



DEFENSA DE NIÑAS Y NIÑOS INTERNACIONAL DNI  
DEFENSE DES ENFANTS INTERNACIONAL DEI  
DEFENCE FOR CHILDREN INTERNATIONAL DCI  
*the worldwide movement for children's rights*



**ANCED**

Associação Nacional dos Centros de  
Defesa da Criança e do Adolescente

• Seção DCI Brasil •

# **II Alternative Report on the Situation of the Rights of the Child in Brazil to the International Convention on the Rights of the Child (CRC)**

## **Brazil 2014**



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**Coalition (Coordinator): ANCED (National Association of Centers  
for the Defense of Child Rights) – DCI Brazil**

**Support:  
Fundação Abrinq/Save the Children  
ActionAid**

**COALITION MEMBERS:**



**Save the Children**



**FNPETI**

Fórum Nacional de Prevenção  
e Erradicação do Trabalho Infantil





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## INTRODUCTION

The II Alternative Report on the Situation of the Rights of the Child in Brazil, to the International Convention on the Rights of the Child (CRC) carries information and analysis organized by ANCED and several partners as members of a coalition of non-governmental organizations dedicated to children's rights promotion in Brazil.

ANCED is composed of 34 associated Defense Centers for the Rights of the Child that deal daily with the promotion and guarantee of the Rights of the Child. The following organizations are also members of the coalition who presents this Alternative Report: Fundação Abrinq (Abrinq Foundation), National Forum for the Rights of Children (FNDCA), ECPAT-Brazil, National Forum for the Prevention and Eradication of Child Labor and Save the Children.

The present Report is the result of the development of a 'monitoring matrix' by ANCED and its partners. The 'monitoring matrix' is made of descriptors and indicators of the situation of children in Brazil. The descriptors and indicators are based on the rights of the child as laid down in international law, particularly the on the CRC, the Brazilian Statute on the Rights of the Child (ECA) and the Recommendations made in 2004 by the Child Rights Committee of the UN to the Brazilian State.

The 'monitoring matrix' was developed by ANCED, during 2005 and 2006, as to give visibility to violations affecting children in Brazil, but in particular those belonging to groups in vulnerable situations, and allow an analysis of public policy, in view of the effectiveness of the principle of non-discrimination.

ANCED submitted the I Report on the Situation of the Rights of the Child in Brazil to the Child Rights Committee of the United Nations in 2004. The Brazilian State submitted its first Report on the CRC in 2003, 13 years after becoming a part on the convention. The Brazilian State submitted its II Report to the CRC in 2013, for the years of 2003-2007, after 10 years of the presentation of the I State Report. Once again, the State did not comply with the international obligations according to the international law and international human rights law.

Therefore, and considering that this final country Report on the CRC presented to the Committee was not translated to Portuguese, ANCED decided to develop its II Alternative Report based on its 'monitoring matrix', applying it to the period beginning in 2004, to 2014.

Brazil is a country of great disparity, inequality, being the children one of the major victims of this situation. This Report describes and analyzes that, despite governmental efforts to promote social wellness, the violation of children human rights require urgent measures, such as happens on the case of the increase of homicides against Afro-Brazilian teenagers, child disability due to lack of preventive health care, child labor at early ages, child drug addiction and alcoholism at early ages, increase of deprivation of liberty of adolescents, deconstruction of educational institutions, among others. ANCED and all members of this coalition hopes that a fruitful dialog is raised between the society and the government, from this moment on, to the benefit of all children living in Brazil.



## 1) GENERAL MEASURES OF IMPLEMENTATION

### 1.1. THE SYSTEM FOR GUARANTEE OF THE RIGHTS OF THE CHILD

#### A) The Councils for the Rights of the Child

##### A.1. Municipal Council for the Rights of the Child (CMDCA)

According to data from the survey *Knowing the Reality*<sup>1</sup>, in 2006 only 8% of Brazilian municipalities lacked CMDCAs. Nevertheless, when analyzing regional data, marked differences are perceived. The Midwest, North and Northeast regions have respectively 16%, 13% and 12% of municipalities without active boards, while in the South and Southeast regions this rate is 96% of active boards.

The operation, organization and structure of these organs present failures according to the same survey. It is also noteworthy that there is an average period of **three years** between the creation of CMDCAs and the beginning of its operation. A number of 47% of the councils reported having periods of disruption or never having developed effective activities in the municipality. The dedication of the counselors was low, about 70% of those engaged only up to 5 hours per month, 65% of councils carried only one monthly meeting and another 11% could only meet every two months. Also, only 20% of councils were able to structure an evaluation of the situation of the children in the county, and only 23% produced a documented Plan of Action for the municipality.

Without consolidated and documented knowledge about the reality of childhood in the city, the CMDCAs are unable to respond satisfactorily to some of its main tasks, namely, formulating policies that address childhood participating in the construction of a full protection policy for the city. Not surprisingly, only in 30% of municipalities there was full inclusion of the action plan in the municipal budget.

The existence of a program for the monitoring and evaluation of policy implementation with a focus on children are even rarer. Only 17% of the councils have structured such procedures and 46% do not have them, while in the others, it is under preparation.

Data on infrastructure show that 17% of the councils studied while active, lack of proper office establishment. A more serious situation is faced by councils in the Northern Region, where this ratio is as high as 25% of Councils.

Only 54% of councils reported having staff, mostly (91%) assigned by the government. Most importantly 3% of councils say they have support staff maintained with funds from the Municipal Fund for the Rights of Children, which constitutes an error since the Municipal Fund resources must necessarily be allocated to meet policies, programs and actions aimed at promoting and protecting the rights of children.

The situation regarding the creation of the Funds is also severe, since in 30% of the councils, the Municipal Funds have not been regulated; Also, only 42% reported ever having received any resource from this source. It reveals that there may be ignorance about the nature of the Municipal Funds for Children.

There is still a precarious balance between forces of government and civil society, what create problems of independence, since 60% of counselors reported being public servants, coming from the executive, legislative and judicial powers. It is important to clarify that the participation of

<sup>1</sup> [http://www.promenino.org.br/portals/0/docs/ficheros/200707170012\\_15\\_0.pdf](http://www.promenino.org.br/portals/0/docs/ficheros/200707170012_15_0.pdf)



representatives of the Legislative and Judiciary on the Boards of Rights contradicts the constitutional principle of the independence of the branches and, specifically, the resolution 105/2005 from CONANDA, which is the National Council for the Rights of Children<sup>2</sup>.

It is also registered an interference regarding the management of Funds, since 20% of Councils indicated that the responsible for the use of resources was the government. The authors concluded that "this situation questions the very nature of Municipal Funds, which are likely to provide more effective performance of the counselors, independently of the municipal executive, from the priorities raised among the board of the council and not by only one of the parts".

There are also low levels of knowledge and incorporation of resolutions of CONANDA and the State Councils by CMDCA's. This survey asked CMDCA's how often they took notice and incorporate in their actions CONANDA's and State Council's resolutions. As for CONANDA resolutions, only 30% of the CMDCA's reported that always took note of these and only 29% incorporated these resolutions in their actions. Regarding the resolutions of the State Councils, the number increases slightly, since 33% of the CMDCA's reported always taking notes of these and 30% started incorporating these resolutions.

### **A.2) Guardianship Councils (CT)**

According to the same survey, there is an average period of three years between the creation and effective implementation of the activities of CT, in the North and Northeast this period is larger, with 5 and 4 years respectively. An important fact is that 96% of CTs pays a salary to their staff, with an average of R \$504.00 (approximately US\$250,00). The study also reveals that 44% of the staff work more than 40 hours a week and another 28% work between 31 and 40 hours.

### **Poor infrastructure and lack of equipment**

The survey showed that 12% of CT do not have a permanent office. This situation is most serious in the North, where 29% do not have an office. As for the workplace, only 50% of members assess how well the size of the office and 48% as good storage conditions. Still on the office, the requirement that received the lowest average was the one who argued about the privacy policy, which appears only as good in the assessment of 32% of CTs.

With regard to the presence of equipment and materials, it appears that 15% do not have basic furniture, 23% office materials and 30% legal texts. Other more sophisticated, but also needed to perform the function of receiving complaints and surveillance as telephone and motor vehicle are also absent in 37% and 60% of CTs, respectively.

### **A.3) State Councils for the Rights of the Child (CEDCA)**

The State Councils were created in all states. On its composition, 54% of the counselors work in public institutions. Such as it happens in municipal spheres, the state councils reproduce practices that contravene the principle of separation of powers, since 25% of government representatives reported to be members of the Judiciary, Legislative and Executive Powers.

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<sup>2</sup> Art.11: representantes de órgãos de esferas governamentais – que não o executivo – não devem compor os Conselhos dos Direitos da Criança e do Adolescente no âmbito do seu funcionamento.

(Art.11: representatives of governmental organs – except for the Executive Power - should not compose the Councils for the Rights of the Child and Adolescent while functioning.)



More than half of councils surveyed operates without a diagnosis of the situation of the Child in the state, another 36% say they are preparing and only 12% actually already have this instrument. Despite the lack of diagnosis, 58% have a state policy for protecting the rights of children that includes the municipalities. Another 72% have a documented action plan and 24% are in the planning stages for the construction of the Plan. Regarding the influence in drafting the state budget, 48% of councils had their plan partially included in the budget piece and another 26% had the plan fully included. Finally, about 50% of councils have no structured procedures for monitoring and evaluating of policies for children.

## **B) Data related to the rights of children**

There is still a great need in the collection and provision of data on children's rights. This reality is particularly serious in regards to data on human rights defense, which is one of the sections of the System for the Guarantee of the Rights of the Child.

The research *Knowing the Reality*, held in 2006, as above mentioned, pointed SIPIA (Sistema de Informações para a Infância e Adolescência or *System on Information about Childhood*) as an important policy for the generation of data on childhood. However, it classifies it as "incipient". The SIPIA removes data sources of cases held by the Guardianship Council and SINASE (National Socio-educational System). These agencies do not always make the record of attendance, which impairs feeding SIPIA.

The integration of monitoring systems is another point responsible for its weakness. The SIPIA coexists with other systems, which is not integrated, and which are of a public nature, such as the CNJ (National Register of Adolescents in Conflict with the Law - CNAL) and prosecutors (RJ), information systems System justice.

## **B.1. Comments on Recommendations on System of Protection**

### **1. 1. Plan for the implementation of children's rights (R18)**

In 2002, the elected President has pledged to give priority to Brazilian children in the formulation of public policies. Following the guidelines of the document entitled *A World Fit for Children*, produced during the Special Session of the UN General Assembly on Children held in New York, in May of the same year, a group of civil society organizations and international organizations created the President Friend of the Child and the Adolescent Plan.

Nevertheless, since then, the Federal Government has not yet initiated a process of evaluation and revision of policies and efforts that should be undertaken to achieve the objectives proposed in that plan.

It is worth noting that the document is not scoped to the analysis of the implementation of commitments made by Brazil at the International Convention on the Rights of the Child. It also does not include core dimensions of children's rights such as the right to participation, the right to freedom of expression, the right to freedom of movement, the right to family and community and the right to leisure, among others.



Despite sectorial plans<sup>3</sup>, developed to ensure a specific and detailed attention to each of the situations of violation, it is reasonable to assert that due the lack of coordination, a fragmented project for the promotion and protection of children's rights in Brazil.

### **1.2. Independent mechanism: Paris Principles (R20)**

Brazil lacks institutions with characteristics pointed by the Committee based on Paris Principles – nor dedicated to human rights of children, nor the human rights of the general population - and have not undertaken efforts to establish them.

### **1.3. Article 12 of the Convention: the right to participate (R 37)**

An adult-centered culture, ingrained with the ideas of dependence and ignorance as characterizing childhood and adolescence prevail. Laws in most cases, when it is not late is at least timid, regarding the participation of children. In addition, there are few objective data on this context and on developing appropriate or/and effective inclusive methodologies. ANCED and its partners have developed mechanisms that allow the implementation of this right. Therefore, accompanying this report, there are records of some activities focused on participation, promoted to the perception of the implementation of the rights of children themselves.

## **1.2) RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT**

With focus on what has the Recommendation 41, 42 and 43 of the Child Rights Committee of the UN to Brazil in 2004, we will cover the right to life including: homicides against children in Brazil.

