

Human Rights Council

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**Universal Periodic Review (UPR) of the
Federative Republic of Brazil**

Joint Stakeholders' Submission

Submitted by:

**Marist International Solidarity Foundation (FMSI)
(NGO in Special Consultative Status with ECOSOC)**

and

União Marista do Brasil – Umbrasil

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Introduction

1. This submission by *Marist International Solidarity Foundation (FMSI)* and *União Marista do Brasil – Umbrasil* aims to promote issues of justice and defending the rights of children and adolescents in Brazil. Our report focuses on three issues: 1) The situation of children in shelters (protected households); 2) early childhood education; and 3) adolescents in conflict with the law. The information provided in this report comes from persons living in Brazil and is based on research carried out by their organizations¹.

2. Brazil's first UPR was in 2008 and one of the accepted recommendations from that review was to invest more rigour in evaluating the outcomes of planned activities in such areas as the juvenile justice system². Our concern is that not enough has been done in following up this area of juvenile justice since accepting this recommendation in 2008.

3. Brazil with its 8,515,692 km² is the largest country in South America. The latest census³ put the population at 190,755,799. The population of children and youth people under 19 years of age is 62,923,165 which represents 32.98% of the population. Brazil ratified the Convention on the Rights of the Child in 1990 and its two optional protocols four years later in 2004. Brazil integrated the Convention on the Rights of the Child into its 'Statute of the Child and Adolescent' in 1990⁴.

A) CHILDREN LIVING IN PROTECTED HOUSEHOLDS

4. There are approximately 33,300 children living in protected households in the country⁵. Half of these children are under the age of 11 and 3,178 have some form of disability. Of those living in shelters, 60% have family ties; 47% of them are girls and 53% are boys⁶. There are 2,624 recognized protected households around the country. These can be public or private. Among the private 'shelters' there are 180 institutions some of which conducts several centres. The main reasons for a boy or a girl to enter an official protection program are: family neglect (37.6%), chemical or alcohol addiction of the parents or guardians (20.1%) and abandonment (19%). Among the reasons for leaving this official protection are: the return to the family, adoption, and coming of age⁷.

5. We wish to highlight three important facts:

- Firstly, currently 65.3% of these protected households are private. Government investment in these institutions only averages around 30%.
- Secondly, the level of properly trained staff who work in these protected households (public or private) is low - 62.7% have not completed their high school⁸, which affects the type and quality of care provided.
- Thirdly, the Brazilian juvenile justice system is slow and inefficient. This is because there are no regulations that provide adequate coordination between the various competent bodies, causing long delays in processing each case, such as the withdrawal of parental custody. This leads to the child not having his/her legal status resolved in order to begin an adoption process, as an example. Proof of this is that 8.1% of the cases of children who live in protected households are unresolved, 13.2% of the children have not yet had their administrative procedure opened in the justice system, and the period of shelter time ranges from 16.6 months to 17.6 years⁹.

¹ The name of the organizations that have collaborated with us are: União Marista do Brasil – Umbrasil, Associação Brasileira de Educação e Cultura – ABEC, Associação Paranaense de Cultura – APC, Sociedade Meridional de Educação – SOME, União Brasileira de Educação e Assistência – UBEA, União Brasileira de Educação e Ensino – UBEE, União Catarinense de Educação - UCE, União Norte Brasileira de Educação e Cultura – UNBEC, União Sul Brasileira de Educação e Ensino – USBEE.

² A/HRC/8/27. Report of the working group on the UPR. p. 15. para 83.3

³ The Brazilian Institute of Geography and Statistics – IBGE (<http://www.censo2010.ibge.gov.br/>)

⁴ Federal Law N. 8.069/1990.

⁵ Research conducted by FIORCRUZ (Oswaldo Cruz Foundation) in partnership with Claves (Latin American Center for Studies on Violence and Health Jorge Careli).

⁶ Ibid.

⁷ See the "Statute of the children and adolescent" Section 3, articles 28 to 52D.

⁸ According to data of the FIOCRUZ: - 2010. Fundação Oswaldo Cruz é una Institución a nível federal vinculada al Ministério de Salud.

⁹ Ibid.

6. Attention is drawn to the following challenges that need to be faced: insufficient financial resources transferred from the government; low level of qualified staff; excessive bureaucracy in terms of administrative procedures; as well as inefficient judicial system in resolving cases of removal from families and obstructing adoption processes.

