

ALTERNATIVE REPORT TO THE
CONVENTION ON THE RIGHTS OF THE CHILD -
CONTRIBUTION FROM A GENDER PERSPECTIVE^[1]

CLADEM/Brasil

I. INTRODUCTION

A new paradigm was introduced to Brazilian legal culture by means of the 1988 Federal Constitution, the Children's and Adolescents' Statute (Law 8,069/90) and the Convention on the Rights of the Child, ratified by Brazil on September 24, 1990. This paradigm was inspired by the conception of children and adolescents^[2] as true subjects of rights, in a peculiar condition of development. Brazilian Law may be divided into two phases, before and after 1988. The Brazilian Constitution of 1988 constitutes a legal watershed in terms of the democratic transition and of the institutionalization of human rights in the country.

However, there persists in Brazil an adult-centric culture that perceives life and the world through an adult lens. There remains the culture of 'minorization', in which children and adolescents are seen as minor and inferior in terms of rights and dignity.

The new paradigm introduced by the 1988 Constitution, by the Children's and Adolescents' Statute and by the Convention on the Rights of the Child also encourages the doctrine of integral protection of children and adolescents. It enshrines its own logic and set of principles geared towards ensuring the prevalence and primacy of the superior interests of children and adolescents.

Within a human rights perspective, the Convention on the Rights of the Child, as much as the 1988 Constitution and the Children's and Adolescents' Statute, translate an integral vision of children's and adolescents' human rights, covering the indivisibility of these rights, their reciprocal implementation on a par with all other rights in terms of importance, whether civil, political, social, economic or cultural.

However, Brazilian reality reveals a serious pattern of disrespect for the most elementary human rights to which children and adolescents are entitled. Chief among the serious violations of children's and adolescents' human rights are: a) child labour; b) sexual violence and abuse; c) children and adolescents in conflict with the law; and d) the violation of the rights to health, housing and education. These violations make up the themes of this report.

In the context of the serious violations of children's and adolescents' human rights, it is also fundamental to incorporate perspectives of gender, race, ethnicity and regional inequality. In other words, as well as the specific vulnerability to rights violations resulting from their age, children and adolescents in Brazil face further vulnerability as a result of the double or triple discrimination they suffer due to their gender, race, ethnicity or socio-economic situation. Hence this report's emphasis on violations suffered by girls (e.g., domestic child labour, teenage pregnancy, sexual abuse, trafficking), by Afro-descendants and by children and adolescents who live in rural areas or in the country's poorer regions, such as the North and Northeast. Note, furthermore, that discrimination implies poverty and poverty implies discrimination.

In Brazil, children and adolescents number 61 million, which represents 35.9% of the population. Out of these, 29 million (nearly 50%) are Afro-descendants. Of the total number of children and adolescents, 45% are poor. Poverty affects 71% of indigenous children and 58% of Afro-descendent children.^[3]

With regards to rural children and adolescents, 74% are considered poor. This is twice the rate of poverty among urban children and adolescents — 36,7%.[\[4\]](#)

It is necessary to 'de-naturalize' inequality, as well as the pattern of structural, systematic and persistent violence that affects children and adolescents differently depending on their race, ethnicity, gender and region, among others. If human rights are not a given, but a construct, the same can be said about their violation.

Breaking definitively with the culture and practice that inhibit the construction of children's and adolescents' human rights in a spirit of emancipation, and violate their fundamental rights to respect and dignity, is absolutely urgent.

II. THEMES

II.1. CHILD LABOUR

Despite the fact that: item XXXIII of Article 7 of the Brazilian Constitution of 1988 (modified by Constitutional Amendment nº 20 of November 16, 1998) prohibits individuals under 18 from working at night or doing unhealthy or dangerous work, and individuals under 16 from working at all, except as apprentices from the age of 14; in 2000, the Brazilian State ratified ILO Convention 182 and Recommendation 190 on the Prohibition of the Worst Forms of Child Labour and Immediate Action for its Elimination, which came into force in Brazil on February 2, 2001; the Brazilian State ratified ILO Convention 138 and Recommendation 146 on the Minimum Age for Admission to Employment, which came into force in Brazil on June 28, 2002, what one observes is that, contrary to all these norms, the reality of child labour persists in Brazil.

One must add to this normative framework Article 227 of the Federal Constitution that sets out the State's duty to protect not only the family and society, but also children and adolescents from whatever form of exploitation.

Paragraph 3 of Article 227 includes special forms of protection for children and adolescents, among them: the minimum age of 14 for admission to employment, observing the terms of Article 7, item XXXIII; the entitlement to labour and social security rights; the guaranteed access of teenage workers to schooling.

It is also worth highlighting the fact that Article 5 of the Children's and Adolescents' Statute (Law 8,069 of July 13, 1990) establishes that no child or adolescent will be the object of any form of exploitation. Along these lines, Article 60 reiterates the constitutional prohibition related to under-16-year-olds working, except as apprentices.

With regards to the work of adolescents, the Statute forbids night work, dangerous or unhealthy work, or that performed in places prejudicial to his/her education and physical, psychological, moral and social development. Further, it prohibits work in places and during hours that do not allow him/her to attend school (Article 67).

However, despite this whole legal framework, the Brazilian State has not yet been able to change the actual situation. According to the 2000 Census, 1.14 million children aged between 10 and 14 work in Brazil. This corresponds to 6.6% of the population in this age group.[\[5\]](#) One also observes that rural areas have greater participation of children in the workforce: some 15% of rural children carry out some sort of activity. In urban areas, the figure falls to 4%. According to the Census, of the 1.14 million child workers in Brazil, 370,000 were girls in 2000.

Data from IBGE (Brazilian Institute of Geography and Statistics) for 2003 demonstrate that the number of children in the labour market from the 10-14 age group has been rising. In Brazil's six main metropolitan areas — São Paulo, Rio de Janeiro, Recife, Salvador, Belo Horizonte and Porto Alegre —, the number went from 88,000 to 132,000, a growth rate of 50% in relation to January 2003 and of 76% in one year.[\[6\]](#) This rise in the number of child workers is owed in part to the absence of workplace enforcement on the part of the government.