### **A) Homicides of Children in Brazil**

The increasing incidence of violent deaths has direct consequences on patterns of juvenile mortality in recent years. Brazil assumes a prominent position on this scenario because, despite the fact that homicides affect the population as a whole, **especially the adolescents are victims.** Various researches show that male and **black adolescents are the biggest victims of homicide.** Moreover, when it comes to homicides committed by state agents (police) there is a great impunity. The statistics show a clear cut of class, age and color.

According to the *Map of Violence 2006*<sup>4</sup>, conducted by the Organization of Ibero-American States for Education, Science and Culture (OEI) deaths from homicide in the country were concentrated in 556 of the 5.560 Brazilian municipalities, e.g. about 10% of it. Of the 48 345 deaths from this cause, recorded in 2004, 34,712 - more than two thirds - happened in these cities. According to the study, based on data from 1994 to 2004, there is an increase in violence within the country, mainly in the Midwest region (covering states bordering other Latin American countries), and not only in large capitals and metropolitan regions.

<sup>3</sup> National Plan for the Promotion, Protection and Defense of the Right of the Child and Adolescent to Family and Community Living; National Plan for Fighting Sexual Violence against Children and the, National Plan for the Eradication of Child Labor and the Protection of the juvenile worker, to mention some plans.

<sup>4</sup> <http://mapadaviolencia.org.br/publicacoes/Mapa2006.pdf>



The survey data *Map of Violence in Brazilian Municipalities in 2008*- a study prepared by the Network of Latin American Technological Information (RITLA) - referring to 2006, confirm that no less than 73.3% of all homicides in Brazil occurred in the 556 most violent municipalities.<sup>5</sup>

It analyzes that violence is going to the countryside because there was, in recent years, rapid growth in the industrial hub of the smaller cities, which consequently attracted many people and increased the number of the population. The anthropologist Alba Zaluar, a renowned researcher on the subject, in the country, explains that one reason for the growth in the rate of homicides in the inner cities is due to the use of them as warehouses for the trafficking of drugs and weapons. It also points out that another reason for this phenomenon is the uncontrolled growth by which some of these cities have gone through in recent years, as Macaé, in Rio de Janeiro. In regards to drug trafficking, we see the involvement of many adolescents.

The *CADÊ 2012 survey: Children and Adolescents in Data and Statistics* was conducted by the Brazilian Society for the Defense of the Child and the National Forum for the Defense of the Rights of the Children - which is part of the coalition presenting this Alternative Report. The survey indicates that the percentage of homicides in the population ranging from 0-19 years of age in Brazil, increased 33,84%, from 1997 to 2011 – from 6645 to 8894 cases of reported homicides.

The *Map of Violence 2014*<sup>6</sup> draws some conclusions about the homicides of adolescents in Brazil: homicide rates among young people moved from 19.6 in 1980 to 57.6 in 2012 per 100 000, representing an increase of 194.2%. In the rest of the population, we call not young, in the same period, spend 8.5 to 18.5 per 100 000: growth of 118.9%. The evolution of these ratios is not uniform either in time or in space, and it can be separated in periods as follows:

- **2003/2007:** The national strategy for disarmament concomitantly with successful policies to combat violence in a few states with high rates and strong demographic weight (like São Paulo and Rio de Janeiro) originate initially falls and, later, a certain stabilization in homicide rates.
- **2007/2012:** Rates resume their upward trend, rising from 25.2% in 2007 to 29.0% in 2012, e.g. an increase of 15.3% in five years.

### A.1) The Color of Homicides

The same source indicates that between 2002 and 2012, the trend in homicides by race / color of the victims was unequivocal: **Fall of white homicides - decrease 24.8%** - and **rising black homicides: grow 38.7%**. Taking into account the respective populations, the white rates fall 24.4% while black 7.8% increase. Thus the index of the total black victimization goes from 73.0% in 2002 (73% die proportionately more blacks than whites) to **146.5% in 2012, representing an increase of 100.7% in the total black victimization.** Among the youngsters, the situation is more worrying: the number of white victims fell 32.3%. **The number of black young victims increases 32.4%**: the diametric opposite. White rates fall 28.6% while black 6.5% increase. With this, the total **black victimization** among this group rate goes from 79.9% in 2002 (die proportionately 79.9% more young blacks than whites) to 168.6% in 2012, representing a **111% increase in the victimization of young black people.**

<sup>5</sup> Actually, Brazil has 5.564 cities.

<sup>6</sup> [http://www.mapadaviolencia.org.br/pdf2014/Mapa2014\\_JovensBrasil\\_Preliminar.pdf](http://www.mapadaviolencia.org.br/pdf2014/Mapa2014_JovensBrasil_Preliminar.pdf)



## **A.2) Public Policy: National Security and Citizenship Program (PRONASCI)**

The program does not present anything new neither fixes deadlines, goals and budget for the development of the planned activities. PRONASCI simply does not mention or plan action against police violence. The program does not include actions aiming to reduce the rate of police killings, the need for separation from their duties of the police is involved in deaths while there have been investigations. Combating police violence and corruption should be central points of the Program. The actual context of deaths by firearms involves a range of actors and circumstances and quite a State response marked by coercion, violence and lack of intelligence in action. Under the argument that they are fighting organized crime or drug trafficking and thus maintaining urban order, the Brazilian police in some states receive by the Executive (Mayors, Governors) expressed order to kill, known for their brutality.

To the Amnesty International, governmental response to the claims of low income communities in areas of crime was described as "confusing"<sup>7</sup>. According to this source, although the federal government has launched policies aimed at crime prevention, such as the PRONASCI, which allocates resources to the area of public safety, there are still "violent methods, discriminatory and corrupt in combating crime " in many states, and especially in Rio de Janeiro.

## **A.3) Impunity**

The practice of the Centers for the Defense of the Child (CEDECAs) comes along a few years by identifying the causes of the maintenance of impunity for crimes against children:

a) Investigative police and police violence - Lack of evidence is the factor that most contributes for complaints not to become criminal legal suits, which is caused by the inefficiency of the police to carry out the necessary tests to characterize the offense. This occurs due to lack of personnel, materials and tools and the lack of action of the police officers.

b) Public Prosecutor/Ministry – It is currently the most time consuming sector in the application of ECA. ANCED denounces the failures in law enforcement for child protection, based on the ECA and the CRC by the Prosecution, as noted from their participation in police investigations and prosecutions investigating violence against life and physical integrity of children. The Public Ministry is responsible, to put charges or accuse adolescents, from committing acts against the law, but primarily it has the duty to monitor and guarantee the law implementation.

c) Judiciary - Difficulties in access to justice are not limited to the access to the judicial system by socially vulnerable groups. It has been a huge obstacle to the realization of rights. The Brazilian Judicial system was recognized in 2005 by the UN Special Rapporteur on "the independence of the judges and lawyers" as an important element in the worsening of the situation of particularly vulnerable groups such as children and adolescents. They are re-victimized by the Judicial system that reproduces, in the administration of justice, the existing discriminatory will that exists in society:

**(...) "Difficulties of access to justice, notoriously slowness, sparse representation of women, Afro-descendants and indigenous people in senior positions in the judiciary, tendency to nepotism (...). Of all, the most serious is undoubtedly the first, in that a large part of the population, for reasons of social, economic, cultural or exclusion are prevented from accessing the judicial provision or receives a discriminatory manner. (...)Another big problem is the slowness of Justice which in practice affects the right to petition, or makes it ineffective.**

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<sup>7</sup> Annual Report of the Amnesty International (2007), delivered in May, 28<sup>th</sup>, 2008.



Thus, the cases (legal suits) take several years to be judged, which causes uncertainty and (...), in many cases, generates impunity "(Leandro Despouy, UN Special Rapporteur on independence of judges and lawyers).<sup>8</sup>

These problems are also pointed out by the *Special Rapporteur on Extrajudicial, Arbitrary and Extrajudicial Executions, Asma Jahangir*. She asserted that the fact that **only 7.8% of the homicides committed annually in Brazil are investigated and prosecuted successfully** reveal the failure of the State to exercise due diligence in carrying out justice. The UN on Extrajudicial, Arbitrary Executions and the Special Rapporteur, Philip Alston, reaffirmed this standard: "*most of the recommendations were not implemented. **Impunity remains the rule in Brazil**, with few extrajudicial executions being effectively investigated and prosecuted. Police violence remains widespread and systematic, disproportionately affecting the most vulnerable elements of the population.*"

#### **A.4) Administrative records on violations against children lives**

The studies mentioned above as *Map of Violence* for various periods, constantly point out that the data on homicides do not reflect the reality of the murders in the country. The problem occurs due to a failure in the Instituto Médico-Legal – IML (Forensic Institute), the government agency that conducts forensic expert investigation of unexplained death events. Many deaths are registered in the system as "undetermined", a kind of statistical limbo that does not define what is homicide, accident or suicide. When in doubt, IML simply classifies the case as unclear. In many cases, in the moment the death is registered, it is not possible to identify the cause, what will take time. The problem is that not always, after the police investigation, the data is updated.

In addition, there are situations where, despite the evidence, experts and police deliberately did not classify the death as a homicide. Researchers consider an acceptable index of "undetermined intent" of up to 5% of all deaths due to external causes. **For total violent deaths in Brazil between 1996 and 2010, the State failed to identify the underlying cause of death in 9.2% of cases, which corresponds to 174 223 victims.**

This and other data are shown on the *Map of Hidden Homicide in Brazil*, launched in 2013, done by IPEA<sup>9</sup>, based on the *Mortality Information System (SIM)*<sup>10</sup>, the number of hidden homicides (HOs) estimated in each unit of Brazilian federation, considering deaths misclassified as "undetermined". It analyzed socioeconomic and situational characteristics associated with each of the almost 1.9 million violent deaths that occurred in the country between 1996 and 2010. The results in this study indicated that the number of homicides in the country would be 18.3% higher than the official records, which represents about 8,600 homicides unrecognized each year. Thus, the estimates indicate that Brazil has surpassed the annual mark of 60 000 deaths from assaults. The calculations also showed that a substantial increase in the homicide rate in many states of Brazil and, in particular, the Northeast has not occurred, but that the official rates were driven by decreased underreporting that occurred with the improvement in the quality of the SIM.

<sup>8</sup> On the situation of the slowness of the Brazilian Judiciary see: Report presented by Leandro Despouy, United Nations Special Rapporteur for the Independence of the Judges and Lawyers (2005) and Civil and Political Rights, specially Issues Related to the Independence of the Judicial Power, Justice Administration and Impunity at <http://www.ohchr.org/spanish/countries/br/index.htm>.

<sup>9</sup> [http://www.ipea.gov.br/portal/images/stories/PDFs/TDs/td\\_1848\\_sumario\\_executivo.pdf](http://www.ipea.gov.br/portal/images/stories/PDFs/TDs/td_1848_sumario_executivo.pdf)

<sup>10</sup> The Information System about Mortality (SIM) was created to regulate the provision of data on mortality in the country, under the Ministry of Health .



Nevertheless, in recent years, there has been a worrying phenomenon of increase in violent deaths whose intention was not determined. This fact did not occur in the whole country, but it was confined mainly to seven states: Rio de Janeiro; Bahia; Rio Grande do Norte, Pernambuco; Roraima; Minas Gerais and São Paulo.

## 2) VIOLENCE AGAINST CHILDREN

### 2.1. Family and community

#### A) The institutionalization of children in Brazil: Challenges

The attenuation of the practice of placing children in institutions started on the 1990's, when ECA entered in force and enforced the constitutional right to family and community life of children. The ECA subsequently determined the end of the doctrine of irregular situation, to establish the doctrine of integral protection, reaffirming the right to family and community life of children.

With the advent of full protection, institutionalization becomes protective a measure for children who have been threatened or violated their rights (Art. 98t, ECA), and is characterized by the principles of exceptionality and brevity (Art. 101, sole paragraph of ECA). The new paradigm also breaks with the stigmatizing and authoritarian practice for poor families, determining that the lack of material resources is not sufficient for the loss or suspension of parental authority subject. Remains, however, the dilemma of effectuation of these rights and principles that guide the protective measure of shelter.

The effectiveness of the precepts of full protection is great difficulty on this "culture of institutionalization", still quite rooted in society, combined with the socioeconomic conditions of the population, which remain quite exclusive and unequal.

