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BRAZIL

**CHILDREN'S RIGHTS:
INTERNATIONAL AND NATIONAL LAWS AND PRACTICE**

Executive Summary

The Constitution provides the principles to be followed for the protection of children and adolescents in Brazil. These principles, coupled with numerous international treaties and several pieces of enacted legislation, offer a wide range of protection for children's and adolescents' rights.

I. Introduction

This report covers the international treaties to which Brazil is a signatory in the field of protection of children and presents a summary of the relevant legislation enacted, including Constitutional principles, in the areas of child health and social welfare, child education, child labor and exploitation, sale and trafficking of children, and juvenile justice.

II. Implementation of International Rights of the Child

Brazil is a founding member of the United Nations (UN) and a signatory of the Universal Declaration of Human Rights, which was adopted and proclaimed by General Assembly resolution 217A(III) of December 10, 1948.¹ Article 25(2) of the Universal Declaration enunciates that motherhood and childhood are entitled to special care and assistance and that all children, whether born in or out of wedlock, shall enjoy the same social protection.

In 1959, this theme was expanded and the UN proclaimed by General Assembly resolution 1386(XIV) of November 20, 1959, the Declaration of the Rights of the Child.² The declaration served as the basis for the future Convention on the Rights of the Child,³ which would be adopted, thirty years later, by UN General Assembly resolution 44/25 of November 20, 1989.

¹ Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810 at 71 (Dec. 10, 1948), available at official website of the United Nations, <http://www.un.org/Overview/rights.html>.

² The U.N. Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354, official website of the United Nations, <http://www.unhchr.ch/html/menu3/b/25.htm> (last visited Aug. 3, 2007).

³ Convention on the Rights of the Child, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 28 I.L.M. 1448 (1989), official website of the United Nations, available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

On November 21, 1990, Brazil issued Decree⁴ No. 99,710,⁵ ratifying Legislative Decree No. 28 of September 14, 1990, which approved the UN Convention on the Rights of the Child, fully incorporating it onto Brazil's positive law. Additionally, on March 8, 2004, Brazil issued Decree No. 5,007,⁶ promulgating the UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography⁷ and Decree No. 5,006,⁸ promulgating the UN Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.⁹

Brazil also ratified the International Covenant on Civil and Political Rights of 1966,¹⁰ and on July 6, 1992, this covenant was promulgated through Decree No. 592.¹¹ On September 13, 2002, Brazil issued Decree No. 4,377,¹² promulgating the Convention on the Elimination of All Forms of Discrimination against Women,¹³ and on July 30, 2002, issued Decree No. 4,316,¹⁴ promulgating the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.¹⁵

At the Organization of American States, Brazil is a State-party to the Inter-American

⁴ Art. 84, VIII of the Brazilian Constitution determines that the President of the Republic has the exclusive power to conclude international treaties, conventions, and acts, ad referendum of the National Congress.

⁵ Decreto No. 99.710 de 21 de Novembro de 1990, website of the Brazilian Presidency, available at http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D99710.htm.

⁶ Decreto No. 5.007 de 8 de Março de 2004, website of the Brazilian Presidency, available at http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2004/Decreto/D5007.htm.

⁷ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, official website of the United Nations, <http://www.unhchr.ch/html/menu2/dopchild.htm> (last visited Aug. 3, 2007).

⁸ Decreto No. 5.006 de 8 de Março de 2004, website of the Brazilian Presidency, available at http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2004/Decreto/D5006.htm.

⁹ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, official website of the United Nations, <http://www.unhchr.ch/html/menu2/6/protocolchild.htm> (last visited Aug. 3, 2007).

¹⁰ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, 21st Sess. Supp. (No. 16) at 52, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171, official website of the United Nations, available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

¹¹ Decreto No. 592 de 6 de Julho de 1992, website of the Brazilian Presidency, available at http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D0592.htm.

¹² Decreto No. 4.377 de 13 de Setembro de 2002, website of the Brazilian Presidency, available at http://www.planalto.gov.br/ccivil_03/decreto/2002/D4377.htm.

¹³ Convention on the Elimination of All Forms of Discrimination against Women, 1249 U.N.T.S. 13, official website of the United Nations, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (last visited Aug. 3, 2007).

¹⁴ Decreto No. 4.316 de 30 de Julho de 2002, website of the Brazilian Presidency, available at http://www.planalto.gov.br/ccivil_03/decreto/2002/D4316.htm.

¹⁵ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, official website of the United Nations, <http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm> (last visited Aug. 3, 2007).

Convention on the International Return of Children,¹⁶ adopted in Montevideo on July 15, 1989, and to this effect issued, on August 3, 1994, Decree No. 1,212,¹⁷ promulgating the Convention. Brazil approved the Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors¹⁸ on June 19, 1996, through Legislative Decree No. 60, and then promulgated it by Decree No. 2,429 of December 17, 1997.¹⁹ On August 20, 1998, Brazil also issued Decree No. 2,740,²⁰ promulgating the Inter-American Convention on International Traffic in Minors.²¹

Decree No. 3,087 of June 21, 1999,²² promulgated the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption,²³ and Decree No. 3,413 of April 14, 2000,²⁴ promulgated the Hague Convention on the Civil Aspects of International Child Abduction.²⁵ Additionally, on September 16, 1999, Brazil issued Decree No. 3,174,²⁶ which designated the central authorities in charge of carrying out the duties imposed by the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption; instituted the National Program on Cooperation on International Adoption; and created the National Council of Brazilian Central Administrative Authorities.

On September 12, 2000, Brazil issued Decree No. 3,597,²⁷ which promulgated the

¹⁶ Inter-American Convention on the International Return of Children, O.A.S.T.S. No. 70, official website of the Organization of American States, <http://www.oas.org/juridico/english/treaties/b-53.html> (last visited Aug. 3, 2007).