According to a report sent to the ILO by the Porto Alegre-based Association of Labour Auditors-Inspectors of Rio Grande do Sul state (AGITRA), Convention 81 is disrespected in Brazil due to the inexistence of effective cooperation between inspection and other governmental services and public and private institutions that carry out activities to combat child and slave labour, and to the reduction in the number of labour inspectors since 1990. In that year, they numbered 3,285. By 2003, this had fallen to 2,194. The consequence has been a marked decline in the number of companies inspected, from 414,875 in 1990 to 285,241 in 2003.

An additional factor are the delays in the delivery of federal funds to the states that are party to the Program of Eradication of Child Labour (PETI) and the threatened reduction in resources for this program that attends to more than 810,000 children registered throughout the country, whose families should receive a monthly stipend either of R\$40, in the case of children living in urban areas, or of R\$25, in the case of children living in rural areas. The main aim is to provide financial assistance to families with children under 16, removing them from child labour (often dangerous, unhealthy, hard or degrading).

II.1.1. Domestic Child Labour

Domestic child labour, as well as the usual criticisms applicable to any type of child labour, generates specific concerns due to two peculiarities. The first is that, given that it does not pursue profit, domestic work has an impact in terms of socialization for work that is different from that of entrepreneurial establishments. In this sense, it contributes less towards the experience of children and adolescents than other forms of placement within the labour market. The second is that, given that it takes place in a private sphere and therefore cannot be the object of systematic inspection, domestic work exposes children and adolescents to a series of violations of rights, from low pay and long hours to acts of violence and sexual abuse. Domestic work has further peculiarities by virtue of being predominantly female work.

According to data from the 2001 National Survey by Household Sampling (PNAD), 93% of children and adolescents who do domestic work are female, 63% are Afro-descendent and 45% are under 16 years old.

By virtue of being mainly female, domestic work has the following consequences: in the field of health, many girls suffer from ailments of the nervous system, leading to stomach problems and headaches; in the psychological field, they are forced into a process of accelerated maturing which reduces their childhood; in the social field, their development is harmed since the distance from their families makes them not feel a part of any social group.

Furthermore, it is worth highlighting the fact that girls in the 10-14 age group who do domestic work have on average a 36-hour working week, compared with an average working week of 26 hours for children doing other work activities. This gets worse in the 15-17 age group, in which female workers have on average a 43-hour working week, five hours longer than the average working week for adolescents in general of the same age group.

The picture is even worse when one looks at pay. The average monthly pay of child workers in the 5-9 age group is R\$13, while that of 10 to 14-year-olds is R\$56. Some child workers in these age groups work for no pay.

In June 2004, the ILO released a pioneering report on the situation of domestic child labour throughout the world. According to this report, Brazil has 559,000 domestic workers in the 10-17 age group, most of whom are overworked girls.

II.2. SEXUAL VIOLENCE AND ABUSE

Brazil has legal instruments for protecting children and adolescents from all forms of abuse and violence in general, and sexual abuse in particular. As well as having ratified the Additional Protocol to the Convention on the Rights of the Child that refers to the Sale of Children, Child Prostitution and Pornography, which came into force in Brazil on February 24, 2004, Paragraph 4 of Article 227 of the 1988 Federal Constitution sets out that the law shall punish severely the abuse, violence and sexual exploitation of children and adolescents.

Regarding domestic violence, Paragraph 8 of Article 226 of the 1988 Federal Constitution sets out that the State shall ensure assistance to all the members of the family and create mechanisms to contain violence within its relations.

Following the principle stipulated by the Constitution, the Children's and Adolescents' Statute in Articles 240, 241 and 244-A considers it a crime to: produce or direct a theatrical, TV or cinema performance that uses a child or adolescent in an explicit sexual or pornographic scene; photograph or publish an explicit sexual or pornographic scene involving a child or adolescent; submit a child or adolescent to prostitution or sexual exploitation.

Article 244-A, which was added to the Children's and Adolescents' Statute by Law 9,975 of June 23, 2000, also criminalizes the proprietor, manager or other person responsible for the place where children or adolescents are submitted to prostitution or sexual exploitation. If he/she is convicted, the establishment automatically loses its license to operate.^[7]

Furthermore, Federal Law 9,970, passed on May 17, 2000, instituted May 18 as National Day of Combat to the Abuse and Sexual Exploitation of Children and Adolescents.^[8]

Even though Brazilian legislation comprehensively protects children and adolescents from any type of violence or abuse, including sexual abuse, it is possible to diagnose that this group still is the object of significant rates of violence and abuse, and that the problem is still far from solved.

In fact, one observes the beginning of a process of effective investigation of such crimes, in which the universe of reports, statistical data and other information is still the tip of an iceberg, made up of a pattern of human rights violations and covered up by 'hidden figures'. The tip of this iceberg is still far from reflecting reality.

In June 2003, a Joint House-Senate Commission of Inquiry into Sexual Exploitation was set up. It is investigating 186 cases of sexual abuse and exploitation of children and adolescents in 21 Brazilian states: 33 in Mato Grosso; 20 in Rio Grande do Norte; 17 in Paraíba; 16 in Minas Gerais; 14 in Rio Grande do Sul; 13 in Mato Grosso do Sul; 11 in Pará; 11 in Paraná; 8 in Bahia; 7 in Ceará; 7 in Rondônia; 7 in Santa Catarina; 5 in Acre; 5 in Roraima; 4 in São Paulo; 3 in Espírito Santo and 1 each in Alagoas, Amazonas, Amapá, Sergipe and Tocantins.

One of the main cases is in Porto Ferreira, São Paulo state, where ten people were convicted on April 19, 2004 of recruiting girls for sex. Of the group, six were city councillors. One of the more worrying facts arising from the investigation is that in many cases there is the participation of people in positions of local authority. In the town of Pompeu in Minas Gerais state, the mayor and local businessmen are under investigation for creating a network of sexual exploitation involving adolescents. In the state of Maranhão, two mayors, a city councillor and a state assembly member are answering for crimes of sexual violence and other forms of sexual abuse and exploitation of adolescents.