The Brazilian state has not yet prioritized, as determined by the ECA - the absolute priority principle - the promotion of public policies for this segment of the population, with the maintenance of equipment and essential public services, such as kindergartens, schools and family support programs.

The inadequate public policies for this segment of the population, together with the difficulty of families to create and sustain their children in a troubled and miserable everyday leads to violation of the rights of children in the forms of abandonment, neglect and victimization by violence. In this framework, the solution historically constructed prevails, causing thousands of children to be separated from their families and sent to shelter institutions.

According to the National Survey of Children in Shelters<sup>11</sup> (2009/2010), there is in the country 36,929 children living in institutions. Some data indicate the absence of the state in protecting these children. For example, in four of the five Brazilian regions, most institutions are private, and the Northeast has the largest disparity: private:84% public: 15.2%. In this universe of private entities, at least 30% do not hold *Certificate of Social Assistance of Beneficent Entity*, which means

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<sup>11</sup> Performed by the MINISTRY OF SOCIAL DEVELOPMENT AND FIGHTING HUNGER NATIONAL, the DEPARTMENT OF SOCIAL ASSISTANCE and Oswaldo Cruz Foundation at:  
[http://www.fazendohistoria.org.br/downloads/levantamento\\_nacional\\_das\\_criancas%20e%20adolescentes\\_em\\_servicos\\_de\\_acolhimento.pdf](http://www.fazendohistoria.org.br/downloads/levantamento_nacional_das_criancas%20e%20adolescentes_em_servicos_de_acolhimento.pdf)



achieving the standards required by law. Of activities undertaken by the institution, the rates never reach the 50% mark:

**Examples: ACTIVITIES (in the institutions)**

- 1 Preparation of political + educational project unit: 45.6%**
- 2 Planning of activities: 36.1%**
- 3 Registration of available resources and community services: 41.6%**
- 4 Training / development of human resources: 41.8%**
- 5 Training and monitoring of volunteers: 49.4%**
- 6 Guidance to staff on performance in emergency situations: 35.8%**
- 7 Conducting regular meetings to discuss the cases attended: 36.5%**
- 8 Gradual preparation of children for institutional separation: 37.4%**
- 9 Development of Individual and Family Plan for each child: 45.3%**
- 10 Preparation and submission of periodic reports on children for the Justice System for Children: 34.4%**
- 11 Meetings with children for various discussions: 39%**
- 12 Organization of individual belongings / photographs of children: 36.5%**
- 13 Communication between staff members working in different shifts: 38.7%**
- 14 Arrangement of civil documentation: 35.5%**
- 15 Arrangement of immunization records for children 36.8%**
- 16 Efforts to locate the family of origin \* 41.4%**
- 17 Family Visit 40.8%.**

Added to this situation, the lack of training of the technical staff of the institutions: 37% have only primary education (9 years of school study) and 29% have higher education (university). It is significant the fact that approximately 25% to 30% of children housed in the North, Northeast and Middle West regions do not pursue administrative or legal proceedings before sheltering the child. About the main reasons for the institutionalization: negligence in the family (37.6%), parents or guardians are chemical dependents/ alcoholics (20.1%), abandonment by parents or guardians (19%), physical domestic violence (10.8% ) found living on the street (10.1%), lack of material resources of the family (9.7%).

These data demonstrate that shelters are predominantly private institutions not controlled by the government. Also, the insufficient training of the technical staff and the failure of key activities, as outlined, are structures that violate the rights of children, under domestic and international law, and therefore it is urgent that the State take special measures towards that situation.

This source still reveals the typical profile of a child who is sheltered: boy, aged 7-15 years old, black and belonging to a poor or miserable family.

**A.1) Children and adolescents living on the streets**

Children living on the streets have their right to family and community life violated. Launched by the civil society, the public campaign "Children are not for the streets" (*Criança não é de Rua*) (2005) initially estimated around 25,000 children surviving on the streets of cities with more than 100,000 inhabitants in Brazil. Published in 2009, the campaign has developed research *Census of*



*exclusion or lack of inclusion in the Census? The (in) visibility of boys and girls living on the streets in the Brazilian capitals.*<sup>12</sup>

According to this research, on the quantity of children living on the streets: Fortaleza (2007) 411 homeless, Fortaleza 2 (2008) 76 homeless, Aracaju 166 on the streets, Port Alegre 637 on the streets, Teresina 1358 on the streets, Teresina 10 homeless, Sao Paulo 815 (7 to 18 years) on the streets, Rio de Janeiro 347 on the streets, Recife (2005) 368 homeless, João Pessoa 1256 on the streets.

According to the profile of the child on the streets, it was found that he is a teenager, male and black. The vast majority of children living on the street has ties with their families, including some who remain on the streets during the week, returning home on weekends.

The above data do not allow a diagnosis to trace the problem, since they refer to a few cities in Brazil, moreover there is a methodological difference between the studies, which complicates the comparison. **Thus, the most relevant information on children in street situation is precisely the lack of information.**

The data make it possible to verify that the situation of these children is similar to the reality of children who are institutionalized/sheltered. Children on the streets also go through institutions such as shelters and hostels, but it is known that this transition happens for a short time. Thus, it is necessary to carry out more comprehensive and in-depth studies in order to better understand the reality of children living on the street, so the government can promote appropriate public policies to the peculiarity of their situation.

## **A.2) The National Plan for Family and Community Living (PNCFC)**

It causes concern the effective implementation of this Plan in the federative state and especially the cities. Only 49.5% (or 2,754) of municipalities conducted the Municipal Conference for the Rights of Children, which had as a theme the PNCFC. Thus, more than half of the 5,561 existing municipalities in Brazil even learned about the Plan. Even municipalities that participated in the VII National Conference on the Rights of the Child and Adolescent, in December 2007, showed little affinity with the guidelines contained in PNCFC since claimed more incentives to shelter and adoption institutions, just the latest measures to be taken under the provisions of the Plan.

## **3) DISABILITY, BASIC CARE HEALTH AND WELFARE**

### **3.1) EDUCATION**

#### **A. Legal framework and legislative innovations**

The right to education is recognized in the Federal Constitution (CF), specially in articles 6 and 205 to 214, being broader than the right to schooling, called "education" by the legislation (Law number 9394/1996, art.1 °). In this broad sense, education is a right for all and also recognizes the freedom of teaching and learning as well as the broad duties of the state, society and family as to children and adolescents (CF, articles. 205 and 227). Education is a specific duty of the State that may be held by the private sector upon authorization and evaluation by the government, provided they meet the general standards of education (CF, Articles 206, III, 209.). Brazil is a federative state, leaving the municipalities, states and the Federal District to provide elementary education,

<sup>12</sup> Em: <http://www.criancanaoederua.org.br/pdf/CENSO.pdf>



while the Federal government has an obligation to provide technical and financial assistance at this stage, and to establish general standards of education and maintain their own network of higher education and professional (CF, article 211).

In recent years, two constitutional amendments that modify the structure of the right to education were approved. Firstly, the Constitutional Amendment number 53/2006, created the Fund for the Maintenance and Development of Basic Education and Enhancement of Education Professionals (Fundeb), amplifying the focus of all funding for basic education and ensuring more funds from the federal government (the Union), which would contribute 10% of the total fund. Secondly, the Constitutional Amendment number 59/2009, among other measures, expanded the age range of compulsory education to all children and adolescents aged 4 (four) and seventeen (17) years, be required from 2016.<sup>13</sup>

More recently, new legislation, conquered from the pressure of organized civil society, opened a positive outlook for the financing of education in the country. Federal Law number 13.005 / 2014 approves the new National Education Plan, to be implemented between 2004 and 2014 regulating the constitutional directive to establish "target application of public resources on education as a proportion of gross domestic product [GDP]" (CF art. 214, section VI). In this sense, the goal of progressive increase in public investment in public education was set in order to achieve at least the level of 7% of the country's GDP in the 5th year of the Act and at least the equivalent of 10% of GDP at the end of the decade, in 2024.

It is also relevant - although its practical effects depend on gradual implementation - the approval of Law number 12.858/2013, also the result of extensive mobilization of Brazilian society. This law aims to education, in addition to the resources tax originally bound by the Constitution (article .212), the share of 75% in revenues from royalties and special participation of new contracts for oil and 50% of revenue from the Pre-salt Social Fund revenues fund that meets the Union with such exploitation.

## **B) Exclusion and inequalities in access to education for children**

According to the *2013 School Census* (MEC / INEP)<sup>14</sup>, official survey that records all enrollments and students related to educational systems, including private schools, there was in Brazil 50,042,448 enrollment in basic education, against 53,028,928 registrations recorded in 2008. The percentage of 46% of enrollments in basic education are the responsibility of municipalities, 36% of states, 17% of the private sector and 0.6% of the federal government. The reduction in enrollment occurred in this period is caused by three elements. On one hand, improving completion rates in basic education and the rapid change in the age profile of the population; on the other hand, the inability of the Brazilian State to include in school historically excluded segments, especially the population of zero to five years and 15-17 years ranges where it moved very slowly in recent years.

Unequal educational opportunities found throughout the educational system, from the most elementary levels, as child education. Despite being one of the main achievements of Brazilian

<sup>13</sup> These expenses are included in the public resources transfers to the private sector, such as incentives and exemptions to private schools, scholarships and grants access to these institutions and also lending to nurseries , pre-schools and private special education (Law No. 1.,005/ 2014 , art. 5 °, §4 ). This practice nurture a greater privatization of educational provision in the country, which is a great problem.

<sup>14</sup> <http://portal.inep.gov.br/basica-censo>



society, which succeeded the recognition of the right to social care and education of young children in the Federal Constitution of 1988, only a minority of the population enjoys the fact, with marked inequalities in access.

In nursery (0-3 years), it was reached 2,730,119 enrollments in 2013 from 1,579,581 in 2007 (MEC/ INEP, 2013). Still, only 21.2% of children in this age group attended educational institutions (IBGE/PNAD, 2012), which led to an exclusion of large numbers now forming waiting lists in municipalities with no prospect for compliance. In the case of pre-school (4 and 5 years old), the anticipation of the entry of children of six years in elementary school not assured to increase enrollment at this stage, since the enrollment reached **4,860,481 children in 2013, 69,806 children less than those recorded in 2007 (MEC / INEP, 2013)**. Also in this case, there are significant educational exclusion, since 78.2% of children in this age group attend school (IBGE/PNAD, 2012). This framework is also serious because it demonstrates that the inclusion of enrollment in kindergartens and preschools in collaborative funding of basic education mechanism represented by FUNDEB did not lead to an effective increase in enrollment. In the age group 6-14 years in 2012, date of last available sample survey, 98.2% of children were attending educational institutions.

In high school the situation is even more critical. The enrollment was also reduced from 8,369,369 in 2007 to 8,312,815 in 2013 (MEC / INEP, 2013), a persisting exclusion rate of 15.8% in the age group 15-17 years (IBGE/ PNAD, 2012). In 10 years virtually stagnated attendance rate of this population, which increased from 81.5% in 2002 to 84.2% in 2012. This year, the net attendance rate in secondary education was 54% (population 15-17 years in appropriate educational stage), while 27.8% were linked to primary education because of failures or dropouts. In 2012, 32.3% of young people 18-24 years of age had not completed high school and were not studying. Although, according to official indicators, this data represents an 8.8% decrease compared to 2002, shows a scene of very serious violations of the right to education that persists even after the almost universal primary education. The ESL reaches about half of young people 18-24 years old who belong to the poorest fifth of the population (53.8%), while 10.2% of the young people belonging to the richest quintile were in this situation (IBGE / PNAD, 2012).

The private sector is also an important indicator of the failure of state policies, since it is precisely where most also highlights the inability of the state to ensure access to education for all. In the last period, there was a significant increase in private sector participation in basic education, enrollment reached 8,610,032 in 2013, representing an increase of 34.84% in relation to the participation of this sector in 2007. In early childhood education, 36, 6% of enrollments in kindergarten and 25% of enrollment in pre-schools were linked to private enterprise in 2013.