¹⁷ Decreto No. 1.212 de 3 de Agosto de 1994, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D1212.htm.

¹⁸ Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors, O.A.S.T.S. No. 62, official website of the Organization of American States, <http://www.oas.org/juridico/english/treaties/b-48.html> (last visited Aug. 3, 2007).

¹⁹ Decreto No. 2.429 de 17 de Dezembro de 1997, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/decreto/D2429.htm.

²⁰ Decreto No. 2.740 de 20 de Agosto de 1998, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/decreto/D2740.htm.

²¹ Inter-American Convention on International Traffic in Minors, O.A.S.T.S. No. 79, official website of the Organization of American States, <http://www.oas.org/juridico/english/treaties/b-57.html> (last visited Aug. 3, 2007).

²² Decreto No. 3.087 de 21 de Junho de 1999, website of the Brazilian Presidency, *available at* http://www.planalto.gov.br/ccivil_03/decreto/D3087.htm.

²³ Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 32 I.L.M. 1134 (1993), official website of the Hague Conference on Private International Law, *available at* http://www.hcch.net/index_en.php?act=conventions.text&cid=69.

²⁴ Decreto No. 3.413 de 14 de Abril de 2000, website of the Brazilian Presidency, *available at* http://www.planalto.gov.br/ccivil_03/decreto/D3413.htm.

²⁵ Hague Convention on the Civil Aspects of International Child Abduction, 19 I.L.M. 1501 (1980), official website of the Hague Conference on Private International Law, *available at* http://www.hcch.net/index_en.php?act=conventions.text&cid=24.

²⁶ Decreto No. 3.174 de 16 de Setembro de 1999, website of the Brazilian Presidency, *available at* http://www.planalto.gov.br/ccivil_03/decreto/D3174.htm.

²⁷ Decreto No. 3.597 de 12 de Setembro de 2000, website of the Brazilian Presidency, *available at* http://www.planalto.gov.br/ccivil_03/decreto/D3597.htm.

International Labor Organization's (ILO) Convention No. 182 on the Worst Forms of Child Labor²⁸ and ILO Recommendation No. 190,²⁹ concerning the prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. Additionally, on February 15, 2002, Decree No. 4,134³⁰ was issued promulgating ILO Convention No. 138,³¹ Concerning Minimum Age for Admission to Employment and ILO Recommendation No. 146.³²

III. Child Health

A. Constitutional Principles

The Brazilian Constitution, enacted on October 5, 1988, determines, *inter alia*, that health is a social right³³ and that it is the duty of the family, the society and the State to ensure to children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.³⁴ In addition, article 229 of the Constitution dictates that it is the duty of the parents to assist, raise, and educate their underage children.

Paragraph 1 of article 227 of the Constitution further establishes that the State must promote full health assistance programs for children and adolescents, allows the participation of non-governmental entities, and determines that the following precepts must be regarded by the State:³⁵

I – allocation of a percentage of public health care funds to mother and child assistance;

II – creation of preventive and specialized care programs for the physically, sensorially, or mentally handicapped, as well as programs for the social integration of

²⁸ Worst Form of Child Labor Convention, I.L.O. No. 182, official website of the International Labor organization, <http://www.ilocarib.org.tt/childlabour/c182.htm> (last visited Aug. 3, 2007).

²⁹ Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, I.L.O. Recommendation No. 190, official website of the International Labor organization, <http://www.ilo.org/public/english/standards/realm/ilc/ilc87/com-chir.htm> (last visited Aug. 3, 2007).

³⁰ Decreto No. 4.134 de 15 de Fevereiro de 2002, website of the Brazilian Presidency, available at http://www.planalto.gov.br/ccivil_03/decreto/2002/D4134.htm.

³¹ Convention concerning Minimum Age for Admission to Employment, I.L.O. No. 138, official website of the International Labor organization, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138> (last visited Aug. 3, 2007).

³² Minimum Age Recommendation, I.L.O. Recommendation No. 146, official website of the International Labor Organization, <http://www.ilocarib.org.tt/childlabour/r146.htm> (last visited Aug. 3, 2007).

³³ Constituição Federativa do Brasil de 1988 [C.F.], art. 6, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm (last visited Aug. 3, 2007).

³⁴ *Id.* art. 227.

³⁵ Translation of all constitutional passages modified by the author from the version available in FEDERAL SENATE SPECIAL SECRETARIAT FOR PRINTING AND PUBLISHING, UNDERSECRETARIAT OF TECHNICAL PUBLICATIONS, CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL (Brasília, 2002).

handicapped adolescents, including training for a profession and for community life and facilitating access to public places and services, by eliminating prejudice and architectural obstacles.

Paragraph 2 determines that the law must regulate construction standards for public sites and buildings and for the manufacturing of public transportation vehicles, in order to ensure adequate access to the handicapped.

Paragraph 3 establishes that the right to special protection must include the following aspects:

I – a minimum age of fourteen years for admission to work, with due regard to the provisions of article 7, XXXIII of the Constitution that prohibits night, dangerous, or unhealthy work for minors under eighteen years of age as well as any work for minors under fourteen years of age, except as an apprentice;

II – a guarantee of social security and labor rights;

III – a guarantee of access to school for the adolescent worker;

IV – a guarantee of full and formal knowledge of the determination of an offense, equal rights in the procedural relationships, and technical defense by a qualified professional, in accordance with the provisions of the specific protection legislation;

V – compliance with the principles of brevity, exceptionality, and respect for the peculiar conditions of the developing person, when applying any measures that restrain freedom;

VI – government fostering, by means of legal assistance, of tax incentives and subsidies, as provided by law, for the protection, through guardianship, of orphaned or abandoned children or adolescents;

VII – prevention and specialized assistance programs for children and adolescents addicted to narcotics or related drugs.