Furthermore, it is pointed out that there are 650 locations along federal highways where children and adolescents are sexually exploited.^[9] The Parliamentary Commission of Inquiry will request the indictment of some 250 people for the sexual recruitment of children and adolescents, among them judges, entrepreneurs, doctors, pastors and politicians.^[10]

The National Multi-professional Association for the Protection of Children and Adolescents (ABRAPIA), through the National System for Combating the Sexual Exploitation of Children and Adolescents (0800-990500), received 1,547 complaints, between January 1, 2000 and January 31, 2003. The states with the most complaints were Rio de Janeiro (29%), São Paulo (13%) and Minas Gerais (7.6%).

In 76.29% of the total number of cases, the victims were female; in 17.05%, male and, in 6.27%, both male and female. According to the ABRAPIA database, the absolute majority of victims of sexual abuse was made up of girls.

As for the perpetrators of violence, 90.05% were male, while 4.52% were female and 4.97% were both male and female.^[11] Note, therefore, that with regards to sexual abuse and exploitation, gender inequality is dominant, with men the perpetrators and girls the victims.

As for physical (not sexual) violence, the data on youth homicide^[12] contained in *Mapa da Violência IV* (Map of Violence IV)^[13] stand out. They demonstrate that over the course of the period 1993-2002, the number of homicides of youngsters (in the 15-24 age group) grew 88.6%, that is, it almost doubled.

It is important to compare the rate of youth homicide with the general rate of homicide, for in 2002, the latter was 28.4 per 100,000 inhabitants, while the former was almost twice as much (54.7). The young population is becoming more and more a victim of homicide.

In relation to fatal violence against youth, the gender issue is inverted. In 2002, 93.8% of youngsters killed were male and 6.2%, female.

Sexual abuse and violence against children and adolescents have increased in recent years. Regarding sexual abuse in the strict sense, the very production of the information for the construction of a true picture of the problem is complex.

By virtue of being a type of violence that often takes place in the family environment^[14] and that involves a level of inequality between victim and aggressor, it is very difficult to have a true diagnosis of the existence of this type of violence, which ends up being under-reported. Furthermore, as demonstrated by the cases investigated by the Joint House-Senate Commission of Inquiry into Sexual Exploitation, there is a deep involvement in this type of crime on the part of authorities such as mayors, city councillors and lawmakers, among others, which makes it even more difficult for complaints to be actually filed.

Finally, it is worth mentioning the report of the UN special *rapporteur* on the sale of children, child prostitution and pornography, Juan Miguel Petit, of November 2003, which highlights gender prejudice as a deep-rooted cause of sexual exploitation.^[15] It stresses the fact that homosexual, bisexual and transsexual adolescents are even more exposed to violence, in particular to psychological violence, and that society's hostile reactions to gender and sexuality end up marginalizing them and leading them to situations of exploitation. It concludes that the vicious cycle of violence, poverty, exclusion and discrimination perpetuates the violation of children's rights and pushes those most vulnerable towards sexual exploitation. Finally, it points out factors that explain the sexual abuse and exploitation of children and adolescents: a) society's extreme tolerance and justification of sexual abuse and violation of children's and adolescents' rights; b) social programs do not include families living in situations of extreme poverty and social exclusion; c) gender relations that reinforce male power; d) race and ethnicity as determinants of social exclusion; e) media representation of the human body as an object for consumption; f) children and adolescents beginning their sex lives earlier and earlier; and g) limited work opportunities for adolescents with access only to precarious education.^[16]

II.3. THE TRAFFICKING OF GIRLS AND YOUNG WOMEN IN BRAZIL

The Brazilian Constitution of 1988 guarantees to children and adolescents, as an absolute priority, the right to life, health, food, education, leisure, job training, culture, dignity, respect, freedom and family and community coexistence, as well as the right not to experience negligence, discrimination, exploitation, violence, cruelty and oppression. Paragraph 4 of Article 227 of the 1988 Federal Constitution states that the law shall punish severely the sexual abuse, violence and exploitation of children and adolescents.

It is worth adding that Brazil ratified the Additional Protocol to the Convention on the Rights of the Child that refers to the Sale of Children, Child Prostitution and Pornography, which came into force in Brazil on February 27, 2004.

Articles 238 and 239 of the Children's and Adolescents' Statute consider a crime the following behaviours: to promise to hand over or hand over a child or tutee to a third party in return for payment or reward; to make an offer of or actual payment or reward; and to promote or aid the actualization of an act meant to send a child or adolescent abroad without observance of the legal formalities or with the aim of obtaining a profit.

Despite the absence of accurate statistics, it is estimated that every year some 1.2 million girls and boys are victims of child trafficking and are forced to work in agriculture, mining, factories in armed conflict zones, domestic work and sexual exploitation. The issue warrants growing global concern.^[17]

In several countries, domestic child labour is directly linked with the trafficking of girls and boys, who are recruited in rural areas for domestic service in urban areas. Poor girls are most vulnerable to this type of recruitment, a culturally acceptable practice in many places. The employment of children as domestic workers, with abuses and exploitation, is difficult to detect, as it is not subject to inspection. There are cases of girls who are forced to have sex with men of the family and work under conditions analogous with slavery.

In Brazil, the Labour Prosecution Service has been registering various cases of child and adolescent trafficking in the Jequitinhonha River Valley, Minas Gerais state. The children, mainly teenage girls, are taken to the homes of third parties to live and carry out domestic services. Many of them end up disappearing or being used in commercial sexual exploitation.

According to the ILO, much of the trafficking of women, boys and girls in the Americas and the Caribbean has tourist centres as its destination, where there is a great demand for commercial sex.

According to research conducted by the Children's and Adolescents' Reference, Studies and Action Centre (CECRIA), in Brazil, trafficking for sexual ends is mainly of black and mixed-race women and girls aged 15 to 27, of whom 30.6% are 16 and 17 years old.[\[18\]](#)

Data presented in October 2000 at the First International Seminar on the Trafficking of Human Beings held in Brasília under the auspices of the Helsinki Human Rights Foundation, a Finnish NGO, showed that Brazil is responsible for around 15% of the women who leave South America to work in cabarets, brothels, saunas and similar establishments throughout the world. [\[19\]](#)

At another seminar held in Brasília in 1996, it was confirmed that Brazil is South America's biggest exporter of children for sexual exploitation purposes. [\[20\]](#)

Child prostitution is becoming a recruitment market much like the drugs market. This type of market can be found in Brazil's main capitals and highways.