Another perspective on this issue is the migration of a significant number of families in the public school to the private school, which resulted from the improvement of the socioeconomic conditions of a portion of the population. The lack of trust on the public school by the population, which is the result of the alarming educational segmentation and poor dissemination of the contents of learning - much the fault of the State, as we shall see - has meant that the private sector participation in primary education had increased from 9.94% of enrollments in 2007 to 15.05% in 2013 that, far from signifying improvement in terms of ensuring rights, since this stage of education remained largely unchanged its attendance rate means higher educational segmentation and weakening of the public sector.



The outstanding issue in the analysis of the framework of access and permanence in Brazil are inequalities in terms of income, which are expressed as indicators of economic discrimination in access to schooling. The proportion of children aged 2 and 3 years attending day care is 2.9 times higher for the richest fifth of the population, compared to the poorest quintile, considered the per capita monthly household income: while 63% of children in this range linked the richest portion of the families attending kindergarten age, only 21.9% of the poorest children exercised that right. In pre-school, since there is a higher rate of attendance, there is disparity reduction depending on income, which is still very significant: while the vast majority of children aged 4 and 5 years related to the richest families is in school, achieving 92.5% attendance this segment, only 71.2% of the poorest children in this age group are attended.

There are also serious inequalities in terms of regional origin. While only 63% of children aged 4 and 5 years attend pre-schools in the North, this rate reaches 82% in the Southeast. Moreover, about one third of (66.7%) children this age who live in the countryside are also excluded from the pre-school.

Inequalities and discrimination based on income, age and regional origin add up ethnic and racial inequalities in Brazil are a factor with great weight, setting a framework for persistent institutional discrimination. Considered the last stage of basic education, white youth aged 15-17 years have a net school attendance rate of 62.9%, while for young black or brown this rate is only 47.8% (IBGE/PNAD, 2012). This indicator shows how the progressive improvement of the school flow over the past 10 years, which has reduced the distance between the age of students and the level of education attended, not everyone benefited equally and reiterated the disadvantages of black teenagers.

The girls have in this age group net school attendance of 59.8%, while the boys arrive just 48.4% (IBGE/PNAD, 2012), which may be related to gender roles that drive young people earlier to the labor market, reducing their time available for study and aggravating their educational backwardness. This theme was further developed in the Report Brazil - Gender and Education (2011)<sup>15</sup>, in which we can identify that women and men are still predominantly concentrated in occupations considered "feminine" and "masculine", despite a timid and slow transformation. Women still quite concentrated in the areas of health, education, welfare and less socially recognized and valued housework. Although achieve higher level of male education, women have incomes far below the average male, considered the same levels of training.

Finally, inequality also affects the conditions of infrastructure of schools, with both losses to the pedagogical work and the dignity of care provided to children. Only 47.2% of pre-school (4 and 5 years) have public playground and only 43.8% have toilets suitable for children. In pre-schools located in rural areas that picture is bleak, since such indicators reach only 11.4% and 12.9%, respectively. Also the aspect of school infrastructure, only 29% of elementary schools in Brazil have library, gymnasium 29%, 17% reading room, boardroom 61% and 49% of teachers' lounge (MEC / INEP, 2013) .

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<sup>15</sup> Ação Educativa, Denise Carreira. Informe Brasil – Gender and Education. Ação Educativa (coordinator); Denise Carreira (coordinator); Ecos; Centro de Referência às Vítimas da Violência do Instituto Sedes Sapientiae; National Rapporteur for the Human Right to Education. São Paulo: Ação Educativa, 2011. Available at: <http://www.acaoeducativa.org.br/portal/images/stories/pdfs/informegeneroeducacaoout2011.pdf>.



### **C. Precarious inclusion of children in educational systems: violation of human rights in education**

Another feature present in Brazilian educational exclusion, therefore, is the precarious integration of students in the education system. Despite the necessary recognition of the differences between public schools, found many crowded rooms, with higher number of normative references to students, inadequate buildings, and lack of teacher turnover, aggravated situations in poorer and remote areas.

The conditions of life and work of teachers constitute a chapter of prominence. Low wages and poor working conditions become less and less attractive profession for future generations and lead the category to wear at various jobs. Teachers have a level of income that is just over half the average salary of other professionals with the same formation (IBGE, 2010), which is surely a factor in discouraging the entry of new talents in the educational area. The conditions for the existence of collective work and the training and preparation of lessons are still quite poor, leading to the lack of application of several innovative projects in schools. The enhancement of professional education in the country, the overwhelming majority are women, is then a central agenda to move towards quality education.

In the aspect of diversity in education, it is necessary to revise and extend the concept of quality of education and learning in vogue in the public policies, overly focused on measuring learning through standardized tests. It is necessary to strengthen the coping of discrimination marked by racism, homophobia and lesbophobia, among many others, has been aggravating the strengthening of religious conservatism in the Brazilian society. Our school is still centered on a reference Eurocentric, white, sexist and heteronormative. This model excludes daily thousands of children and young people, highlighting plight of black boys, the social group that has the worst social indicators in education, as we have seen.

The implementation of Laws number 10.639 / 2003 and 11,645 / 2008 establishing respectively the African-Brazilian mandatory teaching of African history and culture, and indigenous are major challenges. The debate on diversity and the confrontation of different discrimination experienced daily in Brazilian school has to permeate the macro policies of education, especially training, assessment, courseware, overcoming the fragmented and isolated programs within educational policy.

These standards, despite its enormous importance in recognizing the role of black and indigenous peoples in the formation of Brazilian society, are still treated as specific demands, not as state policies to correct inequalities and discrimination within the present educational policy and how requirements of structural change of curricula and school practices, as well as initial and ongoing training of teachers.

In Brazil, extending the concept of learning and quality is a challenge to democracy and human rights. In this sense, policy evaluation, which has a very strong role to induce educational policies, have to be open to evaluating other variables that impact the learning process. The performance and student flow are profoundly impacted by inequalities and discrimination experienced by students in schools.



#### **D. Privatization of education in Brazil and the risks for the right to education of children and adolescents<sup>16</sup>**

It was expected that the growing involvement of the State in providing compulsory education would reduce the market space in education. However, three main strands of privatization of education developed in the country in recent years with serious risks to the realization of the right to education of children and adolescents are:

a) *Commodification* (turning it into a commodity) and *oligopolization* (turning it into an oligopoly) of higher education, through the formation of educational funds on the Stock Exchange or private equity funds, which rely on the input from major international companies (Pearson, for example). Many institutions, in order to achieve relevance according to the logic of the market, reduce their investments in research and academic extension, dismiss teachers with higher qualification and redirect their services to more profitable modalities, such as distance education. This scenario affects directly the fulfillment of the right to basic education, since private institutions are responsible for about 58% of total undergraduate enrollment and teacher training, mostly in evening courses, and for 51% of the vacancies offered in distance education, in institutions that do not carry out research or extension activities (Higher Education Census 2010). Such conditions discourage the theoretical and practical training, internships for teaching and broader cultural formation, required for a good performance for those who teach in basic education.

b) Significant Expansion of private sector participation in the provision of basic education. Between 2007 and 2013 private schools grew by 34.8 %, while public schools decreased by 11.25%

c) Sale of standardized private education systems to public basic education, mainly to municipalities. Also in this field there are activities of business conglomerates through investment funds that compete in the market.

Under this scenario, the abrupt and poorly planned decentralization of basic education in the last two decades, particularly in early childhood education and elementary education was not accompanied by equivalent financial and technical support. Therefore, this situation made the precariousness of many local governments explicit, stimulating the development of a promising market for private consultancies in teaching and management fields, besides the standardization of education.

The weakness of educational efforts also gives rise to forms of “endo-privatization”, such as public-private partnerships that lead to the proliferation of private logic in public education and the emerging of corporate actors in the management of educational policy at the expense of mechanisms for democratic participation.

In this context, on the steps where the public offer is still very low, especially in nurseries – but also in pre-school education and non-inclusive education for people with disabilities – models of low cost schools have proliferated to serve the lower classes, frequently relying on the transfer of public funds. There is, in these cases, an increase in provision by private entities, partly with grants from the government, through so-called “conveniantos” (kind of a public-private partnership). In 2011, 27.2% of private pre-school enrollments were subsidized by the government, even though a great deal does not quite qualify as nonprofit institutions.

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<sup>16</sup> This part of the report is based on a position that has been investigated and publicized by the Ação Educativa and the National and the Campaign for the Right to Education, members of the coalition presenting this report. It is further presented at the study annexed, entitled: “Privatisation of education and rights violations in Brazil : notes for Committee on the Rights of the Child”.



The availability of public resources to the private sector, in this context, is fueling the educational market in Brazil, helping to generate conglomerates with the participation of international corporations and shares on the stock exchange. These economic actors have been colonizing Brazilian educational field, replacing the paradigm of educational human rights by market logic, based on cost-benefit and on the view of students as commodities.

In Brazil, there is a growing process of commodification of education. In this context, school enrollments are effectively seen as goods, to the extent that they are recorded as commodities in the educational market. As underlined a body of researchers, national and international private groups working in the educational market trade in the stock market or in private equity funds taking the number of public enrollments, directly or indirectly assisted, as a reference for market value. The formation of oligopolies in this sector, with the entry of large international groups, is also growing.

Along with this process comes the proliferation of a reductionist view of educational quality related to the “endo-privatization” process, as noted in the Report of the Special Rapporteur on the Right to Education: Normative Action for Quality Education By reducing “quality” to the performance measurement through large scale standardized tests applied to students is setting a framework that presupposes a current crisis in the Brazilian public education system or its supposed inability to provide quality public education, opening up space for privatizing initiatives within public systems.

Below, we enumerate the major risks that this process of allowing education to be considered as a market service and commodity offers to the human right to education:

#### **D.1. Violations against Availability and Accessibility of education**

- In compulsory education, usually private schools can be understood as tool of the structural discrimination in the accomplishment of the right to education, once the high tuition fees act as a powerful mechanism of social selectivity, which strengthens and reproduces deep social, economic, ethnic-racial inequalities in Brazil. In practical terms, attendance at private schools is the main requirement to access jobs and social positions.
- The increasing use of public funds to purchase private standardized systems, the possibility of profit on the sale of such services and the expansion of transfers of public funds to the private sector, profit and nonprofit, reduces the State's ability to provide new vacancies in the public system due to the reduction of public resources available to create opportunities, especially in non-mandatory stages and in those where coverage is low, leading to the poor, the children and adolescents from the field, *quilombolas*<sup>17</sup> (people who descend from fugitive African slaves and live in traditional communities) and indigenous people, youth and adults with low education and children and adolescents with disabilities or special needs who cannot pay private institutions.
- Furthermore, the standardized private school systems normally do not provide additional technical and educational assistance to schools and to the poorest families; recent researches show that, in the case of the pedagogical support to the schools staff, when it is

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<sup>17</sup> A *quilombola* is a resident of a quilombo in Brazil. They are the descendents of Afro-Brazilian slaves who escaped from slave plantations that existed in Brazil until abolition in 1888.



done, It shows poor quality and even disagreement with Brazilian laws and educational parameters.

- As they do not go through a process of quality control by government agencies as occurs to public books in general, private education systems have no a specific education proposal to groups historically discriminated – people with disability, special educational needs, ethnic or linguistic diversity and populations with different cultural traditions – violating, in this sense, the right to non-discrimination.
- Tax exemptions (indirect financing) and the direct transfer of resources to the private sector, including the possibility of accounting these expenditures in order to calculate the amount invested in GDP, encourages privatization, weakens the state's ability to implement directly the education tends to decrease the infrastructure, technical staff and management of the State to provide quality public education.
- Likewise, in the field of education for children and adolescents with disabilities, the assistance through public-private partnerships aimed to encourage expansion through exclusive education, contradicting the right to association, participation and inclusion of this population.

#### **D.2. Violations against Acceptability of Education**

- Especially in compulsory education, the increase of the private sector in provisioning basic education is due to the spread of a negative understanding of public education, fostered indirectly by the Brazilian State by disseminating the results of standardized tests, understood in national public policy as the sole criterion of quality, which is disseminated decontextualized in relation to the socioeconomic profile of the students and the cultural, ethnic and racial diversity of populations.
- The idea of quality conveyed in the adoption of standardized systems is self-referred and supported by advertising strategies, usually based on brand advertising in some elite private school belonging to the company and promising to promote the improvement of the performance of the Municipality with regards to standardized tests of scale applied by state to the students.
- As there is usually no consultation with school communities (school boards, municipal boards of education or other organs) before the adoption of standardized private educational systems, which are commonly unilaterally imposed to schools, there is also scare feedback from schools and education managers regarding adoption of private systems, the freedom of professional teachers to teach is violated.
- The *commodification* (turning it into commodities) and *oligopolization* (turning it into an oligopoly) in the provision of higher education have been impacting severely the policy for training teachers for basic public education, as an increasing number of new graduates in low-cost and low-quality academic institutions are financially encouraged by the state.