Paragraph 4 mandates that the law must severely punish abuse, violence, and sexual exploitation of children and adolescents; Paragraph 5 clarifies that adoption must be assisted by the Government, as provided by law, which must establish cases and conditions for adoption by foreigners. Paragraph 6 decrees that children born inside or outside wedlock or who have been adopted must have the same rights and qualifications and that any discriminatory designation of their filiation is forbidden.

In addition, health in Brazil is considered to be a right of all and a duty of the State, which is guaranteed both by social and economic policies aimed at reducing the risk of illness and other hazards and by universal and equal access to actions and services for its promotion, protection, and recovery.³⁶

³⁶ C.F., art. 196.

The Constitution also establishes that health actions and services are of public importance and that it is incumbent upon the government to provide, in accordance with the law, for their regulation, supervision, and control. The Government may execute this duty directly or through third parties, whether they are individuals or private legal entities.³⁷

Article 198 of the Constitution determines that health actions and public services are to be integrated in a regionalized and hierarchical network and constitute a single system (*Sistema Único de Saúde*) organized according to the directives established in the Constitution.

B. Legislation

On September 19, 1990, as established in the Constitution, Brazil issued Law No. 8,080, regulating, in all its territory, the actions and health services, carried out separately or together, permanently or intermittently, by individuals or public or private legal entities.³⁸

The law determines that health is a fundamental right of the human being and that the State must provide the indispensable conditions for its full exercise.³⁹ The law further determines that the duty of the State to guarantee health consists of the planning and execution of economic and social policies aimed at reducing the risks of diseases and other hazards and the establishment of conditions to guarantee the universal and equal access to the actions and services for its promotion, protection, and recovery.⁴⁰

Moreover, article 4 of Law No. 8,080 explains that, according to article 198 of the Constitution, the body of actions and health services, provided by organs and public institutions, federal, state, or municipal, whether directly or indirectly funded by the government, constitute the Single System of Health (*Sistema Único de Saúde*). In 1990, Brazil enacted the Child and Adolescent Statute through Law No. 8,069 of July 13, which provides for the full protection of the child and the adolescent.⁴¹ For the purposes of the law, a child is considered to be a person less than twelve years of age and an adolescent is a person between twelve and eighteen years of age.⁴² In some exceptional cases foreseen in the statute, it also applies to persons between the ages of eighteen and twenty-one.

Additionally, article 5 of the Brazilian Civil Code⁴³ determines that minority ceases at the completion of eighteen years of age, when the person is then fully capable of practicing all acts of

³⁷ *Id.* art. 197.

³⁸ Lei No. 8.080 de 19 de Setembro de 1990, art. 1, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/Leis/L8080.htm.

³⁹ *Id.* art. 2.

⁴⁰ *Id.* §1.

⁴¹ Estatuto da Criança e do Adolescente, Lei No. 8.069 de 13 de Julho de 1990, art. 1, website of the Brazilian Presidency, <http://www.planalto.gov.br/ccivil/LEIS/L8069.htm>.

⁴² *Id.* art. 2.

⁴³ Código Civil, Lei No. 10.406 de 10 de Janeiro de 2002, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/LEIS/2002/L10406.htm.

civil life. Paragraph 1 of article 5 further establishes that the minor's incapacity may also cease by the concession of the parents, or one of them in the absence of the other, through a public instrument, independently of judicial sanction or judicial decision of a sixteen year-old minor;⁴⁴ by marriage;⁴⁵ effective exercise of public employment;⁴⁶ graduation from an institution of higher education;⁴⁷ commercial or civil establishment, or the existence of employment relation, that provides a sixteen year-old minor with economic support.⁴⁸

For criminal purposes, the Brazilian Penal Code dictates that minors under eighteen years of age are not criminally chargeable and are subject to the rules established in special legislation.⁴⁹

In accordance with articles 6 and 227 of the Constitution, the statute establishes that the family, the community, the society in general, and the government have the duty to guarantee, with absolute priority, the enforcement of the right to life, health, food, education, sports, leisure, professionalization, culture, dignity, respect, freedom, and close family and community association.⁵⁰

Article 7 of the statute proclaims that the child and the adolescent have the right to protection of life and health through the implementation of social public policies that enable satisfactory conditions for births and for the health and harmonious development of children.

In 1991, Brazil created the National Council for the Rights of the Child and the Adolescent (*Conselho Nacional dos Direitos da Criança e do Adolescente*).⁵¹ The Council is responsible, *inter alia*, for the elaboration of the general norms of the national policy on the rights of children and adolescents and the inspection of the execution of actions established in the directives contained in articles 87 and 88 of the Child and Adolescent Statute.⁵²

IV. Child Social Welfare

A. Constitutional Principles

The Brazilian Constitution declares that social assistance must be rendered to whomever may need it, regardless of their contribution to social welfare. The objectives are the protection of

⁴⁴ *Id.* art. 5(§1)(I).

⁴⁵ *Id.* (II).

⁴⁶ *Id.* (III).

⁴⁷ *Id.* (IV).

⁴⁸ *Id.* (V).

⁴⁹ Código Penal, Decreto-Lei No. 2.848 de 7 de Dezembro de 1940, art. 27, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848compilado.htm.

⁵⁰ *Id.* art. 4.

⁵¹ Lei No. 8.242 de 12 de Outubro de 1991, art. 1, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/LEIS/L8242.htm.