The profile of the victims of people smuggling in Brazil is of women of African descent, aged between 15 and 25, from poor backgrounds, with low levels of schooling and low-paid work. The younger ones have already suffered some kind of sexual violence. These findings are in the first survey on the Trafficking of Women, Children and Adolescents for Commercial Sexual Exploitation in the Country, presented at the Ministry of Justice on June 20, 2002. [\[21\]](#)

Among the survey's findings were the causes of people smuggling for sexual exploitation: violence and socio-economic and cultural relations. The smuggling of women goes mainly through Spain, the Netherlands, Venezuela and Portugal. But it is not only international. Inside the country, girls are taken from the interior to the state capitals with the promise of better lives but end up sexually exploited. In the Centre-West region, the state of Goiás has the most serious problem. In the Northeast region, it is Maranhão; in the North region, Pará, Roraima and Amazonas. The survey also shows that 59% of the recruiters are men. Of those identified in the survey 109 are Brazilians and 52 are foreigners, making up a total of 161 individuals.

However, in Brazil there is no information available that might indicate appropriately the true scale of child trafficking. Attempts made to map out the issue have stumbled upon the absence of specific national legislation, despite the fact that Brazil is a signatory to important international instruments. Between 1997 and 2000, the National Multi-professional Association for the Protection of Children and Adolescents (ABRAPIA), received only 36 reports of the trafficking of children and adolescents, which came, by order of magnitude, from Rio de Janeiro, Minas Gerais, Bahia, Pernambuco, Paraná, São Paulo, Rio Grande do Sul, Rio Grande do Norte and Goiás. The vast majority (84.84%) referred to the trafficking of girls. Out of a total of 246 Federal Police investigations conducted between the start of 1999 and September 2001, 28 related to the trafficking of children and adolescents, 33 to child sexual exploitation, 60 to pedophilia and 6 to child prostitution.[\[22\]](#)

II.4. CHILDREN AND ADOLESCENTS IN CONFLICT WITH THE LAW

In Brazil, the penalty of deprivation of freedom is not admitted for children. It is only admitted for adolescents submitted to the due legal process, with ample rights to defend themselves and found guilty of offences with violence or serious threat to the human person.

In the light of the principle of brevity, exceptionality and respect for the peculiar condition of the developing person, when applying any measure of deprivation of freedom (Federal Constitution of 1988, Article 227, Paragraph 3, Section V), the maximum length of the period is 3 years. The sentence must be served in an establishment meant exclusively for adolescents. Any contact with adult prisoners is forbidden.

The adolescent may be arrested if caught in the act of committing the offence or by a written, well-grounded order of a judicial authority, under the terms of Article 106 of the Children's and Adolescents' Statute. In the case of a judicial order, the adolescent shall be sent immediately to appear before a judicial authority, under the terms of Article 171 of the Children's and Adolescents' Statute.

An adolescent arrested in the act of committing an offence is taken before an adequate police authority, preferably a specialized police station (or, in the absence of one, to facilities separate from those meant for adults, as set out in Article 172 of the Children's and Adolescents' Statute). Under no circumstances must an adolescent be detained in a police facility, unless the offence committed was a violent one or one that posed a serious threat to the human person. Even then, the maximum period of detention is of 24 hours.

The socio-educational measures contained in the Children's and Adolescents' Statute (Article 112 and following) as strictly coherent with the Convention on the Rights of the Child, the Beijing Rules and the Minimum UN Rules for the Protection of Youth Deprived of Freedom.

In Brazilian Law there is no possibility of the death penalty, life imprisonment or forced labour, even for adults, under the terms of Article 5, Section XLVII, of the 1988 Federal Constitution.

The socio-educational measures contained in the Children's and Adolescents' Statute are the following: warning (Article 115); obligation to repair the damage (Article 116); provision of community services (Article 117); assisted freedom (Article 118); placement in a semi-freedom regime (Article 120); and internment in educational establishment (Article 121).[\[23\]](#)

A report produced by the Institute of Applied Economics Research (IPEA) in August 2003, paints a picture of the situation of institutional attention provided to adolescents in conflict with the law in Brazil during September and October 2002.[\[24\]](#) It states that this universe is predominantly a male one: in Brazil, some 94% of youngsters whose sentences deprive them of their freedom are male. In other words, during September and October 2002, out of every hundred internees, only six were girls.

The report also says that internment institutions for girls, when they exist in the states, are often underused. This, in the opinion of their administrators, means that it would be possible to provide more individualized care and better accommodation.

However, the report produced in 2002 by the childhood *rapporteur* of the Inter-American Human Rights Commission of the OAS[\[25\]](#) pointed out a series of reports of violence and torture in adolescent internment institutions. An example is the case reported in *Jornal do Brasil* newspaper on December 6, 1995. Eight teenage girls interned in Escola Santos Dumont in Rio de Janeiro were beaten and tortured. The main perpetrator of the violence allegedly was the very director of the unit. The report concluded: "La Comisión considera que los derechos del niño protegidos tanto en los instrumentos internacionales de los cuales Brasil es parte, como en la legislación interna de este país, en la práctica, frecuentemente no se observan. En efecto, los casos de tortura de niños y adolescentes persisten y siguen siendo denunciados ante la comunidad brasileña e internacional."[\[26\]](#)

According to information contained in IPEA report, out of the 190 units researched in Brazil, 71% of the administrations considered the physical environment inadequate in relation to the needs of the pedagogical project of applying the socio-educational measures. Furthermore, various units were full beyond capacity, with reports of single rooms with five occupants and collective rooms with more than double their capacity. A serious case was observed in UI-09 in São Paulo (Tatuapé), where there were only two rooms, one with 60 and another with 20 youngsters. In another case in Pernambuco, even the classrooms were being used to house the adolescents, due to the overcrowding of the bedrooms.[\[27\]](#)

The IPEA report highlighted various difficulties in the provision of schooling to the adolescents deprived of freedom in the internment units researched. The main ones were: insufficient/inadequate physical space; lack of teachers; teachers inadequately trained in working with adolescents; lack of motivation/interest on the part of students; difficulty in maintaining criteria for dividing classes; different periods of stay at the institution; prejudices aimed at the adolescents in outside activities; discrimination on the part of teachers; insufficient/inadequate teaching materials; non-provision of certification; overcrowded classrooms; difficulties participating due to drug use; inexistence of criteria to evaluate learning; inadequate state school calendar; school inadequately structured relative to the other activities of the institution.