Recommendations

7. In relation to children living in protected households, we recommend that the Brazilian Government:
- a) **increases its financial investment to both government-run and the officially recognized non-government protected households for minors;**
 - b) **Provides training courses to improve the qualifications of staff who work in protected households;**
 - c) **Takes urgent steps to reduce the excessive time delays in processing children in protected households to improve the resolution of adoption cases or the withdrawal of parental custody.**

B. THE RIGHT TO EARLY CHILDHOOD EDUCATION

8. Early childhood education in Brazil is the first stage of elementary education and is the child's right and obligation of the State. It takes place in *nurseries* for children under the age of 3 and in *preschools* for children ages 4 to 5.

9. The right to early childhood education for all children was established in 1988 in the Federal Constitution, in 1990 in the Statute of the Child and Adolescent (ECA)¹⁰, and in 1996 in the Law of Basic Tenets (LBD). Since the proclamation of this law, the Ministry of Education has published a series of law decrees¹¹ to implement it as well as a series of documents to implement the application of this law¹².

10. In spite of all these decrees and documents to improve early childhood education, the reality is different. Brazil's social inequality hampers the effectiveness of these policies, particularly for the most disadvantaged. The percentage of children under the age of 3 included in the educational system was only 13% in 2005 and 17.1% in 2007. In the same period for the 4 to 5 years olds, it reached 70.1%.

11. There is an 80% gap in *universal access* to day-care centres for babies (aged 0-3) and 20% for 4 to 5 year olds. To alleviate this problem, there is a growth in the number of nurseries that operate without regulation and control, putting children at risk. However, many worker-parents use these facilities because at least they have a place to leave their sons and daughters while they are working. However the education that children receive in these day-care centres and nurseries is not of an acceptable standard because those who staff them do not have adequate training.

12. The families that need this service are from the most disadvantaged in society. Children from higher income families and whose parents are generally well educated themselves and living in urban areas, are enrolled in proportions significantly higher than those from poorer families: black, mothers with low-level schooling and/or reside in rural areas. 33% of the children under 3 years of age enrolled in nurseries are from the richest families, and only 10% are from the poorest families. Almost 90% of children from high income families are enrolled in preschools (4-5 year olds), while only 62% from the

¹⁰ Federal Law n. 8.069/1990, article 54 of ECA. And Federal law n.9.394 of 20th December 1996, chapter III article 4.IV (LBD).

¹¹ National Curriculum References for Early Childhood Education (1998), National Curriculum Guidelines for Early Childhood Education (1999), Constitutional Amendment (EC 53/2006) that created the Fund for the Maintenance and Development of Elementary Education and Valuing Education Professionals (Fundeb), the National Policy on Early Childhood Education (2006), the National Quality Parameters of Early Childhood Education (2006), the Basic Parameters of Infrastructure for Early Childhood Institutions (2006), the Criteria for education at a day care that respects the fundamental rights of children (2009), and the Quality Indicators in Early Childhood Education (2009).

¹² National Program for Restructuring and Equipping Early Childhood Public Schools - PROINFÂNCIA (2007), the National Program for School Transportation (PNATE) that in 2009 included providing transportation for early childhood education, the National Program for School Library (PNBE) that in 2008 included 60 titles of literature for young children, and PROINFANTIL, which up until 2009 had trained 4,900 teachers who did not have a high-school level education.

poorest in society are enrolled. The black or mixed race population continues to suffer a disadvantage in accessing early childhood education in both nurseries and pre-schools.

13. The access of children to nurseries and preschools in the rural areas is too low. These children remain at home with their families due to the lack of schools or school transport. However, many go with their parents to work because there is no one at home to look after them. The number of children under 3 years old who attend day-care centers, proportionally, is three times higher in urban areas than those in rural areas¹³ or Indian reservations.

14. Another major concern is the poor quality of both education and associated services offered to the children and their families. The causes of these are:

- there are not enough schools for early childhood education;
- many staff are unqualified due to the virtual absence of a 0-5 aged curriculum in their Pedagogical University Studies for their teaching degree and there is a lack of ongoing training;
- the child:teacher ratio is very high (23.2 : 1 in public schools)¹⁴, which hinders the individualized care required;
- low wages and low professional standing in the community;
- insufficient funds for the necessary equipment, as well as material infrastructure, lack of play spaces and learning areas for similar age groups.