⁵² *Id.* art. 2.

the family, maternity, childhood, adolescence, and the elderly; assistance to needy children and adolescents; promotion of the integration into the labor market; habilitation and rehabilitation of the handicapped and their integration into community life; and the guarantee of a monthly benefit of one minimum wage to the handicapped and to the elderly who prove their incapability of providing for their own support or having it provided for by their families, as set forth by law.⁵³

B. Legislation

The Child and Adolescent Statute guarantees to the pregnant woman pre-natal and post-natal assistance through the Single System of Health.⁵⁴ Hospitals and other health institutions that deal with pregnant women, whether public or private, must keep medical records for a period of eighteen years;⁵⁵ identify the newborn child by his footprint (*impressão plantar*) and the mother's fingerprint or other forms of identification used by the competent administrative authorities; perform exams aimed at the diagnosis and remediation of abnormalities of the newborn's metabolism, as well as provide orientation to the parents; provide a declaration of birth containing all the information concerning the child's delivery and the development of the newborn child; and keep accommodations that make it possible for the mother and the newborn child to stay together.⁵⁶

Article 11 of the statute guarantees medical assistance to children and adolescents by the Single System of Health and the universal and equal access to actions and services for the promotion, protection and recovery of health. A handicapped child or adolescent is entitled to specialized treatment; it is the duty of the government to provide free medicines, prostheses, or any other means related to medical treatment, habilitation, or rehabilitation for the needy.

The statute determines that health institutions must provide the necessary conditions for one parent or guardian to the stay at any time when a child or an adolescent is hospitalized.⁵⁷ According to the statute, the Single System of Health must promote medical and dental assistance programs for the prevention of illnesses that ordinarily affect the young and campaigns of health education for parents, educators, and students. The statute also requires the vaccination of children, as recommended by public health authorities.⁵⁸

On March 31, 1993, the government enacted Law No. 8,642,⁵⁹ creating the National Program for the Full Attention to the Child and the Adolescent (*Programa Nacional de Atenção*

⁵³ C.F., art. 203.

⁵⁴ Estatuto da Criança e do Adolescente, Lei No. 8.069 de 13 de Julho de 1990, art. 8, website of the Brazilian Presidency, <http://www.planalto.gov.br/ccivil/LEIS/L8069.htm>.

⁵⁵ *Id.* art. 10(I).

⁵⁶ *Id.* art. 10.

⁵⁷ *Id.* art.12.

⁵⁸ *Id.* art.14.

⁵⁹ Lei No. 8.642 de 31 de Março de 1993, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/Leis/1989_1994/L8642.htm.

Integral à Criança e ao Adolescente), and Decree No. 1,056,⁶⁰ of February 11, 1994, regulates this law. The purpose of the program is to articulate all the actions in support of children and adolescents.⁶¹ The priority areas of the program are the mobilization for community participation; full attention to children between zero and six years of age; basic education; attention to the adolescent and education for the job market; protection to the health and safety of the child and the adolescent; assistance to handicapped children; culture, sports, and leisure for children and adolescents; and training of professionals specializing in the development of children and adolescents.⁶²

Law No. 8,742 of December 7, 1993, organizes social assistance in Brazil (*Lei Orgânica da Assistência Social*). The objective of social assistance is to provide protection for the family, motherhood, childhood, adolescence, and the elderly; to support needy children and adolescents; to promote integration into the job market; to provide for the habilitation and rehabilitation of handicapped people and the promotion of their integration into the community; and to guarantee a monthly minimum wage to the handicapped or to any elderly person that has been proven to have no means to provide for his own maintenance and whose his family cannot take care of him.⁶³

V. Education

A. Constitutional Principles

In Brazil, education is considered a right of all and a duty of the State and of the family, which must be promoted and fostered with the cooperation of the society, with a view to the full development of the person and his preparation⁶⁴ for the exercise of citizenship and qualification for work.

Article 206 of the Constitution establishes the principles to be used as the basis for education:

I – equal access to school;

II – freedom to learn, teach, research, and expression of thought, art, and knowledge;

III – pluralism of pedagogic ideas and conceptions and coexistence of public and private teaching institutions;

IV – free public education in official schools;

⁶⁰ Decreto No. 1.056 de 11 de Fevereiro de 1994, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D1056.htm.

⁶¹ *Id.* art. 1.

⁶² *Id.* art. 2.

⁶³ Lei No. 8.742 de 7 de Dezembro de 1993, art. 2, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/Leis/L8742.htm.

⁶⁴ C.F., art. 205.

V – appreciation of the value of teaching professionals, guaranteeing, in accordance with the law, career plans for public school teachers, with a professional minimum salary and hiring exclusively by means of public entrance examinations consisting of tests and presentation of academic and or professional credentials;

VI – democratic administration of public education, in the manner prescribed by law;

VII – guaranteed standards of quality.

Article 208 determines that the government's duty to provide education must be fulfilled by ensuring the following:⁶⁵

I – mandatory and free elementary education, including the assurance of its free offer to all those who did not have access to it at the proper age;

II – progressive promotion of access to free high school education throughout the country;

III – specialized schooling for the handicapped, preferably in the regular school system;

IV – assistance to children up to the age of six in day-care centers and preschools;

V – access to higher levels of education, and opportunities for research and artistic creation according to individual capacity;

VI – provision of regular night courses to meet the needs of the student;

VII – assistance to elementary school students through supplementary programs providing school material, transportation, food, and health assistance.

Additionally, the article specifies that access to compulsory and free education is a public subjective right,⁶⁶ that the competent authority must be held liable for any failure of the Government in providing compulsory education or providing it irregularly;⁶⁷ and that the Government has the power to take a census of elementary school students, call them for enrollment, and ensure that parents or guardians see to their children's attendance at school.⁶⁸

B. Legislation

The Child and Adolescent Statute sanctions the above-listed constitutional principles. In article 53, it says that children and adolescents have the right to education, with a view to the full

⁶⁵ *Id.* art. 208.