The IPEA report pointed out the following difficulties for the provision of health services to the interned youngsters: insufficient materials; insufficient frontline staff; insufficient staff for the control of medication; insufficient or inadequate physical space; insufficient equipment; insufficient training of the available professionals; absence of treatment of substance abusers; insufficient in-patient facilities in the public health system; prejudice on the part of public health system staff; delays in booking appointments; difficulty in setting up partnerships; difficulty in obtaining specialized care and tests on the public health system.

Given this information, one concludes that the institutional care for adolescents deprived of freedom still is precarious and that health, education and adequate space for the pedagogical project of re-socialization still face difficulties to exist in practice. Further, occasional items of information on positive attention offered to teenage girls deprived of freedom coexist with reports of ill-treatment and torture.

II.4.1. Recruitment of Children and Adolescents for Drug Trafficking

According to Luke Dowdney,^[28] from 1993, children and adolescents began substituting older traffickers, given that many were arrested or killed in confrontations with rivals or the police. In his study, the author states that children who live in the 'favelas' of Rio de Janeiro are exposed from a very early age to drug trafficking. Those who take an interest, start following the dealers around and, between the ages of 10 and 15, decide voluntarily to work with them full-time, without having been forced or coerced by the crime factions.

The choice of working in the drug trade may be defined as the best alternative among the limited options open to children who live in the 'favelas' of Rio de Janeiro: domination by the factions; poverty; lack of access to the formal labour market; and the drug trade seen as an acceptable form of employment.

The author adds that security experts estimate that those employed by the factions constitute 1% of the population of the 'favelas', that is, some 10,000 people, most of whom are armed. It is estimated that between 5,000 and 6,000 of these are under 18.

Luke Dowdney's work helps one clarify the issue of the recruitment of children and adolescents by the drug traffickers. This is a particularly worrying problem in Brazil, given that there is a lack of accurate information about it.

II.5. RIGHTS TO HEALTH, EDUCATION AND HOUSING

Article 6 of the 1988 Federal Constitution lays down that education, health, security, work, leisure, social security, protection of maternity and infancy and assistance to the needy are social rights. To this list was added, by means of Constitutional Amendment n° 26 of February 14, 2000, the right to housing.

Article 227 of the 1988 Federal Constitution sets out among the duties of the family, society and the State, ensuring to children and adolescents, as an absolute priority, access to health, food, education, leisure, job training and culture, among others. The contents of Article 4 of the Children's and Adolescents' Statute go in the same direction.

With regards to economic, social and cultural rights, much remains to be done in relation to the actual respect for Article 4 of the Convention on the Rights of the Child. This contains the obligation of States to adopt all

necessary measures (be they administrative, legislative or others), to the full extent of available resources and, when necessary, with international cooperation, for the Convention's full implementation.

Greater transparency in the allocation of budget funds is necessary, demonstrating that priority was actually given to the implementation of economic, social and cultural rights, especially with regards to children and adolescents.

In parallel with such transparency, society's right to participate must be preserved, with an emphasis on children and adolescents as protagonists, on the choice of public policies with a view to the actualization of social rights and on true enforcement of the implementation of the public policies needed.

However, the global escalation of misery, a product of the structural adjustment economic policies of the last few years, has led to much growth in the phenomenon of social exclusion, especially in developing countries. This affects most deeply the more vulnerable social groups, among them children and adolescents.

II.5.1. The Right to Health

The 1988 Federal Constitution establishes in Paragraph 1 of Article 227 that the State shall promote programs of comprehensive health care for children and adolescents as a fundamental right with an absolute character and as a priority. The Children's and Adolescents' Statute deals with the right to health in Articles 7-14.

In confronting the right to health and the gender issue, the problem of teenage pregnancy stands out. The early formation of a family as a result of a pregnancy has serious implications for the development of youngsters in general and of teenage girls in particular, with effects in the fields of family stability and education.

According to IBGE data, the number of pregnant 15 to 19 year-old girls has risen 15% since 1980. In 1999, approximately 27% of births performed in the Brazilian public health system (SUS) were of 10 to 19 year-olds, which corresponds to 756,553 births. Of this total, 1.3% were of 10 to 14 year-olds.

The National Survey by Household Sampling (PNAD) carried out by IBGE in 1992, 1995 and 1999, shows the data on the total number of girls in Brazil, the number who had children and the respective percentages:

| Total in 1992 | Number who had children | % who had children | Total in 1995 | Number who had children | % who had children | Total in 1999 | Number who had children | % who had children |
|---------------|-------------------------|--------------------|---------------|-------------------------|--------------------|---------------|-------------------------|--------------------|
| 4,420,857 | 302,119 | 6.8 | 4,900,166 | 357,227 | 7.3 | 4,903,621 | 211,702 | 4.3 |

With the passing of time, the percentage of adolescents who became pregnant and had children fell approximately 36%, which denotes the effectiveness of government programs of sex education and prevention of early pregnancy.

However, the worry remains in relation to the socially excluded segments. The coming together of factors such as the low level of information girls have (often as a result of low schooling levels) with the low rate of pre-natal care, lead to a potentially dangerous situation in which both the health-related and the social consequences converge to perpetuate exclusion.

