, *supra*.

⁵⁶ Tabachnick, B. G., & Fidell, L. S. (2013). *Using Multivariate Statistics*. New Jersey: Pearson Education.

⁵⁷ See note 54, *supra*.

⁵⁸ Norman, G. (2010). Likert scales, levels of measurement and the "laws" of statistics. *Adv in Health Sci Educ*, 625–632.

⁵⁹ Laros, J. A. (2005). O Uso da Análise Fatorial: algumas diretrizes para pesquisadores. In: L. Pasquali, *Análise Fatorial para Pesquisadores* (pp. 163–193). Brasília: LabPAM.

⁶⁰ See note 54, *supra*.

⁶¹ *Ibid.*

⁶² *Ibid.*

maximizes the relationship between the variables and the factors. This rotation technique is based on the assumption that the factors are correlated.⁶³

Principal component analysis indicated that a four factor framework could be considered sufficient. In addition, the dataset used is valid for the model being tested. These four components explain 41% of the variance of the model. The exploratory factor analysis also indicated the existence of four factors in a well-adjusted model, which corroborates the results of the principal components analysis. These four factors explained 39% of the variance of the model.

The similarity between the models estimated through principal components analysis and exploratory factor analysis is evidence that the analyzed variables are reliable.⁶⁴ This similarity is such that 25 items are shared between the models which are grouped in a similar way in each factor. The dimensions of major importance to the managers participating in the interviews, namely Stakeholders, Control, Organizational Resources, and Access to Justice, were the same factors that emerged from the statistical analyses. This result confirms the use of a four factor model that emerged from the results of principal components and exploratory factor analysis.

The seven dimensions initially identified were regrouped into four factors, in a more parsimonious model. The items of the questionnaire were grouped so that the dimension "Organizational Resources" remained cohesive, constituting the factor Strategic Resources. The dimension "Control" merged with the dimension "Accountability," forming the factor Control and Accountability. In fact, the concept of accountability is strongly related to transparency, answerability, and enforcement, aimed at the control of public managers.⁶⁵ Thus, it was to be expected that characteristics of these dimensions would be grouped into a single factor.

The dimension "Stakeholders" was divided. The items that dealt directly with the users of the legal aid service were grouped with the items of the dimension "Access," constituting the factor Access to Justice. The other items of the dimension "Stakeholders" related to the engagement of the stakeholders in the Public Defender's Office's internal processes and decisions, were grouped into their own factor, called Social Participation.

The dimensions "Structure" and "Strategy" had few items emerging in the statistical analyses. As the analysis was based on the variation of the items, items with common variation tended to be classified in the same factor. The items related to these dimensions have little common variation among them, since the population studied belongs only to the Federal Public Defenders' Office.

This framework is both similar to and different from the one proposed by Akutsu et al.⁶⁶ The study of these authors suggested the dimensions of judicial governance would be institutional environment, performance, access to justice, accountability, independence, resources and structure, and governance practices. For the Public Defender's Office, access to justice becomes a preponderant dimension, since it reflects the mission of that institution. Social participation is also a significant factor because it is an organization that deals with the most vulnerable public and needs to be attentive to the problems and desires of social leaders. This factor was not considered in the Akutsu et al. study, perhaps because it is understood to be somewhat conflicting with judicial independence. Control and accountability, as well as

⁶³ Ibid.

⁶⁴ See note 59, supra.

⁶⁵ See note 38, supra.

⁶⁶ Akutsu, L., Correia, P. M., Gomes, A. O., Guimarães, T. A., & Bilhim, J. d. (2017). *Evidências de Validade de Construtos de Governança Judicial em Tribunais Brasileiros e Portugueses*. In: M. Emmendorfer, Organizações Públicas, Inovações e Políticas de Desenvolvimento (pp. 100–117). Viçosa: Instituto de Políticas Públicas e Desenvolvimento Sustentável.

strategic resources, find their correspondents in the Akutsu et al. model; accountability and resources and structure, respectively.^{67,68}

The questionnaire with the best statistical and theoretical coherence is composed of 32 items grouped into four factors. Factor 1 – Control and Accountability – consists of ten items. Factor 2 – Social Participation – is composed of six items. Factor 3 – Strategic Resources – contains eight items. Factor 4 – Access to Justice – also has eight items. **Table 1** shows the factors, items linked to them, their factorial loads, and the medians of the responses. The responses were made on a seven-point agreement scale, where “1” represents total disagreement and “7” total agreement.