⁶⁶ C.F., art. 208(§1).

⁶⁷ *Id.* (§2).

⁶⁸ *Id.* (§3).

development of the person and his preparation for the exercise of citizenship and qualification for work. It also assures equal access to school; the right to be respected by their educators; the right to contest evaluation criteria, with the right to appeal, for higher school entrance; the right to be organized and to participate in student entities; and access to public and free schools near their residences. Moreover, parents and guardians have the right to be informed of the pedagogic process, as well as to participate in the development of educational policy proposals.⁶⁹

On December 20, 1996, Brazil issued Law No. 9,394⁷⁰ (*Lei de Diretrizes e Bases*), which establishes the directives and the basis for education. According to the Law, the term “education” includes the formative processes that take place in life in the family, in human associations, at work, at institutions of education and research, within social movements, in the organizations of civil society, and at cultural events.⁷¹ Law No. 9,394 directs school education, developed predominantly through teaching at the appropriate institutions,⁷² and states that school education must be linked to the job market and the social experience.⁷³

In articles 2 and 3, the Law defines the principles and the purpose of education. Article 2 specifies that education is a duty of the family and of the government; that it is inspired by the principles of freedom and is based on the ideals of human solidarity; and that its purpose is the full development of the student, his preparation for the exercise of citizenship, and his qualification to work. Article 3 enunciates the constitutional principles applied to education (described above).

In 2001, the government created a School Allowance Program (*Bolsa Escola*)⁷⁴ designed to keep children in school. The program is the federal government's financial participation in municipal programs that work through the schools to guarantee a minimum income.⁷⁵ The federal government supports the programs that have as beneficiaries the families residing within the municipality, that have a certain family income defined by the federal government, and that have responsibility for children between six and fifteen years of age regularly enrolled in educational institutions, with a school attendance rate of eighty-five percent or more.⁷⁶

VI. Child Labor and Exploitation

Based on principles elaborated in the Constitution, the Child and Adolescent Statute sanctions the prohibition of any work for minors less than fourteen years of age, except as

⁶⁹ Estatuto da Criança e do Adolescente, Lei No. 8.069 de 13 de Julho de 1990, art. 53 (§1), website of the Brazilian Presidency, <http://www.planalto.gov.br/ccivil/LEIS/L8069.htm>.

⁷⁰ Lei No. 9.394 de 20 de Dezembro de 1996, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/Leis/L9394.htm.

⁷¹ *Id.* art. 1.

⁷² *Id.* (§1).

⁷³ *Id.* (§2).

⁷⁴ Lei No. 10.219 de 11 de Abril de 2001, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/Leis/LEIS_2001/L10219.htm.

⁷⁵ *Id.* (§1).

⁷⁶ *Id.* art. 2(II).

apprentices,⁷⁷ and dictates that the protection of the work of adolescents is regulated by special legislation.⁷⁸ Article 62 defines apprenticeship as technical-professional education administered according to the directives and on the basis of the education legislation in force. Article 64 lays out the principles to be followed in technical-professional education. The statute also assures labor and social security rights for apprentice adolescents older than fourteen years⁷⁹ and protected work for handicapped adolescent.⁸⁰ In addition, it establishes that the adolescent worker has the right to acquire a profession and protection at work, which must respect the peculiar conditions of a developing person and equip them with adequate professional qualifications for the job market.⁸¹

On December 19, 2000, the government enacted Law No. 10,097⁸² to supplement the section (arts. 402 to 441) of the Consolidation of Labor Laws⁸³ that regulates the protection of the work of minors to conform the section to both the Constitution and the Child and Adolescent Statute.

In 2001, the Ministry of Labor and Employment issued an administrative act (*Portaria*)⁸⁴ listing eighty-one working activities prohibited to minors of less than eighteen years of age. The act prohibits, for instance, work by minors in both civil construction and heavy machinery construction; in industrial operations of paper, plastic, or metal recycling; with infected animals; in fabrication of fireworks, and in slaughter houses.

VII. Sale and Trafficking of Children

The Constitution decrees that the law must severely punish any abuse, violence, and sexual exploitation of children and adolescents.⁸⁵

According to the Brazilian Penal Code, it is a crime to benefit or profit from the prostitution of a third party, which is punished with up to four years in prison and a fine,⁸⁶ and if the victim is older than fourteen and less than eighteen years of age, or if the perpetrator is the

⁷⁷ Estatuto da Criança e do Adolescente, Lei No. 8.069 de 13 de Julho de 1990, art. 60, website of the Brazilian Presidency, <http://www.planalto.gov.br/ccivil/LEIS/L8069.htm>.

⁷⁸ *Id.* art. 61.

⁷⁹ *Id.* art. 60.

⁸⁰ *Id.* art. 66.

⁸¹ *Id.* art. 69.

⁸² Lei No. 10.097 de 19 de Dezembro de 2000, art. 1, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/Leis/L10097.htm.

⁸³ Decreto-Lei No. 5.452 de 1 de Maio de 1943, arts. 402, 403, 428, 429, 430, 431, 432 and 433, website of the Brazilian Presidency, https://www.planalto.gov.br/ccivil_03/decreto-lei/De15452.htm.

⁸⁴ Portaria No. 20 de 13 de Setembro de 2001, official website of the Ministry of Labor and Employment, http://www.mte.gov.br/legislacao/portarias/2001/p_20010913_20.pdf.

⁸⁵ C.F., art. 227(§4).