Several studies have detected a clear link between poverty and pregnancy in adolescence. Among homeless families in 1997, 37% of women had had children by the time they were 20 years old. Among poor women, this percentage fell to 12%. In the same year, among families who live on less than one minimum wage per capita,

8.9% of 15-17 year-olds had had children. Considering families who live on more than twice the minimum wage per capita, this percentage is only 0.8%.[\[29\]](#)

With regards to infant mortality, there was a significant drop between 1989 and 1998: the rate went from 52.02 to 36.10. However, the regional variations stand out. In the North and Northeast regions the rates were 47.42 and 77.82 in 1989, while in the South and Southeast regions the rates were 29.20 and 35.86, respectively. By 1998, these had fallen to 35.20 and 57.91 in the North and Northeast regions, and to 22.39 and 24.76 in the South and Southeast regions, respectively. The North and Northeast regions have markedly higher rates than the South and Southeast regions. This regional difference persisted throughout the 1980s and 1990s.

II.5.2. The Right to Education

Article 225 of the 1988 Federal Constitution elevated education to the condition of a right for all and a duty of the State and the family, which was reinforced by Article 53, and subsequent ones, of the Children's and Adolescents' Statute.

However, Constitutional Amendment n.º 14 of September 12, 1996, by altering Section II of Article 208, abolished the progressive extension of the compulsory and gratis nature of education by reducing the minimum length of compulsory schooling from 11 to 8 years. This change makes clear the State's policy creating a mass system to the detriment of quality.

Educational inequality is one of the main violations of women's and girls' rights, as well as an important barrier to their social and economic development. The eradication of illiteracy is a pre-condition for achieving real social equality and full citizenship.

The Brazilian educational structure is divided into basic infant education (0 to 6 years of age), with nursery and pre-school; 'fundamental' schooling (7 to 14 years of age); and 'medium' schooling (15 to 17 years of age).

At nursery level, the first stage of basic education, girls represent 48.6% of the total number of registrations. Data from IBGE[\[30\]](#) reveal that the percentage of girls and boys in 'fundamental' schooling out of the total child and adolescent population is practically the same, both over 95%. However, considering the size of the Brazilian population, those nearly 5% excluded from the system represent a very large number of children and adolescents.

According to data from the 2003 School Census conducted by the Anísio Teixeira National Institute of Educational Studies and Research (Inep/MEC) of the Ministry of Education, of the 5,395 Brazilian municipalities that have students in 'medium' schooling, female adolescents are the majority, i.e., make up half or more of the student population, in 73.4% of them.

This situation is replicated in every state capital. The one with the highest rate of female presence in school is João Pessoa (capital of Paraíba state), with 57.7%. The one with the lowest rate of female presence in school is São Paulo, with 51.7%, almost a gender balance.

In Brazil, out of 9,072,942 students in 'medium' schooling, 54.1% are female. The data of the School Census and of the Higher Education Census show that as the level of schooling goes up, so does the female participation. One of the explanations is that women manage to stay within the education system, hence reaching in greater numbers the final stage of each level of schooling.

The average number of years spent in education is also higher for women than for men in Brazil. According to the 2002 National Survey by Household Sampling (PNAD) conducted by IBGE, women 15 years old or older have an average of 6.7 years of schooling, whereas for men, the figure is 6.4 years of schooling. This phenomenon is a result of women's insertion in the labour market, which compels them to seek more qualifications, hence improving their level of schooling.

II.5.3. The Right to Housing

As mentioned earlier, the right to housing was added to the list of social rights contained in Article 6 of the 1988 Federal Constitution by means of Constitutional Amendment n.º 26 of February 14, 2000. The Children's and Adolescents' Statute does not relax this right whatsoever.

II.5.3.1. Inadequate Homes

The combination of some indicators classifies homes as adequate, semi-adequate and inadequate.^[31] Adequate homes are those with running water, sewage system or septic tank, direct or indirect rubbish collection and up to two residents per bedroom. In semi-adequate homes, there are only three, two or one of these characteristics. Inadequate homes have none of the characteristics.

In 2000, 19.6 million Brazilian homes were adequate and 2.2 million, inadequate. This corresponded to 43.9% and 5.1% of the total number of homes in existence in the country, respectively. Back in 1991, only 32.8% of homes were adequate, while 11% were considered inadequate.

In every Brazilian region, except the Southeast (where nearly 60% of homes were adequate in 2000), under half the homes were adequate. The North region had the worst situation with only 15% of adequate homes. Despite the fact that the situation remains unsatisfactory, between 1991 and 2000, the number of adequate homes grew by 33.7%, and that of inadequate homes fell by 53.6%.^[32]

II.5.3.2. Homes in 'Favelas'

The larger municipalities concentrate 70% of the homes in 'favelas'.^[33] In 2001, 1,269 Brazilian city/town councils (23% of the total number of municipalities) declared that there existed 'favelas' or districts with other types of precarious housing in their territory. However, only 13% stated that they had records of this type of housing. The total recorded number of 'favelas' is 16,433 with 2,362,708 registered homes. Of these, 1,654,736 (70%) are located in the 32 largest municipalities of the country (with over 500,000 inhabitants). All of the 32 largest municipalities declared that they had 'favelas' in their territory.

Of the country's regions, the one with the largest absolute number of registered homes in 'favelas' is the Southeast, with 1,405,009 homes over 6,106 recorded communities. Out of the region's 1,668 municipalities, 379 (23%) stated that they had 'favelas' in their territory. However, in relative terms, the South region is the one for which most municipalities declared having 'favelas', 30%. The region has 7,077 registered 'favelas' — more than the Southeast — but the number of homes located in them much smaller, 290,645. The Centre-West is the region where fewest municipalities stated they had 'favelas' in their territory, 10%.

In the Metropolitan areas, 79% of municipal governments informed that they had this type of housing in their territory, of which 56% recorded.

This housing picture demonstrates a situation of outrageous negligence on the part of the State, which often also means that there are no minimum living conditions in these areas. In the main urban centres the situation in terms of dangerous or precarious housing is even worse.

This setting presents girls and young women with various problems related to issues such as crime and drugs, education and training, precarious sports and leisure facilities, difficulties entering the labour market etc.