For most of the items of the factor Control and Accountability, the respondents appear to be indifferent. The exceptions are the items 32 – “The Public Defenders' Office carries out orientation campaigns with its members in order to prevent functional faults,” where the median respondent stated that they did not agree, 41 – “The Public Defenders' Office establishes mechanisms to guarantee the accountability of its public agents” and 44 – “The Public Defenders' Office applies, in its daily life, the Rule of Access to Information,” where the median respondent said they agreed. The distributions of the responses related to the items of the Control and Accountability factor are shown in **Figure 1**.

These results indicate that public defenders, managers, and technicians do not perceive the structures and mechanisms of control as components of governance in the Public Defender's Office. Accountability was not a dimension highlighted by the subjects in the high-ranking employees of the Public Defender's Office at the time of the interviews. This result is even more remarkable when considering that the Office is an autonomous agency and slightly permeable to democratic control mechanisms. The establishment of control measures is essential to supervise and prevent the abuses and inefficiencies of government, and is an essential tool to improve the management of public policies.⁶⁹ It is worth mentioning that the Public Defender's Office is considered an agency with a high degree of autonomy and low levels of capacity.⁷⁰

For the Social Participation factor, the median opinion of the research participants was disagreement with the entire item. Their perception was that there is little or no social participation in decision-making processes. Item number 19 – “The Public Defenders' Office – allows the participation of all stakeholders (defenders, servants, and citizens) in its internal electoral processes” and Item number 21 – “The Public Defenders' Office – establishes mechanisms of social participation in the election of its leadership”, in particular, elicited almost total disagreement. The distribution of answers to the items of the Social Participation factor are shown in **Figure 2**. The mode of these answers corresponds to “totally disagree” in all cases.

In fact, appointments to the highest positions in the Federal Public Defender's Office take place via an election in which only the defenders participate. In the case of the General Public Defender (the Minister), the Federal Deputy Public Defender (the Deputy Minister), and the General Corregidor, the President of the Republic appoints from closed lists compiled by the choice of the defenders themselves. Only the nominee for General Defender is submitted to oral test before approval by the Senate. In the case of the Superior Council, the normative body of the Public Defenders' Office, there is not even the participation of the President in the appointment.⁷¹ Therefore, it is perceived that the Public Defenders' Office is insulated from

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ See note 5, *supra*.

⁷⁰ See note 27, *supra*.

⁷¹ Brazil. (1994). *Supplementary Law No. 80, which organizes the Federal Public Defenders' Office, and the Federal District and Territories Public Defenders' Office, and prescribes general norms for its organization in the States, and provides other measures*. Brasília.

Table 1: Factors, items, factorial loads of the Public Defenders' Governance Scale, and median responses.

Factor	Item	Factor Load	Responses Median
Control and Accountability	32 – The Public Defenders' Office carries out orientation campaigns with its members in order to prevent functional faults.	0.41	2
	33 – The Public Defenders' Office uses mechanisms to control the actions of its managers.	0.50	4
	34 – The internal control bodies of the Public Defenders' Office carry out periodic audits.	0.51	4
	35 – The Public Defenders' Office uses the recommendations of internal control bodies in the decision-making process.	0.57	4
	37 – The organs of the higher level of the Public Defenders' Office exert control over each other.	0.40	4
	39 – The Public Defenders' Office establishes mechanisms that guarantee the autonomy of internal control bodies.	0.47	4
	41 – The Public Defenders' Office establishes mechanisms to guarantee the answerability of its public agents.	0.56	5
	42 – The Public Defenders' Office punishes the public agents that act with impropriety.	0.61	4
	43 – Public Defenders' Office managers are held accountable for their actions.	0.70	4
	44 – The Public Defenders' Office applies, in its daily life, the Rule of Access to Information.	0.51	5
Social Participation	13 – The bodies of the higher level of the Public Defenders' Office adopt formal mechanisms of social participation for decision-making.	0.52	2
	14 – The Public Defenders' Office considers the opinions of groups of society in its decisions.	0.40	4
	15 – The Public Defenders' Office allows the participation of diverse stakeholders (defenders, servants and citizens) in its decision-making process.	0.53	2
	17 – The Public Defenders' Office conducts public hearings to address the needs of the population.	0.36	3
	19 – Public Defenders' Office allows the participation of all stakeholders (defenders, servants, and citizens) in the internal processes for the choice of leaders.	0.71	1
	21 – Public Defenders' Office establishes mechanisms of social participation in the election of its leadership.	0.72	1
Strategic Resources	1 – Public Defenders' Office conducts training activities for the public officials responsible for the services provided to citizens.	0.51	3
	2 – The Public Defenders' Office provides opportunities to update defenders' knowledge.	0.47	5

(Contd.)