15. There are other issues hindering the advancement of universal, quality childhood education, namely:

- the federal government is faced with increased migration from neighboring countries, creating an even greater demand for access;
- the inclusion of children with disabilities in preschools, thereby increasing the complexity of working with a large group of children in a class;
- The monitoring of the national curriculum in nurseries and pre-schools is inadequate.

Recommendations

16. In light of these concerns we recommend that the Brazilian Government:

- a) increases public investment in the education provision for 0 to 5 years olds to both public and private institutions;**
- b) Increases the number of nurseries and preschools, not just in the cities, but especially in rural areas, using the education program “PROINFANCIA”;**
- c) improves the professional standards of those who work in the preschool system by offering more higher education courses aimed at training teachers for early childhood education, and offer upgrade courses for those who already work in these schools.**

C. ADOLESCENTS IN CONFLICT WITH THE LAW

17. The Brazilian Constitution establishes the commitment of the state to protect children and adolescents. This commitment is shared with society and with the family. As well, the “Statute of the Child and Adolescents” mentioned earlier, establishes the protection terms and the measures to be applied by the juvenile justice system, called “socio-educative measures” relating to illegal acts committed by adolescents between 12 to 18 years old, as a way to ensure their socialization and integration into society¹⁵.

18. Once an infraction against the law has been established, the proper authority may apply the following measures to the adolescent:

- I. Admonition;
- II. Obligation to repair the damage;
- III. Rendering of community service;

¹³ Data from PNAD 2007.

¹⁴ Source: MEC/INEP, School Census 1999-2006.

¹⁵ See the Statute of child and adolescents title III, chapter I, II and III.

- IV. Assisted freedom;
- V. Inclusion in a system of semi liberty;
- VI. Internment in an educational institution;
- VII. Any of the measures specified in art. 101, I to II¹⁶.

19. The first four are considered as a non-custodial environment and measures V and VI are considered custodial environment. Number VII may be custodial or non-custodial. The **obligation to repair the damage** requires that the adolescent or his parents cover the costs of the damage done. **Rendering of community service** (PSC)¹⁷ consists in carrying out tasks of general interest for free for a period not exceeding 6 months and 8 hours a week. **Assisted freedom** (LA)¹⁸ requires a person or entity, designated by the judicial authority, to accompany and guide the young person. **Semi liberty** is applied for a minimum of 6 months. Under this regime the adolescent has access to outdoor activities such as education and vocational training. Use of this measure is to be regarded as exceptional and for a period not exceeding 3 years. Education and other services and activities must be ensured during internment.

20. The *Statute of the Child and Adolescent* states in articles 120 to 125 when, where and how long a custodial sentence must be applied – such as inclusion in a system of semi liberty or internment in an educational establishment. The internment measure must be carried out in conformity with the law, namely, in special institutions for persons under 18, with conditions suitable to their age and needs and by ensuring the accessibility to social services, in particular, health care and education as recommended by the Committee on the Rights of the Child (2004 review)¹⁹.

21. In order to reaffirm the socio-educational measures for adolescents in conflict with the law, Brazil has been working toward the implementation of the *National Social Educational Care System* (SINASE)²⁰. SINASE is based on international agreements on human rights and in particular in the area of rights of children and adolescents such as the Convention on the Rights of the Child and the two Optional Protocols, to which Brazil is a party. The Draft Law No. 134/2009 that legally establishes SINASE is pending in the Senate and includes the regulation of the socio-educational measures, giving priority to measures in a *non-custody* environment rather than in custody, in addition to other measures.

22. According to the 2010 Census of the Brazilian Institute of Geography and Statistics-IBGE²¹, the number of Brazilian adolescents aged between 12 to 17 is 20,666,575. According to the National Survey of Socio-Educational Care for Adolescents in Conflict with the Law - 2010²², there are 18,107 teenagers carrying out custodial measures or are deprived of their liberty. This is divided as follows:

- 12,041 in confinement;
- 3,934 in temporary confinement;
- 1,728 in semi-confinement; and
- 404 in confinement for other reasons.