II.5.3.1. Child and Adolescent Street-Dwellers

The quantitative and qualitative data available about the child and adolescent street population are imprecise. Despite the efforts of students, researchers and academics who work on the issue, Brazil does not possess accurate and up-to-date data on the phenomenon at the national level.

Some data on the situation in the São Paulo municipality depict the extremes of this form of exclusion. According to a count made in 1997, [34] 76.72% of the children found on the streets were male and 19.66% were girls and young women. Another one, [35] of 2003, found that children aged 0-17 represent 7.4% of the total population of street dwellers [36] and that 3.3% are boys and girls aged 7-14. By comparing the information of the 2000 Census obtained by FIPE (in which children represented 8.4% of the total) with that of the 2003 survey, one observes that the percentage of the infant population of the streets gradually went down, as did the total number of children.

The daily lives of São Paulo street-dwelling girls are restricted to begging or selling sweets, candies or other minor items. Many complain about the lack of friendship in the family and the ill-treatment they get from parents or guardians. They live in dangerous neighbourhoods and use drugs frequently. A significant proportion of them have already been victims of violence on the part of adults or the police. They consider the world of crime a difficult one and believe they cannot live with their parents.

III. RECOMMENDATIONS [37]

- 1) Strengthening the conception of children and adolescents as true subjects of rights, undergoing the peculiar condition of development;
- 2) Conferring absolute priority to children's and adolescents' rights, consolidating the doctrine of integral protection;
- 3) Incorporating the value of diversity for the defence, protection and promotion of children's and adolescents' human rights, under the perspectives of gender, race, ethnicity and social and economic inequality, among other criteria;
- 4) Stimulating the leading role of children and adolescents, ensuring their participation in the formulation, implementation and social control of public policies;
- 5) Investing in the education and training of the professionals in charge of promoting and protecting children's and adolescents' rights in the sphere of public institutions and non-governmental organizations;
- 6) Ensuring the eradication and prevention of any form of child labour, with special attention to domestic work done fundamentally by girls;
- 7) Strengthening the Program of Eradication of Child Labour (PETI), supporting income-generation initiatives for the families of children attended to by the program so as to promote local integrated sustainable development;
- 8) Guaranteeing families' citizenship by means of a national welfare policy focused on combating poverty, ensuring the integral protection of families, children and adolescents, respecting social, ethnic, cultural, gender, generational, physical and mental diversities;
- 9) Ensuring the expansion of violence prevention programs geared to the specific needs of children and adolescents, respecting social, ethnic, cultural, gender, generational, physical and mental diversities;
- 10) Promoting research and studies that identify the causes, consequences and costs of violence against children and adolescents, as well as ways of preventing it; improving the gathering of data on this violence, so as to make viable the formulation of public policies geared to its prevention, combat and eradication;

- 11) Creating, implementing and monitoring a national plan for the prevention and eradication of violence against children and adolescents, allowing greater cooperation and exchange of information related to the prevention of this violence, as well as strengthening the responses for victims;
- 12) Monitoring the broadcast of acts of domestic violence by the media and demanding political responsibility from them in this approach;
- 13) Combating child and adolescent sexual exploitation and people smuggling, creating prevention and surveillance systems that include transparent social control over the measures to lower the levels of all forms of violence;
- 14) Stimulating the development, monitoring and evaluation of socio-educational programs with the participation of family members to attend to adolescents who commit acts of transgression;
- 15) Giving priority to socio-educational measures in open settings to attend to adolescents in conflict with the law;
- 16) Ensuring adequate institutional care for adolescents deprived of freedom, inspired in the pedagogical project of re-socialization so that the internment units provide appropriate physical spaces and health and education services;
- 17) Securing public health policies with universal and equitable access that promote and protect the health of children and adolescents, incorporating perspectives of gender, race, ethnicity and socio-economic, regional and urban/rural inequality;
- 18) Providing incentives for and supporting health promotion programs and basic actions at family and community level, respecting regional peculiarities;
- 19) Strengthening sex education programs in schools, adopting a historical perspective to approach gender relations, investing in training programs for youngsters, teachers, pedagogues and other education workers at 'fundamental', 'medium' and university level;
- 20) Promoting sexual and reproductive health programs for youngsters of both sexes, ensuring the active participation of these youngsters and their diversity, providing the information, inputs and medication necessary to the exercising of a responsible, healthy and safe sexuality;
- 21) Ensuring the universalization of children's education based on the principles of democratization of access, permanence, management and quality, inspired in the values of human rights, citizenship and peace, with a view to the effective eradication of illiteracy;
- 22) Guaranteeing a policy of integral and integrated educational provision that favours the universalization of access and permanence in infant education with professionals specialized in children's bio-psycho-social development, observing perspectives of gender, race, ethnicity and socio-economic inequality;
- 23) Promoting and implementing a decentralized national housing policy that secures the right to adequate housing for all;

Creating and strengthening educational programs for the respect of children's and adolescents' rights both in formal and non-formal education, with ample publicity for the Convention on the Rights of the Child and the Children's and Adolescents' Statute.

[1] This report was produced under the coordination of Flávia Piovesan and Sílvia Pimentel, with a research team made up of Alessandra Passos Gotti Bontempo, Carla Bertucci Barbieri, Carolina de Mattos Ricardo and Mário Thadeu Leme de Barros Filho.

[2] Note that under the terms of Article 2 of the Children's and Adolescents' Statute, a person is considered a child up to the age of eleven, and an adolescent between the ages of twelve and eighteen. Differently from the Convention on the Rights of the Child, that understands a child to be any human being under the age of eighteen, (except if, in conformity with the law applicable to children, adulthood is reached earlier), Brazilian Law distinguishes between children and adolescents. Such distinction will be considered throughout this report.

[3] Regarding this, see *Relatório da Situação da Infância e Adolescência Brasileiras: Diversidade e Equidade*, UNICEF, 2004.

[4] *Relatório da Situação da Infância e Adolescência Brasileiras: Diversidade e Equidade*, UNICEF, 2004.

[5] Source: Censo 2000, IBGE.

[6] Source: Censo 2003, IBGE.