### **D.3. Violations against Adaptability of Education**

- Schools and private universities receive little State regulation, which hinders the assessment regarding compliance with the guidelines and standards for education on human rights and education for race relations.
- In early childhood education and special education, privatization of supplies, encouraged by the transfer of public funds from the State, presents risks to freedom of thought, belief and worship in education, since in many practical situations the only alternative made available by the State to the assistance is the enrollment in religious institutions.
- The adoption of standardized private school systems dramatically reduces the space for curriculum adaptation and pedagogical autonomy of schools and teachers, since all classes, activities and contents are standardized.
- Standardized private systems, thus, tend to subordinate schools, teachers and students to the standardization and weakening of their capacity as active and creative players of the process of enjoyment the right to education. In this sense, it opposes to democratic management of education.
- For historically marginalized groups, the lack of regulation of private standardized systems adopted in public schools means that there is no guarantee that children with disabilities or special needs and from rural areas, indigenous and *quilombolas* communities and other traditional peoples have respected their rights to adapted education, nor they can choose to adopt (or not) standardized private education systems.

## **3.2) HEALTH**

### **A. MENTAL HEALTH**

The Psychosocial Care Centers - CAPS<sup>18</sup> - constitute the main strategy of the reform of public mental health care process promoted by the government. Santos, Oak and Pine (2005) argue that there are few Brazilian community-based epidemiological studies on child and youth mental problems. But those who have already been conducted, revealed prevalence of psychiatric disorders between 10% and 13%, aged between 5 and 14 years.

From 2004 to 2008 there was an increase in the order of almost 100% of this service in Brazil, with the highest concentration in the southeastern region of the country, with just a CAPS deployed in the northern region (Pará State), according to data from SUS. The CAPS play a fundamental role in the care of children and youth mental health in SUS<sup>19</sup>, by setting up as a form of community-based care, in contrast to the hospital-centered model, but it must be observed the universal deployment of this policy across the country.

However, there is still a prevalence of attendance by non-governmental, charitable or private institutions. It is outrageous that such institutions receive public funds to serve children and

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<sup>18</sup> Based on the National Mental Health Policy (Law No. 10.216 / 2001) , guided by the co-responsibility of society and the State , with administrative decentralization, this structure provides a network of day care in mental health services on a territorial basis .

<sup>19</sup> Sistema Único de Saúde (SUS) stands for the public health care system provided by the government to all residents.



adolescents with mental disorders<sup>20</sup>. The lack of coordination of these initiatives by the government does not facilitate the formation of a network of services able to respond appropriately and swiftly to the needs brought by these children. However, referral to such entities is the only possible resource for these children families.

Another critical point in this area is the inclusion of appropriate staff (mental health) in primary care to children and youth. The prevention, promotion, treatment and rehabilitation were ideas conceived by the psychiatric reform in Brazil from the logic of deinstitutionalization. Thus, the inclusion of mental health in primary care set up is a strategic direction, allowing the symptoms of psychological distress to be diagnosed and treated early, in order to avoid unnecessary hospitalization. However, the inclusion of indicators (of mental health) in SIAB (System for the Basic Attention)<sup>21</sup> has not yet been implemented by the Ministry of Health.

According to the available data: regarding the number of psychiatric beds in general hospitals operating in Brazil, the following table it appears, from December 2005 to April 2008: 2005:3,647; 2006: 3,531; 2007: 3,733; 2008: 3,937 (Source: Ministry of Health./CNES 2008). These figures represent a great difficulty implementing the Psychiatric Reform in Brazil, which indicated the need for mental health care in the territory, gradually disabling psychiatric hospitals and deploying psychiatric beds in hospitals general. Another pertinent question as that there is no record of the number of these hospital beds for children, contrary to the CRC.

## **B) DRUGS AND CHILDREN'S HEALTH**

The CAPSad (community mental health services for drug users) and therapeutic communities are the institutional models of detoxification treatment who treat children (adolescents).

According to data from SENAD<sup>22</sup>, therapeutic communities are philanthropic, and, mostly religious, serving people who abuse drugs in an intern regime. With the increasing of drugs consumption and the lack of possibilities for the rehabilitation of persons with dependence on alcohol or other drugs in the public health sector, there was an expansion of these communities in Brazil without any government regulation and control. Most of these institutions care to the adult population, aged between 18 and 59 years, and 251 institutions providing care to children, 41.8% are government managed and 57.4% are nongovernmental, and the 728 institutions that treat adolescents, 32.1% are government managed and 66.8% are non-governmental.

Thus, with the creation of open services in lieu of hospitalization in psychiatric hospitals such services (NAPS, CAPS, among others) are the ones that should be prioritized in the care of persons requiring attention in this area.

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<sup>20</sup> In accordance with Ordinance No. 1635 / GM of September 12, 2002, which includes the Outpatient Information System of the Unified Health System (CIS - SUS) procedures related to patients with mental disabilities or autism (BRAZIL, 2002e). Paradoxically, these institutions justify the care they provide for deficiencies in public policy in this area, claiming that the state still cannot provide the care and proper treatment of such social group, reporting the difficulties encountered in mental health new devices to meet this public. SENAD - National Antidrug Secretariat : " Mapping of Government Institutions and Non-Governmental Attention to Issues Related to Alcohol and Other Drugs in Brazil " (Carvalho, 2007) file: /// C : / Users / MI / Downloads / 2007relatorio\_mapeamento.pdf

<sup>21</sup> <http://www2.datasus.gov.br/SIAB/index.php> (Database)

<sup>22</sup> SENAD – Secretaria Nacional Antidrogas: “Mapeamento das Instituições Governamentais e Não-Governamentais de Atenção às Questões Relacionadas ao Consumo de Álcool e outras Drogas no Brasil” (Carvalho, 2007) em file:///C:/Users/MI/Downloads/2007relatorio\_mapeamento.pdf.



In 2009, the government published the *Brazilian Drug Report*<sup>23</sup>, which constitutes the first unified source of information about drugs in the country, with the overall objective to analyze and report the status of the demand, supply and harm associated with drug use in Brazil from 2001 to 2007. The study shows high consumption of alcohol by adolescents in the country, as well as illicit drugs, although the law prohibits the consumption of alcohol by persons under 18 in the country.

The *VI National Survey on Psychotropic Drug Use among Students of Elementary and Secondary Education of the Public and Private Networks in 27 Brazilian Capitals in 2010*<sup>24</sup>, evaluated the use of drugs among 50.890 students in public and private elementary and secondary education in 27 Brazilian capitals points out that Brazil is the largest consumer of inhalants in South America. Another fact that is important to analyze refers to the spread of lifetime use of drugs in general. In different age groups this use was reported by 10.4% of students from 10-12 years; 22.5% of 13-15 years and 42.8% of 16-18 years. With the reported use in the year is indeed similar: 5.4% of 10-12 years; 9.6% of 13-15 years and 17.0% of 16-18 years. These figures show that the presence of drug is constant in the lives of children over the years and possibly it becomes easier to obtain it, during the evolution of age.

The exposure of students to the drugs usually happens very early. And indeed this early use occurs even at the age of 10 years considering that 5.4% of students used in the year preceding the survey and 10.4% reported lifetime use, at least 5.0% should have started experimenting drugs before age 10. **"In summary, the findings of this VI survey suggest that adequate programs for prevention of drug use should contemplate children before 10 years old."** (Page 406)

The age of first use of legal drugs such as alcohol, tobacco and inhalants, predates the illicit drugs such as marijuana, cocaine and crack. In this sample, crack and cocaine are drugs consumed later. The consumption of alcohol and tobacco is happening later than identified in previous surveys. The first drink gave up on average around 12 years old, according to the survey of 2004 and now occurs on average at age 13. However, we note that the variation in age of first use of illicit drugs is very narrow, and the first use usually occurs for all of them around 13 years old. For illicit drugs, this first use occurs, on average, between 14 and 15 years. It is common knowledge that early use of alcohol increases the risk of alcoholism in adulthood.

### C) Disability

In 2010 (IBGE Census)<sup>25</sup> Brazil had over 45 million people with disabilities (motor, mental or intellectual, visual, auditory), with **growth in 10 years** (2000-2010) of **23.92%**. In the range of **0-14 years, representing 7.53% of this group, the increase was 3.2% (in 2000, representing 4.3%)** although the number of people in this group declined by 5.5 % in these 10 years. This survey points out that there is a **strong growth deficiency in the range 5-9 years of age**, and that visual disability shows prevalence for all ages.

The Federal Constitution<sup>26</sup> provides policies to protect children with disabilities, but no preventive measures. Besides, it is more targeted to adolescents, rather than children (1-12 years), which

<sup>23</sup> Found at: <http://www.escs.edu.br/arquivos/DrogasResumoExecutivo.pdf>

<sup>24</sup> <http://www.obid.senad.gov.br/portais/OBID/biblioteca/documentos/Publicacoes/328890.pdf>

<sup>25</sup> Instituto Brasileiro de Geografia e Estatística (Brazilian Institute of Geography and Statistics): oficial report at: <http://www.pessoacomdeficiencia.gov.br/app/sites/default/files/publicacoes/cartilha-censo-2010-pessoas-com-deficiencia-reduzido.pdf>

<sup>26</sup> Article 227. It is the duty of the family, society and the State to ensure children, adolescents and youth, with absolute priority, the right to life, health, food, education, recreation, vocational training, culture, dignity, respect,



reveals a weakness in the constitutional framework, which has not mention early diagnosis and rehabilitation actions and accessibility.

With regard to legislation for early diagnosis, it is important to note that the ECA provides in Article 10: "Hospitals and other health care establishments of pregnant women, public and private, are required to conduct examinations aimed at diagnosis and treatment of abnormalities in the metabolism of the newborn, as well as providing guidance to parents." With this, we see the attempt to formalize the requirement of tests across the country.

Preventive measures are essential to reducing the incidence of disability because about **70% of disability cases are preventable or attenuating**, according to governmental data (BRAZIL, 2006a). Early diagnosis is essential for the child to develop.

Favero<sup>27</sup> highlights some preventive actions: family planning; genetic counseling; monitoring of pregnancy, childbirth and the postpartum period; nutrition of women and children; immunization to diseases of metabolism and its diagnosis; early referral of other causes of disability; development of special programs for the prevention of occupational accidents and traffic and adequate treatment of their victims. It also bears emphasizing actions related to identification and control of maternal and fetal high risk and early detection of chronic degenerative diseases and other potentially disabling. To Lima<sup>28</sup> (2002, p.188), maternal and child care binomial constitutes "the condition of 'starting point' in ensuring the right to health of the child".

With respect to actions related to the monitoring of pregnant women, preventive measures should be adopted in the preconception period (before pregnancy), prenatal (during pregnancy), perinatal (during birth) and postnatal (after birth).

In Brazil, the official policies of early diagnosis is still poor, with better visibility to the National Neonatal Screening Program (PNTN, 2002), which provides for the mandatory completion of the neonatal screening test called *Teste do Pezinho* (Foot Test). As for the other types of tests to detect early deficiencies, such as auditory (*Teste da Orelinha*) and visual (*Teste do Olhinho*) (OAE test or visual screening), are not yet included in national policy, even if visual disability is prevalent in all age groups. PNTN intends to expand the screening of pathologies and creates the mechanism to be achieved the main goal, which is to prevent and reduce morbidity and mortality caused by diseases screened.

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freedom and family and community life, besides keeping them safe from all forms of negligence, discrimination , exploitation, violence , cruelty and oppression .

§ 1. The State shall promote comprehensive health care of children, adolescents and youth programs , allowed the participation of non-governmental entities by specific policies and complying with the following requirements:

I - Application of the percentage of public resources for health in maternal and infant care;

II - creation of preventive and specialized care for people with physical , sensory or mental disabilities programs , as well as social integration of adolescents and youth with a disability , through job training and living together , and the facilitation of access to collective goods and services , with the elimination of architectural barriers and all forms of discrimination .