Factor	Item	Factor Load	Responses Median
Access to justice	3 – Public Defenders' Office trains its public agents of the finalistic area in several fields of knowledge.	0.48	4
	4 – The Public Defenders' Office agencies maintain multidisciplinary teams for citizen services.	0.42	3
	5 – The Public Defenders' Office conducts leadership training.	0.50	2
	6 – The Public Defenders' Office provides the necessary working conditions for public agents to carry out their tasks.	0.49	3
	8 – Public Defenders' Office's budget resources have increased over the last three years.	0.43	5
	9 – Public officials use Public Defenders' Office action plans to guide their activities.	0.43	4
	16 – Public Defenders' Office establishes channels of communication with society.	0.59	4
	18 – Public Defenders' Office conducts educational campaigns to inform citizens about the services that are provided.	0.60	4
	22 – The Public Defenders' Office works together with other public agencies to increase access to vulnerable populations.	0.66	5
	23 – The Public Defenders' Office works together with society's organizations to increase access to justice.	0.67	4
	24 – The Public Defenders' Office contacts other public bodies through administrative channels with the aim of solving the problems of its public customers.	0.42	6
	49 – The Public Defenders' Office takes action to serve vulnerable populations in hard-to-reach locations.	0.62	5
	50 – The Public Defenders' Office conducts roaming customer service campaigns.	0.51	6
	55 – Public Defenders' Office acts to bring the defender closer to society.	0.49	4

Source: Research data.

democratic controls. To enhance social participation, two good governance principles must be balanced: it is important to guarantee independence for the proper functioning of justice organizations and this independence must be matched with greater levels of transparency and accountability and broad representation of stakeholders in the supervisory board.^{72,73} This is not seen to be the case in the Public Defender's Office. Maintaining an appropriate degree of autonomy does not mean isolating the bureaucracy from society or making decisions not in accordance with the public interest.⁷⁴

⁷² See note 25, *supra*.

⁷³ See note 32, *supra*.

⁷⁴ See note 35, *supra*.

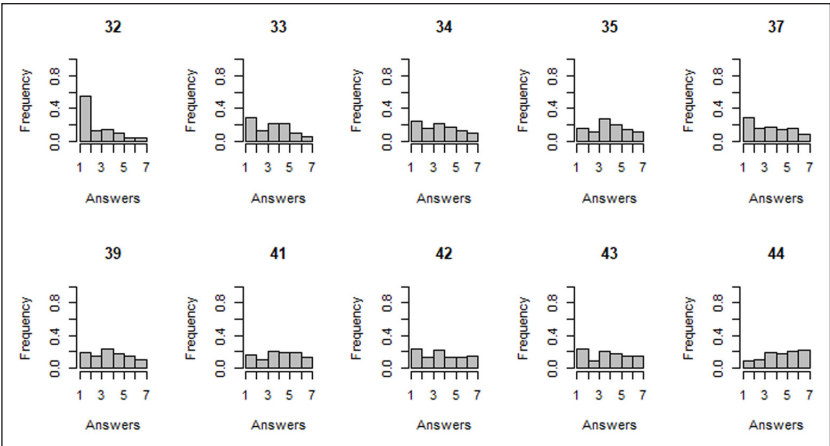


Figure 1: Control and Accountability. Source: Research data.

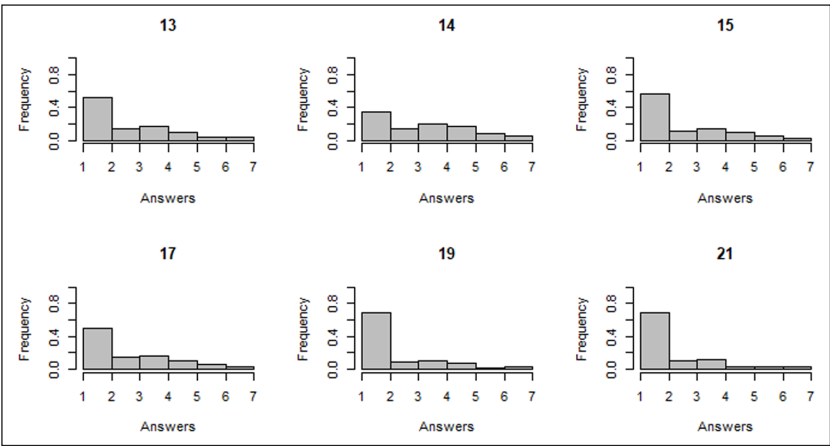


Figure 2: Social Participation. Source: Research data.