⁸⁶ Código Penal, Decreto-Lei No. 2.848 de 7 de Dezembro de 1940, art. 230, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/De12848compilado.htm.

victim's ancestor, descendant, spouse, partner, sibling, tutor, guardian, or a person responsible for the minor's education, treatment, or custody, the punishment is increased to up to six years in prison and a fine.⁸⁷ If violence or a serious threat is used, the punishment increases to up to eight years and a fine, plus the corresponding punishment for the violent acts.⁸⁸

Article 231 of the Penal Code can also be applied to punish, with up to eight years in prison and a fine, whoever promotes, intermediates, or facilitates the entrance, in Brazilian territory, of a person coming to the country to exercise prostitution or the departure of a person to exercise prostitution abroad. If the victim is older than fourteen and less than eighteen years of age, or if the perpetrator is the victim's ancestor, descendant, spouse, partner, sibling, tutor, or guardian, or a person responsible for the minor's education, treatment, or custody, the punishment is increased to up to ten years in prison and a fine.⁸⁹ If violence or a serious threat is used, the punishment increases to up to twelve years and a fine, plus the corresponding punishment for the violent acts.⁹⁰

Additionally, giving an offspring less than eighteen years of age to a person in whose company, the parent knows or should know, the minor is morally or materially in danger is punished with up to two years in prison.⁹¹ If the perpetrator carries out the offense to obtain profit or if the minor is sent abroad, the punishment is increased to up to four years in prison.⁹² Assisting in the sending of a minor abroad for profit is also punished with up to four years in prison, even if there is no moral or material danger.⁹³

Pursuant to article 5 of the Child and Adolescent Statute, no child or adolescent must be the object of any form of negligence, discrimination, exploitation, violence, cruelty, or oppression, and any attempt, by action or omission, to violate the fundamental rights of a child or adolescent must be punished according to the law.

The statute punishes with up to six years in prison whoever promotes or helps in the process of sending a child or adolescent abroad without observing the legal requirements or with the purpose of obtaining profit.⁹⁴ If violence, a serious threat, or fraud is used, the punishment increases to up to eight years in prison plus the corresponding punishment for the violent acts.⁹⁵

The presentation, production, sale, supply, disclosure, or publication, by any means of communication, including the Internet, of photographs or images of pornography or sex scenes

⁸⁷ *Id.* (§1).

⁸⁸ *Id.* (§2).

⁸⁹ *Id.* art. 231(§1).

⁹⁰ *Id.* (§2).

⁹¹ *Id.* art. 245.

⁹² *Id.* (§1).

⁹³ *Id.* (§2).

⁹⁴ Estatuto da Criança e do Adolescente, Lei No. 8.069 de 13 de Julho de 1990, art. 239, website of the Brazilian Presidency, <http://www.planalto.gov.br/ccivil/LEIS/L8069.htm>.

⁹⁵ *Id.* (§1).

involving a child or an adolescent is punished with up to six years in prison and a fine.⁹⁶

The statute also assigns the same punishment to whoever negotiates, authorizes, facilitates, or by any means, is an intermediate in the participation of a child or adolescent in the production of images of pornography or sex scenes;⁹⁷ provides the means or services for the storage of the photographs, scenes, or images of pornography or sex scenes involving a child or an adolescent;⁹⁸ or provides, by any means, access via the Internet to the photographs or images of pornography or sex scenes involving a child or adolescent.⁹⁹ The punishment is increased to up to eight years in prison if the perpetrator carries out the crime making use of an office, position, or function,¹⁰⁰ or with the purpose of obtaining profit.¹⁰¹

Additionally, the Child and Adolescent Statute determines that to subject a child or an adolescent to prostitution or sexual exploitation is punished with up to ten years in prison and a fine.¹⁰² The same punishment is also applied to the owner, manager, or person in charge of a location at which a child or an adolescent is prostituted or sexually exploited.¹⁰³

VIII. Juvenile Justice

Article 228 of the Constitution specifies that minors under eighteen years of age may not be held criminally liable and must be subject to the rules of special legislation for minors.

The Brazilian Penal Code thus provides that minors under eighteen years of age are not criminally chargeable and are subject to the rules established in special legislation (*Estatuto da Criança e do Adolescente*).¹⁰⁴ The Penal Code also determines that if the perpetrator of a crime is less than twenty-one years of age, the punishment for the crime is attenuated.¹⁰⁵ In addition, a curator is nominated if the person being indicted¹⁰⁶ or accused¹⁰⁷ of a crime is a minor.

According to the Child and Adolescent Statute, conduct described as a crime or a

⁹⁶ *Id.* art. 241.

⁹⁷ *Id.* (§1)(I).

⁹⁸ *Id.* (II).

⁹⁹ *Id.* (III).

¹⁰⁰ *Id.* art. 241(§2)(I).

¹⁰¹ *Id.* (§2)(II).

¹⁰² *Id.* art. 244-A.

¹⁰³ *Id.* (§1).

¹⁰⁴ C.P. art. 27

¹⁰⁵ *Id.* art. 65(I).

¹⁰⁶ Código de Processo Penal, Decreto-Lei No. 3.689 de 3 de Outubro de 1941, art. 15, website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del3689Compilado.htm.