<sup>27</sup> FÁVERO, Eunice Terezinha. *Mães (e pais) em situação de abandono: quando a pobreza é fator condicionante do rompimento dos vínculos do pátrio poder*. Tese de Doutorado defendida em 2001, PUC-SP.

<sup>28</sup> LIMA, Isabel Maria Sampaio Oliveira. *Direito à Saúde: garantia de um direito humano para crianças e adolescentes - estudo de caso*. 2002. Tese (Doutorado em Saúde Coletiva) - Instituto de Saúde Coletiva, Universidade Federal da Bahia, Salvador, 2002.



However, as pointed out by the Brazilian Society of Neonatal Screening (SBTN), the screening involves sophisticated features, not always offered in public health<sup>29</sup>. Great part of these services are offered by non-governmental institutions, philanthropic, as is the case of Associations of Parents and Friends of Exceptional Children (APAE), e.g, the collection network for Neonatal Screening is mostly outsourced, that is, done by private parts.

Unlike neonatal screening *Teste do Pezinho*, which is nationally known (because mandatory), the hearing test and the eye test are much less known, because they are performed only in some states and cities of the country.

A program of assessment of hearing, the newborn hearing screening serves for early diagnosis of hearing loss, considering that its incidence in the general population is 1-2 per 1,000 live births. Despite its effectiveness, the hearing test, still is not done on a large scale. Only a few municipalities included in the theme municipal agenda forcing the test, as is the case of some municipalities in the state of São Paulo.

According to the census of the Support Group for Universal Newborn Hearing Screening (GATANU), conducted in 2005, Brazil had 237 available services in 22 states, the number growing rapidly since 1998 when it had been recorded 5 services in 4 states. The services listed in 2005 accounted for approximately 4% of Brazilian hospitals, most with private institutions with more equipment and better prepared than the public hospitals.

According to the Brazilian Society of Pediatric Ophthalmology (SBOP) in Brazil, "it is estimated that there are between 25.000 to 30.000 blind children, approximately 150-180 per million children inhabitants, and 600-720 children with low vision for each million people "in the country. According to the Federal University of Ceará: when it comes to people aged under 15 years who have no ability to see, the number is close to 32 000, which is 0.6/1.000 children. Almost 10% of the child population - about 5.4 million have some form of eyesight problem. **The justification for such high numbers is the lack of a detailed examination of the eyes of the baby shortly after birth.** Moreover, according to SBOP, more than half of newborn infants has only discovered the problem when they are blind or nearly blind for the rest of my life, and this organization provides about 710 new cases of blindness each year.

It is worth noting that the obligation to take the visual screening test in the neonatal delivery room exists only in a few states and cities of the country, such as the cities of São Paulo, Rio de Janeiro and Porto Alegre, which have a specific law providing this examination of newborns before discharge. Given the above, it is observed that the only program that has national coverage, financed with federal funds, is the neonatal screening foot test, *Teste do Pezinho*.

Another important issue in protecting the rights of children with disabilities refers to welfare, taking as object of analysis granting the Continuous Cash Benefit (BPC) (Law Number. 8742/1993/LOAS-Social Service Law) to this social group. The BPC is the second largest non-contributory cash transfer program in Brazil, second only to the Bolsa Família. The program coexists with other forms of income transfers to people with disabilities as in the case of disability retirement.

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<sup>29</sup> For example, since its establishment in 1992, (Ordinance GM / MS No. 22, of January 15, 1992 / MS)

Phenylketonuria and Congenital Hypothyroidism were pathologies pointed to being screened. However , according to Moraes, Magna and Marques de Faria (2007,p 404 ) , " such tests were not available in all regions and in most of them , also there were no conditions to confirm diagnosis , clinical assessment , treatment guidelines for family and genetic counseling. "



## D) Integral Care

The comprehensive care to people with disabilities, by the Government, is still precarious. The predominant actions are isolated (as a pilot project being implemented in the State of Bahia, to perform the Hearing Test in five hospitals), missing more contact with primary care and universal progress in the country, in the field of preventive care especially for early diagnosis. Remember, the process involves PNTN public structures in the three levels of government, municipal, state and federal providing a broad mobilization around the actions related to the Newborn Screening as a public health program in the country.

Many charities that are designed to assist people with disabilities are still sought after, often for the care of children, as they receive public funds for this type of service. What we see are only isolated actions instituted by some municipalities and states in the country. This demonstrates that although there is a wide legislation protecting the rights of persons with disabilities, the Brazilian government still failed to implement a policy that prioritizes attention to this social group to guarantee their right to health, and especially to children.

People with disabilities make up a group whose public policy is the welfare type. Stereotypes and discrimination are constant and end up complicating the lives of these people. Still dominates the prejudice of society, which encourages discrimination and is an obstacle to the inclusion of people with disabilities. "There are few adequate disclosures in society, and people receive biased information about people with disabilities through the media, education, religion, etc." (LIFE BRAZIL, 2007, p. 542).<sup>30</sup>

There is a culture that ignores or does not recognize the potential of children with disabilities (Rizzini, 2008).<sup>31</sup> Several (negative) representations of the children with disabilities are supported by their families, who feel overwhelmed in caring for their children and point out the difficulties in providing the necessary treatment, delegating, often the health care institutions.

According to Rizzini (2008, p. 13), there is a need to deconstruct or denaturalize the discursive practices that "coalesce around the experience of disability and severe mental disorders feelings of rejection, shame and fear because they are effective barriers to a view for changing the look".

## E) Sexual and reproductive Health

To examine how Brazil have secured the right to sexual and reproductive health needs of children, the following indicators were chosen: 1 number of pregnant children, 2 percentage of contraceptives distributed for children, 3 existence of programs and services guidance on use of contraceptive methods and 4 number of children with STD/ AIDS.

**1. Index of teenage pregnancy:** It is worth noting that since the 90s, the fertility rate in Brazil has steadily decreased, except among teenagers, which increased 26%. Elements contributing to the

<sup>30</sup> VIDA BRASIL. Monitoramento de direitos humanos no Brasil: pessoas com deficiência. In: RECH, Daniel. et. al. (Org.). Direitos humanos no Brasil 2: diagnóstico e perspectivas. Rio de Janeiro: CERIS/Mauad X, 2007.

<sup>31</sup> RIZZINI, Irene (Coord.). Do confinamento ao acolhimento: mudando a prática de institucionalização de crianças e adolescentes com deficiência no Estado do Rio de Janeiro. O cerne da questão: síntese dos dados apontados pela pesquisa. Rio de Janeiro: CNPq, Ministério da Saúde, 2008. Available at:

[http://www.ciespi.org.br/portugues/downloads/resultados\\_confinamento.pdf](http://www.ciespi.org.br/portugues/downloads/resultados_confinamento.pdf). (20 jun. 2008)



increase in the number of pregnant adolescents are cited by Baraldi (2007): early menarche, sexual debut at an earlier age and poor access to health services.

Data from the National Survey of Demography and Health of Children and Women (PNDS-2006), published by the Ministry of Health in 2008, **confirm that there was an increase in the fertility rate among younger women.** Demonstrates that deepened a rejuvenation of the reproductive process, as the fertility of younger women (15-19 years) now represents 23% of the total rate in 2006, compared with 17% in the survey conducted in 1996.

Moreover, according to the IBGE, in 2006, every five births, one was an adolescent mother.

The precocity of the onset of sexual activity and failure to initiate and sustain the use of contraceptive methods have been identified as possible causes of the increase in the number of unwanted pregnancies in adolescence, verifying that young people know the contraceptives, but the irregularity and the lack of planning and sex myths about sexual performance, among other factors, contribute to the discontinuation of the methods. This situation is associated with low education and poor access to specific services for this age group as well as the representation of teenage pregnancy by some as an opportunity to realize the dream of marriage and achieve economic and emotional autonomy from family origin.

**2. Use of contraception:** It has been important to analyze the access to contraceptive methods by adolescents in Brazil. With regard to the percentage of contraceptives distributed for teenagers, according to the Ministry of Health, the Primary Care Information System - SIAB does not work with indicator by age group, so we cannot assess the number of adolescents who use contraceptive.

Therefore, although there is the consideration that this is an important indicator to direct the actions of guidance on use of contraceptive methods, current information systems of the Ministry of Health does not allow access to this information. About the existence of programs and guidance on use of contraception services worth statement Pereira (2008, p. 647), according to which there is consensus among health professionals on this issue, "in the sense that teens lack the sexual guidance on contraceptive methods and the need to discuss with young people the questions concerning sex." It also adds that the absence of dialogue with parents, especially in relation to sexuality, also affects pregnancy.

**3. Policies for guidance on use of contraceptive methods:** Firstly, it is a reflection of Diana Dadoorian cited Pereira<sup>32</sup> (2008), which, on analyzing the social context of teenage pregnancies, notes that female function is associated with motherhood (for those adolescents being female is equivalent to being a mother). This can be explained by the incipient separation between sexuality and reproduction in Brazil, where such dissociation does not occur just by not universal contraception for people of all age groups and social status.

Diana Dadoorian cited Pereira (2008, p. 647), "the question that becomes clear is not the lack of information but a lack of training. Providing knowledge about the issues of sexual physiology and contraceptive practices appears to be insufficient and ineffective policies to avoid the serious consequences that brings (...)". In this case, one must pay attention to the results of the research, which found that the girls of the lower classes that reach a higher level of individual education

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<sup>32</sup> PEREIRA, Tânia da Silva. Direito da criança e do adolescente: uma proposta interdisciplinar. 2 ed. Rio de Janeiro: Renovar, 2008.



have lower rates of pregnancy and distinguish themselves from their peers by a worldview more open about the values about sexuality. Hence the importance of strengthening the school as an institution that may have an impact on sexual and reproductive female behavior.

According to Pereira (2008, p. 645), sex education, even though it plays an important role as preventing pregnancy in adolescence and other possible events resulting from sexual practice, plays an even broader purpose, as it brings a discussion of values and attitudes to questioning of sexual problems in our society.

In this sense, the school has responsibility and must provide students with sex education classes. It is necessary, therefore, to analyze the nature or quality of the sex education program offered and their impact in relation to the audience to which it is intended. As stated by Pereira (2008, p 646.), "A program of sex education should not be back just for the informational issues, or merely to biological aspects, since it certainly would affect a crucial mistake: the indifference of the adolescents." Sex educational programs generally aim to de-sexualize the individual, traversing two paths: that of biological information and the transmission of rules and moral precepts about what is lawful and right. In the first one, sex education ends up being remarkably similar to a lesson in botany, given the large amount of *minutiae* about the reproductive system etc. The second operation consists of educational lessons about a large amount of rules that seek to end the limits of sexuality in procreation or move it far away from the sphere of reality, through sentimental idealizations.

Anyway, regarding the effectiveness of sex educational programs, Pereira (2008, p. 646) considers as satisfactory a program that allows the children to "deep reflection of the contradiction that often exists between sexual practice and the conviction arising from their lack of planning." in this area.

It should be noted, though, that policies aimed at teenagers who propose a model of regulation of sexual and reproductive lives are counter to the general trend of the western world, which has diversified experience in the field of sexuality and changes in exercise of sexuality. From the perspective of citizenship and human rights, the State should promote the appropriate conditions for that the most vulnerable population groups could make their decisions about sexual and reproductive health with greater autonomy.

**4. HIV/AIDS:** According to data from epidemiological bulletin AIDS/STD 2007 the Ministry of Health in Brazil has about 407 211 cases of HIV/AIDS were identified. In the case of young people aged 13-19 years, according to the table above, from 2004 to 2007, there was a progressive reduction in the number of new cases. However, this may reflect a possible delay in the reporting of cases. In addition, there is a higher prevalence of HIV infection/AIDS among adolescents and young women, an epidemiological trend pointing to "feminization" of the epidemic and indicates increased vulnerability to infection in this age group. However, these data reinforce the finding that Brazil has made a major investment in actions aimed at HIV prevention.

However, according to the Group Pela Vida (NGO) cited Pereira (2008, p. 672), "The AIDS-related education should be comprehensive and preventive. The absence of campaigns for children in general and specific groups (boys living on the streets), is a reality that every day worsens the spread of the epidemic in childhood and adolescence.