Regarding the Strategic Resources factor, there is a tendency for respondents to disagree with some aspects of the questionnaire items. Respondents agree that the resources of the Public Defender's Office have increased in recent years, and that has provided an opportunity for defenders to update their knowledge. However, there is a perception that the necessary working conditions for public agents to carry out their activities are not available, nor are actions taken to train leaders or public agents who provided care for citizens. There is also an indifference to the use of action plans to steer activities. That is, the median responses indicate that the respondents do not perceive the strategic orientation of the agency. **Figure 3** shows the distributions of the answers related to the items of the Strategic Resources factor.

As stated in **Figure 3**, respondents agree that the budget has increased in recent years. However, there is a tendency to pay more attention to financial resources than to human resources. For good governance, it is not enough to accumulate resources, but they must be allocated efficiently. It is important to increase the level of education and professionalization of public servants to increase the capacity of government agencies.⁷⁵

⁷⁵ Ibid.

Regarding the Access to Justice factor, the opinion of the research participants is in broad agreement with the statements in the items. The median answers do not disagree with any item related to this factor. Items 24 – “The Public Defender’s Office contacts other public agencies through administrative channels with the aim of solving the problems of its public customers” and 50 – “The Public Defender’s Office conducts roaming customer service campaigns,” both of which elicited a strong positive response from the respondents who consider that the agency is making an effort to fulfill its institutional mission—either by its own means or through cooperation with other organs. **Figure 4** shows the distribution of answers to each item of this factor.

The mission of the Public Defender’s Office is to provide access to justice for vulnerable citizens. With this objective, the agency can: (a) meet citizens who seek the agency or (b) work in cooperation with other public agencies or civil society entities. In both cases, coordinated action is required. To extend the coverage of the Public Defender’s Office through partnerships with other public agencies, political networks that involve non-governmental stakeholders

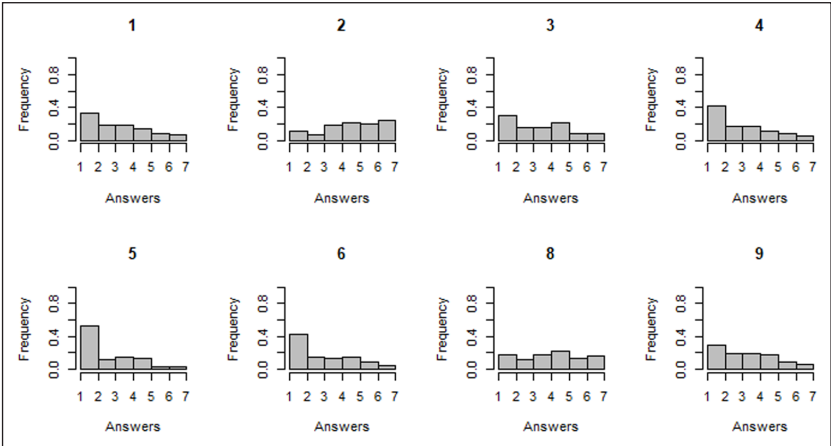


Figure 3: Strategic Resources. Source: Research data.

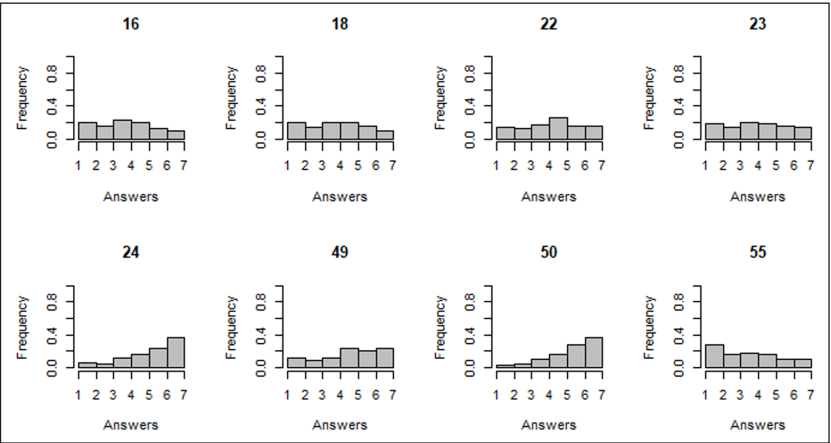


Figure 4: Access to Justice. Source: Research data.

alongside public agencies at different levels of the federal government are important to harmonize efforts and resources, not to mention developing more sophisticated strategies for the management and allocation of these resources.⁷⁶ The Public Defender's Office relies on stakeholders to access and use the resources they need to extend their activities.⁷⁷ This Office needs to cooperate with agencies responsible for controlling budgetary resources in order to increase its capacity.