[7] Legislative information extracted from the Consolidated Report (initial and first two periodic reports) to the Committee on Children's Rights, prepared by the Federal Republic of Brazil, in October 2003, p. 129.

[8] Sexual exploitation may be defined as "a type of violence against children and adolescents, whose context is the culture of the body (of the use of the body), the ethical and legal standard, work and the market (...) which causes bio-psycho-social harm to the exploited, who are people undergoing development." Hence, sexual violence (here generically termed sexual exploitation) is divided into two main, inter-related groups: sexual abuse (intra-familii and extra-family) and commercial sexual exploitation – that is, people trafficking for sexual ends, prostitution, sexual tourism and pornography." In: *Segundo Relatório Nacional sobre Direitos Humanos no Brasil*, apud CECRIA, Mesquita Neto et. al., São Paulo: Comissão Teotônio Vilela de Direitos Humanos, 2002, p. 27.

[9] In the words of the head of the Crime Prevention Division of the Federal Highways Police: "There is no government structure to take in the children and adolescents rescued in actions. Most of the time, the only thing the police officer can do is send the person back to the family, which does not make much of a difference." (*Folha de São Paulo* newspaper, *Cotidiano* section, p. C1, May 18, 2004.)

[10] 'Report of the Parliamentary Commission of Inquiry into Sexual Exploitation is approved', *Estado de São Paulo* newspaper, p. C5, July 9, 2004.

[11] The full ABRAPIA Report on Sexual Abuse may be obtained on their website: <http://www.abrapia.org.br/>

[12] For the purposes of *Mapa da Violência IV*, youth are people aged between 15 and 24.

[13] Waiselfiz, Julio Jacobo. *Mapa da Violência IV: os jovens do Brasil*. Brasília: UNESCO, Instituto Ayrton Senna, Secretaria Especial dos Direitos Humanos, 2004.

[14] In the above-mentioned ABRAPIA report, out of 418 complaints filed between January 2000 and January 2003, in 54.55% of cases, there is a family bond between victim and aggressor.

[15] 'The Rights of the Child', report prepared by UN special *rappporteur* Juan Miguel Petit. Addendum on the sale of children, child prostitution and pornography - November 2003.

[16] 'Children's Rights', report prepared by UN special *rappporteur* Juan Miguel Petit. Addendum on the sale of children, child prostitution and pornography - November 2003, p.10/11.

[17] Source: <http://pgt.mpt.gov.br/noticiais/2003/06/n220.html>

[18] As in note 17.

[19] Priscila Siqueira, "Globalização e Tráfico de Mulheres", in www.pagu.org.br/leituras/004.pdf

[20] As in note 17, p. 4.

[21] The work was coordinated by the Children's and Adolescents' Reference, Studies and Action Center (CECRIA) in partnership with the State Secretariat for Human Rights and the Institute for International Law and Human Rights of DePaul College of Chicago, USA. International organizations supported it financially. The idea came out of complaints made by human rights bodies, the UN and the OAS. The aim is to provide guidelines for the adoption of measures to confront the problem in Brazil and other countries of Latin America and the Caribbean. Some 130 regional researchers in 20 states took part in the survey. They underwent training in June 2001, which included conceptual, theoretical-methodological and operational discussions. For more information, consult the website of CNDM/MJ, under 'notícias de 20 de Junho de 2002': www.mj.gov.br/sedh/cndm/noticias/noticias.htm.

[22] Damásio de Jesus, *Tráfico Internacional de Mulheres e Crianças – Brasil*, São Paulo: Ed. Saraiva, 2003.

[23] Legislative information extracted from the Consolidated Report (initial and first two periodic reports) to the Committee on Children's Rights, prepared by the Federal Republic of Brazil, in October 2003, p. 111 and following.

[24] *Adolescentes em conflito com a lei: situação do atendimento institucional no Brasil*. Enid Rocha Andrade Silva and Simone Gueresi. Brasília, 62, text for discussion | 979 | Aug. 2003, IPEA.

[25] *La infancia y sus derechos en el sistema interamericano de protección de derechos humanos, Relatoria de la Niñez*, Comisión Interamericana de Derechos Humanos, Organización de Estados Americanos, 2002, Latingráfica, Argentina.

[26] As above, p. 192/193

[27] IPEA, p. 34.

[28] Dowdney, Luke. *Crianças Combatentes em Violência Armada Organizada: um estudo de crianças e adolescentes envolvidos nas disputas territoriais das facções de drogas no Rio de Janeiro*. ISER, Viva Rio, 2002, p. 8.

[29] Source: IBGE, 1998.

[30] Pesquisa Nacional por Amostra de Domicílios, 1999 (CD-ROM). Microdados. Rio de Janeiro: IBGE, 2000.

[31] Source: Census, 2000, IBGE.

[32] Source: Census, 2000, IBGE.

[34] Contagem de Meninos e Meninas de Rua, June 1997, carried out by the Family and Welfare Department of São Paulo City Council. The count came to a figure of 1,465 children.

[35] 'Relatório Final de Estimativa do Número de Moradores de Rua e Estudos dos Resultados Obtidos com o SIS Rua', report prepared in October 2003, resulting from a survey conducted by a partnership of the Family and Welfare Department of São Paulo City Council and the Institute of Economics Research Foundation (FIPE).

[36] It is important to stress that the Census carried out in 2000, with coverage of the whole city, totalled 8,706 street-dwellers, while the 2003 Survey, with partial coverage of the city, reached a total of 10,400 street-dwelling people.

[37] Some of these recommendations are based on the resolutions of Fifth National Conference on the Rights of Children and Adolescents, Brasília, December 1-5, 2003; on Dawn Informs, August 2001, available on the Dawn website – www.dawn.org.fj, based on Observatório da Cidadania – Report 2001, n.º 5, "O que as mulheres reivindicam", pg. 88/89, Sonia Corrêa – Researcher of Ibase/Dawn Project. The recommendations relating to the area of violence were extracted, with changes, from the World Report on Violence and Health – Summary;

WHO/Geneva – 2002, pg. 30-33. Other recommendations were inspired by the Feminist Political Platform, National Conference of Brazilian Women, Brasília, June 6 and 7, 2002.