When the social acceptance of female adolescent sexuality is fragile, the social acceptance of contraception is necessarily even weaker. In general, teenagers are perceived by adults as subjects who do not have autonomy regarding their rights and desires in the fields of sexuality and reproduction. For these authors, parents, teachers, religious leaders and health professionals end up establishing contradictory and ambiguous values in relation to adolescents. They are expected to be subjects responsible for their lives - in the civil sphere, at school, and to respect the rules in general. However, do not seem to recognize the legitimacy of their rights and the possibilities arising from the exercise of these rights, especially when it comes to issues such as contraception, exercise of sexuality, abortion, pregnancy, maternity / paternity, among others.

Finally, it should be noted the influence of moral / religious matrix, leading to a negative evaluation of the exercise of sexuality and reproduction of adolescents, which ends up interfering in the bond that could be established between them and the health service in extent that such valuation directs the behavior of many professionals and health workers.

#### 4) Special Measures of Protection

##### 4.2) Economic Exploitation

The term "child labor" is considered as economic activity and/or activity of survival with or without purpose of profit, paid or unpaid, carried out by children or adolescents less than sixteen (16) years old, except for the apprentices from fourteen (14) years, regardless of their occupational status, in the form of ECA and the National Plan for the Prevention and Eradication of Child Labour and Protection of Adolescent Workers (PETI).

The study *Meia Infância: o Trabalho infanto-juvenil no Brasil Hoje* (Half Childhood: the child-juvenile Work Today in Brazil), by the NGO Reporter Brazil<sup>33</sup> indicates that the 2010 Census shows that 3.4 million children aged 10 to 17 years were working. Another official source, the *National Household Survey* (2014) indicates that 3.1 million is the number of working children of 5-17 years old. Also according to this source, Adolescents of 14-17 years of age were most (2.6 million) of the employed minors. Approximately 486 000 children from 5 to 13 years were in the situation of child labor, 15.5% of employed had 5-17 years old. Of this total, 58 000 had 5-9 years of age, and 428 000 from 10-13 years old. Most cases of child labor was in the North and Northeast regions, which amounted to 24.9% and 21.4% of the workforce. The North was the region where there was a greater output of children (from 9.6% to 8.2%), followed by the South (10.4% to 9.1%).

**From 2000 to 2010, the reduction was 13.4%, but the problem occurrence even increased 1.5% among children 10-13 years. This is precisely the most vulnerable age group for which all work is forbidden.** In this phase, the rate of girls and boys engaged in agricultural activities is much higher than in urban areas. About 60% of children and adolescents who work are male, but in some activities, such as domestic work and sexual exploitation, girls predominate. Over 90% of children and adolescents who performs domestic services are female, for example.

The Census also showed that most of the child population in paid work is attending school and the vast majority is in the range between 14 and 17 years old when they could be admitted as apprentices or even as workers (from 16 years). The problem is that these teens are concentrated in activities that are considered the worst forms of child labor. The survey also highlights that while the slowdown of the numbers of children who work are stagnant since 2005, which

<sup>33</sup> [http://www.escravonempensar.org.br/wp-content/uploads/2014/10/meia\\_infancia\\_baixa\\_web.pdf](http://www.escravonempensar.org.br/wp-content/uploads/2014/10/meia_infancia_baixa_web.pdf)



contradicts the goal of eradicating to which Brazil is committed. A serious problem is to remove the involvement of these children and adolescents with the worst forms of child labor such as domestic, in dumpsters, commercial sexual exploitation, family agriculture and the urban informal trade, among others.

The study also shows a close relationship with the child labor to slave labor. Research conducted by the ILO (2011), indicates that 92% of workers freed from slavery had made child labor, starting at age 11, mostly 70% and as domestic workers.

The Recommendations made by this Committee to Brazil, on the exploitation of child labor, will be comment on the following terms:

## **A) Eradication of Child Labour: income generation, inspection and education (R61)**

### **A.1) Root Causes of Child Labour**

The demand for child labor, affected by the structure of the labor market and technology is facilitated by poor supervision and low cost that children represent for employers because since they are illegal workers, they are not members of unions, earn low wages and correspondent taxes and can be fired more easily than adults.

Traditional and cultural values, such as the centrality of the notion of reciprocity in the family environment emphasizes the commitment of the children to help in the functioning of the group as a whole.

Studies emphasize two basic aspects that affect the supply of child labor: family size and income. Parents place minor children to work to increase their income and to minimize the risk of interruption of the continuous flow of the same, caused by loss of employment, loss of harvest, etc.

Another element that explains the early work is the negative effect of parental schooling. As schooling is one of the main variables related to better wages and entry into the labor market, it is critical that the educational level of adults increases. The importance of education goes further, including not only the direct effect on wages and employment, but also the indirect effect, because more educated parents are able to understand the need for children to study and, therefore, would encourage them to go to school instead of working.

Family composition is another important determinant of child labor. Many children work more the greater the number of siblings. Ana Lucia Kassouf says that the increase in family size implies an increase children's participation in the workforce. There is a study based on PNAD<sup>34</sup> 1998, establishing a relationship between birth order and the propensity of the child to work or study in poor families. The younger brother is less likely to work than his older brother, which means that some children work to allow other to study.

As for the place of residence, although the Brazilian population is mainly urban, proportionally, the rural area tends to have more children and adolescent workers in agricultural activities. Besides having a large percentage of child workers, school infrastructure is weaker and the rate of technological innovation is lower in rural areas, which may discourage school attendance. It is also easier for the child being absorbed in informal activities and to perform agricultural work at the household level.

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<sup>34</sup> Pesquisa Nacional por Amostra de Domicílios (*National Household Survey* by Brazilian Institute of Geograpy and Statistics - IBGE)



Another cause for child labor, linked to social and cultural aspects, is the age that parents entered the labor market. Parents who were workers in childhood tend to see more naturally and child labor are more likely to put their children to work.

On the matter of child domestic work by children and adolescents themselves, it is appointed its dubious character, since the alleged reasons for choosing to work is wanting to buy personal things, and at the same time, almost all of them wish to leave domestic work, due to the low social prestige of this type of work. This paradox points to the need to search for alternatives in order to expand the horizons and opening opportunities.

An effective policy to combat early work cannot put their focus solely on the repression of this activity, but rather to create the conditions for it to be discontinued with expansion in quality education system, and the creation of programs for employment generation and income for families. Of course there are situations that work should be banned, as in the case of hazardous work, which may cause damage to health, safety or morals of children.

### **B) Normative specific (criminal and labor) in relation to Domestic Child Labour (R 61b)**

The Federal Constitution<sup>35</sup>, the ECA, particularly articles 60 to 69 and 248 punish those who "fail to submit to the judicial authority of his domicile, within five days, in order to regularize the guard, teen brought from another district to the provision of domestic service, even if authorized by parents or guardians." This article created a figure of different guard, in which there is a guardian who is both employer confronted with the irregularity of using children and adolescents in domestic labor. !!!

The domestic child work, by its own peculiarities, does not allow to make a proper and effective supervision by the public authorities, and against the practice of this early work, the injured adolescent would need to face their employer, and also guardian, making no sense to confront the domestic child work, the situation envisaged by art. 248.

In relation to international norms, Convention 138 ratified by Brazil, states that countries establish penalties for non-compliance with its provisions (article. 9). Brazil, by ratifying the Convention, is committed to provide for sanctions, a fact that does not exist in Brazilian legislation.

In our legal system there are no laws that punish as a crime, agents who employ the hand of juvenile work who as violators of several fundamental rights such as the right to family life, leisure, school, among others. It is perceptive that the legal framework is still inadequate to classify and combat child domestic labor

There is no complaint mechanism exclusively for Domestic Child Labour. It is apparent that the legal framework is still inadequate to classify and combat child domestic labor. There is no specific government programs or strategies aimed at coping, eradicate, combat and protection of child domestic worker. Those that exist, aimed at child labor in general.

Inspections conducted by the Ministry of Labor does not reach the Domestic Child Labor, for its hidden nature. If it is difficult to be monitored, it is therefore difficult to be quantified and mapped, and reliable data resources are of fundamental importance to study child labor in general and recommend government policies.

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<sup>35</sup> Article 7. The rights of urban and rural workers, and others who seek to improve their social conditions are :  
XXXIII - prohibition of night, dangerous or unhealthy for persons under eighteen and any work under sixteen , except as apprentices , fourteen from working ;



The devaluation of domestic work is directly related to the person performing it. Based on 2011 data from the *National Household Survey*, 93.7% of the universe of children and teenagers in domestic child labor are girls (241 000). The boys totaled 16 000. Also, 67% of child domestic workers are black (172 600) while not black totaled 85 000, what reveals gender and race inequality in our country.

In 2011, more than 200 000 (78.7%) children were studying in these conditions and 55 000 (21.3%) were out of school. The time spent on the reproduction of life, taking care of people who cannot "take care of themselves" (elderly, children, patients), with actions essential for the maintenance of productive activities such as education, clothing, food, health and shelter, is recognized as valid for the social organization of work.

The child domestic labor, which occurs in female part, ends up being "from woman to woman", which set up three "actresses": the working girl, her mother and her mistress. In the house of origin, the mother is the one who decides commonly to initiate her daughter on working. Then, when she is already employed, the one who supervises her work is usually the female boss, not the male boss. The paid domestic work (working as *mades*) is the largest female profession in the country. It is considered natural, since involves the exercise of female activities.

### **C) School dropout and repetition associated with the Child Labour (R61c)**

Undoubtedly, education appears as a great ally for the end of child labor. So much so that the Program for the Eradication of Child Labour, the Brazilian government, linking the granting of benefits to children withdrawn from work and entered the school. The same occurs with the Bolsa Família Program, which requires a minimum school attendance for children and adolescents.

It is important to consider that the right to education is not limited to attending formal school. Education should contribute to social inclusion. Therefore, it must encompass both the democratization of access to educational institutions and to stay in school, especially with effective and quality learning. For working children, high dropout rates underscore the need to combat child labor.

Given the severity and importance of the issue, the World Day Against Child Labour (June 12), in 2008, was marked, worldwide, for a campaign to raise awareness activities through the message "Education: the right response against child ", and from the following working assumptions: a comprehensive education, quality and inclusive for all children and adolescents up to the minimum age for admission to employment; educational policies to prevent the problem of child labor by ensuring quality education with adequate resources and skills and; education to raise awareness about the need to discuss the problem of child labor.

### **D) Protection policies to former child worker and educational reentry**

The Program for the Eradication of Child Labor (PETI), as previously described, is characterized by a tripod: a monthly stipend to families of children and adolescents working; social promotion of these families through social and educational activities and expansion and income generation; and the participation of boys and girls in the extended school day, which includes leisure, sporting, cultural and academic support activities.

This third "leg" is considered by experts a key strategy for keeping the child - who was working - busy with activities and away from exploration, through sport, art and tutoring (complementary to school). That is why the quality of socio-educational and interaction activities have to be in the



foreground. This is the public policy of the Brazilian government to protect the former child worker.

Analysis produced by the National Forum for the Prevention and Eradication of Child Labor, FNPETI, also member of this coalition, reveals that the removal of children from work, the main goal of PETI, eventually was substituted by combating poverty, the priority focus of the Bolsa Familia program. Thus, local governments became more concerned with the household income (that enables them to be inserted in the Bolsa Familia Program) than to check if the children are working.

If information on the condition of child labor is omitted, the family receives the benefit in cash, but the child is not beneficiated. FNPETI states that in one hand there is oversight of local governments in the record of child labor and on the other hand many parents want the children to continue to work to help support. With weak supervision, and with little political awareness of families, it is easy to work unnoticed.

The study also points out the recurring problems with the realization of social and educational activities and coexistence. There is a lack of definition about what should be such actions, and the lack of standardization and the ineffectiveness of control over local governments. This aspect can also compromise the effectiveness of the program.

Another government effort for the social and educational activities is the Control and Monitoring of the Offered Shares by Socio Service Program to Eradicate Child Labor System (SisPETI). Created in 2007 as a tool for MDS monitor the attendance of children and adolescents in school extended journey.