5. Conclusions

This article set out to identify good governance standards in the Brazilian Federal Public Defender's Office, as well as the relationships between their dimensions and variables. Initially, the following dimensions were identified: Organizational Resources, Stakeholders, Control, Access, Strategy, Accountability and Structure. These dimensions were then rearranged into four factors: Strategic Resources, Control and Accountability, Access to Justice, and Social Participation. As the study of the governance structure of the Public Defender's Office was examined in depth, the analysis indicated that the Structure and Strategy dimensions are relatively less perceived by the managers and technicians of the Public Defender's Office. Therefore, the questionnaire used to explain the construct is composed of 32 items, which are not directly related to the Structure and Strategy dimensions.

The results state that the governance structure adopted in the Public Defender's Office is still fragile. Public defenders, managers, and technicians are indifferent to the attributes of Control and Accountability, demonstrating that they do not perceive structures and mechanisms of control to be components of good governance. These actors perceive little or no social participation in decision-making processes. Regarding Strategic Resources, although respondents agree that resources have increased, they realize that the necessary working conditions are not available to carry out their activities, and the actions to train leaders and agents in the main activity are inadequate. However, they could perceive an effort by the agency to promote access to justice, either by its own means or through collaboration with other public agencies or civil society entities.

In addition to these results, another contribution of this study is the building and testing of a scale that can be used to evaluate governance of other public defender's offices. It is an appropriate tool to evaluate the perceptions of technicians and managers of such agencies, and to diagnose shortcomings in the decision making process, thus providing important information and data for the formulation and improvement of public policies and management necessary for good governance of public defender's offices. This questionnaire also complements and advances knowledge about the functioning of the Brazilian Justice System, as well as providing a foundation for future studies.

It is important to examine the principles of good governance in a context in which the state is charged with engaging with society and producing quality public services that meet the needs of the population. The information and knowledge produced by this study can help the development of more efficient strategies in the management and allocation of public resources, and consequently more effective provision of legal aid services.

This research is limited in the sense it is an initial attempt to fulfill a research gap on governance adopted in the Public Defender's Office. Although relevant for future research, the

⁷⁶ See notes 8 and 17, *supra*.

⁷⁷ See note 29, *supra*.

results are preliminary and are more for guidance than reaching firm conclusions that practitioners can use. Also, the sample was not defined probabilistically, making generalizations insecure.

Further research is recommended, as well as replication in other public defender's offices in Brazil and other countries, which will allow the construction of a scale that is valid for this sort of agency in general. The cross-sectional nature of this research can also be considered a research limitation. The use of a longitudinal perspective would make it possible to see the evolution of the concept of good governance in Public Defender's Offices, as well as providing more empirical evidence to improve the accuracy of the questionnaire built. Furthermore, the results are in keeping with the bias of Public Defender's Office's managers and technicians. The present study did not examine the quality of the legal aid service from the users' perspective, and future research that seeks to understand citizens' perceptions of governance in the Public Defenders' Office is also recommended.

Appendix – Interview Script

I – Introduction:

- a) Clarify to the interviewee the context and objectives of the interview.
- b) Highlight that the data will be analyzed without mentioning names, and maintaining its anonymity.
- c) Request authorization for interview recording.

II – Identification of factors related to Governance:

Inform the interviewee that, for the purposes of this study, Governance is defined as a set of behaviors, standards, values and methods that privilege transparency, balance the interests of different stakeholders, and control the actions of the manager.

- a) In general, what are the main aspects that explain governance and management in the Brazilian Public Defender's Office?
- b) What are the main state mechanisms and external political control structures of the Public Defender's Office? What bodies would be involved in this control?
- c) What are the main mechanisms and internal political control structures of the Public Defender's Office?
- d) What actions would be required to increase access to justice for low-income citizens?
- e) How does the Public Defender's Office work together with organizations or groups in society to improve low-income citizens' access to justice?
- f) With regard to accountability of public and political agents, do you identify any specific actions of the Public Defender's Office to guarantee such attitudes?
- g) In your opinion, what are the resources, competencies and capacities necessary to guarantee the achievement of Public Defender's Office objectives?
- h) Which procedures would ensure that the action of the Public Defender's Office is focused on meeting social interests?

III – Closure:

- a) Would you like to add any other relevant issues related to the Public Defender's Office governance?
- b) Identification of the interviewee: position, sector in which he/she works, time in the position, and academic education.
- c) Request to the interviewee indication of experts in Public Defender's to be interviewed.

Competing Interests

The authors have no competing interests to declare.

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