The vast majority of these are male adolescents (94.94%) compared to female adolescents (5.06%). There is greater concentration in the north and northeast regions of the country, which suggests the need to reflect on the factors that determine this disproportion. In relation to the year 2009, there was a

¹⁶ Consult the Statute of Child and Adolescent art 112 to 125. And art. 101

¹⁷ PSC is the acronym in Portuguese for the *Rendering of Community Service*.

¹⁸ LA is the acronym in Portuguese for the *Assisted Freedom*.

¹⁹ CRC/C/15/Add.241. p. 14, para 70

²⁰ To know more about SINASE see: <http://www.redeandibrasil.org.br/eca/guia-de-cobertura/medidas-socio-educativas/o-que-e-o-sinase>

²¹ The Brazilian Institute of Geography and Statistics (IBGE) is an institution of the Brazilian federal government created in 1934 under the Ministry of Planning, Budget, and Management (MPOG). Its mission is to provide Brazil with information necessary to know its reality and for exercising citizenship.

²² This document presents a set of data and information provided by the state managers of the social-educational system in relation to the custodial measures, from the MDS-Ministry of Social Development and Fight Against Hunger in relation to the measures in a non-custodial environment, and other sources, processed by the coordination team from the National Social Educational Care System - SINASE, the National Secretariat for the Promotion of the Rights of Children and Adolescents from the Department of Human Rights of the Presidency - SNPDC/SDH.

4.5% increase in the number of teenagers carrying out custodial measures or deprived of their liberty. Numerically this figure represents 763 adolescents.

23. There are 40,657 adolescents under a non-custodial environment, which represents a ratio of 2 adolescents doing socio-educational measures of Rendering Community Service and Assisted freedom, for every 1 adolescent under confinement or deprivation of liberty. This is an unacceptable high number of adolescents being held in custody. A recent evaluation by the National Council of Justice (CNJ)²³ resulted in the recognition of:

- the precariousness of the Units for carrying out the socio-educational measures, which are characterized by overcrowding and inadequate physical infrastructures which do not meet the parameters set out in SINASE;
- temporary confinement that greatly exceeds the 45 days stipulated;
- the absence of Public Defenders and Specialized Centres for Children and Youth;
- lack of pedagogical opportunities;
- adolescents detained in police stations.

The result of these injustices is that there are frequent cases of rebellion by these adolescents who demand better conditions, as well as the occurrence of deaths due to personal or group rivalries.

24. The situation of "unlawful detention" reveals some facts of particular gravity:

- the absence or lack of Public Defenders for children in conflict with the law which often leads to the "imprisonment" of young people without the observance of appropriate legal processes conducted in compliance with the highest constitutional guarantees.
- violations of human rights.
- threats to the physical and psychological integrity of adolescents.
- abuse and torture, and
- lack of legal assistance.

All this is against Brazilian law that establishes the principle of priority and full protection of children and adolescents in conflict with the law.

25. Moreover, we strongly object to the idea of the government aiming to reduce the age of criminal responsibility below the age 18 because the number of adolescents committing infringements against the law represents only 0.08% of the adolescent population in Brazil, suggesting that in Brazil, these young people are not the main protagonists of the situations of violence.

26. The challenge that lies ahead is for a better policy of preventative action by the government, especially municipal governments. These must invest more money into preventative policies that provide real access to the best possible education, health care, housing, culture, sport and leisure activities for children and adolescents.

Recommendations

27. We call on the Brazilian Government to:

- a) pass into law and implement immediately the *National Social Educational Care System (SINASE)* as a public policy with Units to carry out the required socio-educational measures;**
- b) commit to a greater public investment in preventive actions, thus ensure the rights of children and adolescents are safeguarded;**
- c) engage more Public Defenders and establish Courts for Children and Adolescents in order to adequately cater for the demand of legal aid proper judicial proceedings for adolescents in conflict with the law.**
- d) reject the call to reduce the criminal responsibility below the age 18.**
- e) ensure compliance of the pedagogical and social-educational measures specified in the *Statute of Child and Adolescent* and the *National Social Educational Care System (SINASE)* for all adolescents who are in conflict with the law.**

²³ The National Council of Justice (CNJ) is the organ of the Brazilian Judiciary responsible for controlling the administrative and financial performance of the other bodies, as well as to monitor compliance of the functional duties of the judges.