¹⁰⁷ *Id.* art. 262.

misdeemeanor is considered to be an act of infraction if carried out by a minor.¹⁰⁸ The statute confirms the provision of the Penal Code that minors under eighteen years of age are not criminally chargeable and adds that minors are subject to the provisions contained in that law.¹⁰⁹

Article 106 ascertains that no adolescent will be deprived of his liberty except in cases involving acts of infraction, or a written order issued by the competent judicial authority. The adolescent has the right to know the identity of those who apprehend him and must be informed of his rights.¹¹⁰ The apprehension of a minor and the place where he is being held must be immediately communicated to the competent judicial authority, his family, or a person indicated by him.¹¹¹ A maximum confinement of forty-five days can be determined before a final decision on the acts of infraction is issued.¹¹²

Moreover, no adolescent will be deprived of his liberty without due process,¹¹³ and it is guaranteed that the adolescent will have the full and formal knowledge that an act of infraction is being attributed to him by means of service or the equivalent;¹¹⁴ the right to confront victims and witnesses and produce all evidence necessary for his defense;¹¹⁵ the right to be defended by an attorney;¹¹⁶ free and full judicial assistance to the needy according to the law;¹¹⁷ the right to be personally questioned by the competent authority;¹¹⁸ and the right to ask for the presence of his parents or guardian during all phases of the procedure.¹¹⁹

Once the practice of an act of infraction is verified, the competent authority may apply the following measures to an adolescent:¹²⁰

I – a warning;

II – the obligation to repair the damage;

III – community service;

¹⁰⁸ Estatuto da Criança e do Adolescente, Lei No. 8.069 de 13 de Julho de 1990, art. 103, website of the Brazilian Presidency, <http://www.planalto.gov.br/ccivil/LEIS/L8069.htm>.

¹⁰⁹ *Id.* art. 104.

¹¹⁰ *Id.* art. 106(§1).

¹¹¹ *Id.* art. 107.

¹¹² *Id.* art. 108.

¹¹³ *Id.* art. 110.

¹¹⁴ *Id.* art. 111(I).

¹¹⁵ *Id.* (II).

¹¹⁶ *Id.* (III).

¹¹⁷ *Id.* (IV).

¹¹⁸ *Id.* (V).

¹¹⁹ *Id.* (VI).

¹²⁰ *Id.* art. 112.

IV – assisted freedom;

V – insertion of the minor in a semi-free regime;

VI – confinement in an educational institution;

VII – application of the provisions of article 101, I to VI of the Child and Adolescent Statute.

The measure applied must take into account the adolescent's capacity to execute it and the seriousness of the infraction;¹²¹ under no circumstance is forced labor allowed.¹²² The disabled and the mentally challenged adolescent must receive individual treatment in a place appropriate to his condition.¹²³

The law further describes the concept of a warning,¹²⁴ what composes the obligation to repair the damage,¹²⁵ community service,¹²⁶ assisted freedom,¹²⁷ a semi-free regime,¹²⁸ and confinement.¹²⁹

Article 124 provides that a minor that has been deprived of his freedom has the rights, *inter alia*, to be treated with respect and dignity;¹³⁰ to receive a weekly visit;¹³¹ and to correspond with his family and friends.¹³² The government is charged with the duty to take care of the physical integrity of confined minors as well as to adopt the necessary restraint and security measures.¹³³

Before the beginning of the appropriate judicial procedure to verify an infraction, a member of the Public Prosecutor's Office may grant remission, as a form of exclusion of the procedure, based on the circumstances and consequences of the facts and of the social context, as well as on the adolescent's personality and his greater or smaller participation in the infraction.¹³⁴ If granted, the remission suspends or extinguishes the judicial procedure.¹³⁵

¹²¹ *Id.* (§1).

¹²² *Id.* (§2).

¹²³ *Id.* (§3).

¹²⁴ *Id.* art. 115.

¹²⁵ *Id.* art. 116.

¹²⁶ *Id.* art. 117.

¹²⁷ *Id.* art. 118.

¹²⁸ *Id.* art. 120.

¹²⁹ *Id.* art. 121.

¹³⁰ *Id.* art. 124(V).

¹³¹ *Id.* (VII).

¹³² *Id.* (VIII).

¹³³ *Id.* art. 125.

¹³⁴ *Id.* art. 126.

¹³⁵ *Id.* art. 126(§1).

The Child and Adolescent Statute guarantees to all children and adolescents access to the Public Defender's Office (*Defensoria Pública*), the Public Prosecutor's Office, and all organs of the judiciary.¹³⁶ Judicial assistance is free and will be provided to those who need it through a Public Defender or a nominated lawyer.¹³⁷ The judicial actions under the jurisdiction of the Childhood and Youth Courts (*Justiça da Infância e da Juventude*) are free of charge, except in the case of bad faith.¹³⁸

In judicial proceedings, a minor of less than sixteen years of age is represented and a minor that is more than sixteen and less than twenty-one years old is assisted by his parents, tutors, or guardian, according to the Civil Code and the Civil Procedure Code.¹³⁹ The judicial authority will nominate a special guardian for the child or adolescent every time that there is a conflict between the child's interests and his parents or guardian's interests or if the child lacks the due legal assistance.¹⁴⁰ The law also prohibits the disclosure of the judicial, police, and administrative acts involving an infraction committed by a minor.¹⁴¹ Any news regarding the act cannot identify the child or adolescent by photograph or name, including name and surname initials, nickname, filiation, kinship, or residence.¹⁴²

The Child and Adolescent Statute authorizes the states and the Federal District to create specialized and exclusive courts for children and youth.¹⁴³ Such courts are competent, *inter alia*, to receive representations initiated by the Public Prosecutor's Office for the verification of acts of infraction carried out by an adolescent and the application of the pertinent punishment,¹⁴⁴ to grant remission as a form of suspension or extinction of the judicial procedure,¹⁴⁵ to receive adoption requests and related matters,¹⁴⁶ to apply administrative punishments in case of breach of a rule for the protection of a child or adolescent;¹⁴⁷ and to hear cases involving requests for child custody and guardianship in general.¹⁴⁸

In light of recent violent acts of infraction carried out by minors, Congress is currently studying a proposal for a law that decreases from eighteen to sixteen the age that a minor is

¹³⁶ *Id.* art. 141.

¹³⁷ *Id.* (§1).

¹³⁸ *Id.* (§2).

¹³⁹ *Id.* art. 142.

¹⁴⁰ *Id.* art. 142(§1).

¹⁴¹ *Id.* art. 143.

¹⁴² *Id.* (§1).

¹⁴³ *Id.* art. 145.

¹⁴⁴ *Id.* art. 148(I).

¹⁴⁵ *Id.* (II).

¹⁴⁶ *Id.* (III).

¹⁴⁷ *Id.* (VI).

¹⁴⁸ *Id.* (§1)(a).

criminally responsible for his actions.¹⁴⁹

IX. Concluding Remarks

The Brazilian Constitution especially grants rights and establishes principles designed to protect minors. In a special chapter dedicated to the family, the child, the adolescent, and the elderly, the law of the land clearly stipulates that it is the duty of the family, the society, and the State to ensure to children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.¹⁵⁰

In response to these constitutional principles, plus the many international treaties and conventions to which Brazil is either a signatory or a party, many pieces of legislation have been enacted and policy programs developed, offering a wide range of legal protection to children's and adolescents' rights. The enactment of the Child and Adolescent Statute in 1990 consolidated the many rights and duties that were scattered throughout different pieces of legislation and reflects the effort made by the government to promote the protection of children and adolescents.

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¹⁴⁹ Maioridade Penal, VEJA, Feb. 2007, available at http://veja.abril.com.br/idade/exclusivo/perguntas_respostas/maioridade_penal/index.shtml.

¹⁵⁰ C.F., art. 227.

Addendum – Amendment of the Child and Adolescent Statute

On November 25, 2008, Law No. 11,829¹⁵¹ was promulgated to improve the fight against child pornography and to criminalize pedophilia on the Internet. It amended articles 240 and 241 of the Child and Adolescent Statute and included a definition of child pornography.

According to article 240 of the Child and Adolescent Statute, to produce, reproduce, direct, photograph, film or register, by any means, an explicit sex or pornographic scene involving a child or adolescent, is punishable upon conviction with four to eight years in prison and a fine. The same punishment is applicable to whoever negotiates, facilitates, recruits, coerces, or by any other way intermediates the participation of a child or adolescent in the mentioned scenes, or participates in such scenes.¹⁵² The punishment is increased by one-third if the person commits the described crime during the exercise of public functions or under the pretense of such exercise;¹⁵³ by taking advantage of domestic relations, cohabitation or hospitality;¹⁵⁴ or by being related to the minor by blood or by law up to the third degree, or by adoption, guardianship or employment.¹⁵⁵

Article 241 punishes with up to eight years in prison and a fine whoever sells or offers for sale, a photograph, video, or any other means that contains an explicit sex or pornographic scene involving a child or adolescent. Whoever facilitates the participation of minors in such scenes;¹⁵⁶ provides the means or services for the storage of such photographs or scenes;¹⁵⁷ or furnishes, by any means, access, through the world wide web or Internet, to the mentioned photographs or scenes,¹⁵⁸ is also punished in the same way.

Article 241 punishes with up to six years in prison and a fine whoever offers, exchanges, makes available, transmits, distributes, publishes, or publicizes by any means a photograph, video, or any other source that contains an explicit sex or pornographic scene involving a child or adolescent.¹⁵⁹

Article 241-B, punishes with up to four years in prison and a fine the acquisition, possession or storage, by any means, of a photograph, video, or any other source that contains an

¹⁵¹ Lei No. 11.829, de 25 de Novembro de 2008, *available at* the website of the Brazilian Presidency, http://www.planalto.gov.br/ccivil_03/ Ato2007-2010/2008/Lei/L11829.htm.

¹⁵² Estatuto da Criança e do Adolescente, Lei No. 8.069 de 13 de Julho de 1990 [E.C.A.], art. 240(§1), *available at* the website of the Brazilian Presidency, <http://www.planalto.gov.br/ccivil/LEIS/L8069.htm>.

¹⁵³ *Id.* art. 240(§2)(I).

¹⁵⁴ *Id.* (II).

¹⁵⁵ *Id.* (III).

¹⁵⁶ *Id.* art. 241(§1)(I).

¹⁵⁷ *Id.* (II).

¹⁵⁸ *Id.* (III).

¹⁵⁹ *Id.* art. 241-A.

explicit sex or pornographic scene involving a child or adolescent. Paragraph 2 of article 241-B lists the exceptional circumstances that allow a person to possess or store such material.

To simulate the participation of child or adolescent in an explicit sex or pornographic scene, by means of adulteration, montage, or modification of video or any other format of visual representation is punished with up to three years in prison and a fine.¹⁶⁰

The enticement, harassment, instigation, or constraint, by any means of communication, of a child, with the purpose of practicing with the child lustful acts is punished with up to three years in prison and a fine.¹⁶¹ The same punishment is applied to whoever facilitates or induces the access of a child to material containing an explicit sex or pornographic scene with the purpose of practicing lustful acts with the child;¹⁶² or entices, harasses, instigates, or constrains a child, with the purpose of inducing the child to expose herself in a pornographic or sexually explicit way.¹⁶³

Finally, Law No. 11,829 created article 241-E determining that, for the purpose of the crimes described in the Child and Adolescent Statute, the expression “an explicit sex or pornographic scene” encompasses any situation that involves a child or adolescent in explicit sexual activities, real or simulated, or the exhibition of the sexual organs of a child or adolescent for sexual purposes.

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¹⁶⁰ *Id.* art. 241-C.

¹⁶¹ *Id.* art. 241-D.

¹⁶² *Id.* (I).

¹⁶³ *Id.* (II).