A survey conducted in January 2008, shows that 321.944 children and adolescents may not be attending after school activities, because these boys and girls are presented to the system as not linked to any executor core of these actions. This number may be even higher, considering that the other 50% of Brazilian municipalities are not fueling system, preventing their monitoring.

As much as there may be failure in completing the SisPETI, this number is very expressive, and it is clear that there are many beneficiaries without the proper care. For girls and boys who are beneficiated, there must be a constant monitoring to know whether the centers responsible for these actions have real social and educational impact.

#### **4.3) Adolescents deprived of freedom: JUVENILE JUSTICE**

The imposition of custody is subject to the legal precepts inserted in Article 227, Paragraph 3, Clause V of the Federal Constitution of Brazil, reiterated by Article 121 of ECA, which enshrine as a fundamental guarantee, the obedience to the principles of brevity, exceptionality and respect for the peculiar condition of the developing person, which fits to the CDC.

However, the juvenile justice system, which includes all State powers, violates these principles, as it will be demonstrate below.

##### **A) Juvenile Justice and socio-educational measures (R 70th)**

The idea that the repression carried out to youth in conflict with the law should repay them and become increasingly hard is widespread<sup>36</sup>. Proposals in National Congress aiming to intensify the

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<sup>36</sup> According to a survey conducted by sociologist Laura Frade, of the 230 proposed legislation on criminal matters between the years 2003 and 2007 at the Federal Congress of Brazil, 224 dealt with worse treatment given to the



punitive system of adolescents in conflict with the law are several and also to decrease procedural and substantive rights of adolescents.

CNT/Sensus for 2007 developed a poll in several states concluding that 81.5% have positioned themselves as favorable to the reduction of criminal responsibility age. A study by DataSenado (Senate Database) in March and April 2007 showed that 87% of respondents claimed that children under 18 years should receive the same punishment of adults who break the law.<sup>37</sup>

Despite the efforts of the Executive and its various bodies to defend the rights of children and adolescents, on April 26, 2007, the Commission of Constitution and Justice of the Senate entered assent to proposed constitutional amendment (PEC) Number 20/99<sup>38</sup>, to reduce the legal age for 16 years to become legally responsible according to criminal law. This bill intends to amend the Federal Constitution and is still moving through the Senate in October 2014.

There are several other legislative proposals that aim, besides reducing the legal age for criminal responsibility, increase the detention punishment, as the Proposed Constitutional Amendment No. 33/2012, No. 21/2013, among many others, which provide also the promotion of a referenda to change the constitution and ordinary law governing these topics.

If approved, any of these legislative proposals, Brazil will be violating the CRC and other international human rights treaties ratified.

#### **A.1) Institutional aspects and adolescents in conflict with the law**

The ideological environment described above is a consistent trend to increasing cases of application of the measure of restriction of liberty for adolescents in Brazil, which contradicts the CRC.

The *National Survey on the Socio-Educational Care for Adolescents in Conflict with the Law*,<sup>39</sup> published in 2011, has the following data and analysis on the extent of care in an enclosed environment - Restriction and Deprivation of Liberty:

"In 2010, the system consisted of 17.703 adolescents. In 2011, there is an increase of 1,892 adolescents in relation to 2010, representing growth of 10.69% in the context of restriction and deprivation of liberty. Such percentage, as well as to interruption a reduction in growth rate of internment that occurred from 2006 to 2009, indicates a worrying trend reversal." The same research points to a conclusion that we endorse:" It is appropriate and timely to examine the reasons and the effectiveness of the use of deprivation and restriction of liberty sanctions by the Justice System in order to assess their potential to influence the interruption of infraction trajectory as expected. Also to be considered a contradiction of this device to the provisions of Law No. 12.594/12, which establishes, in several articles, clear strategies to avoid internment."

Thus, accounts of 19,595 adolescents in closed regimes of deprivation of liberty and 69.650 in open regimes. The survey also brings appropriate observations on the current situation that characterizes the practice of offense:

"In 2011, the numbers and illegal acts perpetrated by adolescents (under deprivation of liberty) are: Robbery (8.415) 38%; Drug traffic (5.863) 26.6%; Homicide (1.852) 8.4%; Theft (subtraction of

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accused. Of these, 30 dealt on juvenile justice (29 in order to intensify the rules and 1 aiming to soften them ) FRADE, Laura . What the Brazilian Congress thinks about crime (Universidade Nacional de Brasília, dissertation, mimeograph).

<sup>37</sup><http://www.senado.gov.br/sf/senado/centralderelacionamento/sepop/pdf/Pesquisa%20Viol%C3%Aancia%20no%20Brasil%20-%20comunicado%20C3%A0%20imprensa.pdf>

<sup>38</sup> [http://www.senado.gov.br/atividade/materia/detalhes.asp?p\\_cod\\_mate=837](http://www.senado.gov.br/atividade/materia/detalhes.asp?p_cod_mate=837)

<sup>39</sup> <http://www.anajure.org.br/wp-content/uploads/2013/04/LEVANTAMENTO-NACIONAL-2011.pdf>



goods without using violence) (1.244) 5.6%. The robbery therefore still presents itself as the most committed act infraction. This corroborates the idea that the offense commitment may be associated with access to consumer goods inaccessible by legal means and generally more common in adolescents from poor families and without much expectation for their future. Such motivation is stimulated by marketing and propaganda strategies, by the general appeal to buy goods and also by the social value representation linked to the possession of goods and its consequent symbolic empowerment.

The used sources of information (IPEA, 2002 and Secretaria de Direitos Humanos (Human Rights Secretary)/Ministry of Justice, 2011), reveals a change that occurred: the reduction of serious acts and the increased participation of drug trafficking in this scenario. In 2011 robbery remains the most common offense, then drug trafficking appears (increasing from 7.5% to 26.6% between 2002 and 2011). From 2002 to 2011, there was a reduction in crimes (described in the Penal Code as crimes against the person): murder - 14.9% to 8.4%; larceny - 5.5% to 1.9%; rape - 3.3% to 1.0% and injury - 2.2% to 1.3%.

**This data contradicts the information circulating in the media trumpeting a supposed increase in the severity of offenses committed by adolescents.** It indicates the increased participation of these adolescents in secondary tasks in the dynamics of drug trafficking. Such information induces a conclusion that adolescents who have committed crimes need protection rather than systematic accusation. Obviously, this conclusion does not ignore - nor should disregard - the fact that all teenagers who commit offenses against the law should be strictly liable.

According to Garcia and Pereira, "The identity marked by the commission of the offense inhibits other expressions of sociability, restricting them to a pariah condition. Distinguish the behavior of the individual and the act of a person is something that helps to release, even partially, of what we call criminal liability. It is essential and urgent the appreciation of their voice and knowledge of the different "worlds" that surround them and where they live."<sup>40</sup> However, as described by these authors, this teen protagonist represents a anti-hero in the urban culture in the country.

The increased application of the social-educative measure of deprivation on liberty is a serious violation of the rights of adolescents. According with Garcia and Pereira, "it is important to emphasize that the liability of teenagers should not be based on punishment and incarceration, but in measures with social purposes, considering that they are more efficient because they follow the principle of comprehensive care for people under development (children) and offer alternatives to crime and social protection apartheid." Thus, the predominant ideological trend in society reveals a *punitive will (volupia punitive)* which reigns in the level of common morality. This premise is challenged by Garcia and Pereira, by arguing against the idea that adolescents are not sufficiently punished for their criminal offenses.

As they state: "there is a social process of selective criminalization of young poor people, that is manifested in reality through the creation of stereotypes of the offender as a poor and black boy. This can be observed just by looking at the profile of those who are subjected to the more severe measure of deprivation of liberty. **The available data shows that the punishment of teenagers is increasing, which contradicts the common sense of 'impunity' "**

## **A.2.) SINASE (National Social-Educational Care System)**

<sup>40</sup> Article published by ANCED at: [file:///E:/ANCED/OSQ\\_31\\_7\\_Garcia\\_Pereira.pdf](file:///E:/ANCED/OSQ_31_7_Garcia_Pereira.pdf)



The Government, particularly the Executive Power, has been doing efforts against the predominant morality, that supports the intensification of punishment of adolescents. As an institutional response to this, created the SINASE. ANCED supports SINASE, provided the following aspects, that reveal essential parameters to build a democratic and effective socio-educational policy:

- a) Ensure compliance with social and cultural diversity of the regions of Brazil;
- b) The implementation of the system under the internationalist orientation of the child's best interest;
- c) Encourage actions that foster the participation of family and society in the implementation of socio-educational system;
- d) Ensure a participatory management in which stakeholders are taking into account, particularly the civil society;
- e) Mechanisms to ensure, through the Popular Councils, in the budgetary plans of the local governments, the state (and federal district) and Union, neutralizing all forms of discontinuity of socio-educational policy;
- f) SINASE should be implemented by the Special Secretariat for Human Rights (SDH/Ministry of Justice), linked to the Presidency of the Republic, not being restricted conceptually as a plan, program or policy of social assistance;
- g) Respect for the limits and powers of public authorities and civil society in the light of the Federal Republican Constitution, by not delegating measures of strategic importance to the non-governmental field, thus minimizing transfer of public management to civil society.

Still, political pressure and joint implementation of policies necessary for the protection of adolescents still need greater commitment from the Union, because a good part of the resources allocated by the states was not used. ANCED understands that the Union should exercise this control, so that policies in the area of child and youth is universal, avoiding the regional disparities that exist.

Finally, in the words of Garcia and Pereira: "The institutional dimension of incompleteness will always be better understood when associated to the importance of coordination between actors and systems and not presented as an reason for the institutions being unable to meet the demands that are addressed to them. In this respect, it is worth considering the challenges for this aspect. Thus, we consider important to map the limits and difficulties on the implementation of SINASE, as well as good practices that can serve as a contrast to the other experiments in progress."

### **B) Legal Assistance (R 70.d)**

Brazilian law provides for the right to legal assistance, to the adolescent who committed the legal infraction. However, it is offered after the teenager is formally charged, which is contrary to art. 37, d, of the CRC. The adolescent is deprived of the presence of a lawyer at the time of evidence collection, including witness testimony, and his personal testimony. To make the situation even worse, ending the police proceedings, the adolescent even without the presence of a lawyer, is taken to the presence of the Public Prosecutor to be heard. At this moment, the Prosecutor forms his conviction about the need to acknowledge the adolescent and apply educational measures.

In addition, the Prosecutor has the cumulative power of remission (forgiveness) and applying socio-educational measures. It is common along with the remission to apply socio-educational



measures of advertence. Could the adolescent be forgiven while receiving socio-educational measures? How could remission be combined with an advertence that will generate records (correspondent to criminal)? If the adolescent is forgiven, he cannot be embarrassed by such an advertence. The Supreme Court disagrees and again the adolescent is punished without adequate defense.

Although the Superior Court of Justice (STJ) has already settled understanding (Súmula 108) stating that only the judge can apply socio-educational measures, this issue is still controversial. Even more after the STJ thwarted that understanding by ruling that the decision of the prosecutor to impose remission combined with socio-educational measures can be validated by the judge.<sup>41</sup> This understanding has led to the increase of decisions regarding punishment of adolescents without due process. The adolescents have been subject to socio-educative measures without a proper technical defense.

There is an evident failure of the State do comply with the Committee's recommendation on that sense. During the period under analysis, there has not a consistent movement of any State power to ensure adolescents the right to technical defense in the pretrial phase. There is a need to enforce the right to technical defense, during the pretrial phase, so that is valid.

### **C) Adolescents deprived of liberty: conditions of detention and internment (R 70.e)**

The Federal Council of Psychology and the Federal Council of the Brazilian Bar Association did an inspection in March, 2006 to institutions for adolescents deprived from liberty, in 22 states and the Federal District (Brasília). The situation was described as: helpless, dirty, lack of essential services, buildings similar to adult prisons, lack of cafeterias with food being served in crowded and fetid rooms, allegations of mistreatment and torture, insecurity and neglect in health care, disciplinary "pseudo-pedagogical" punishments to improve behavior of teenagers ranging from prohibiting sunbathing to isolation.

Adolescents at the peak of sexual age have their sexuality and health left adrift when confined. Sex education, condom distribution, the intimate visits and preventative medical examinations and diagnosis of sexually transmitted diseases were ignored.

Not only sexual and reproductive health was overlooked, but also the cases of emergency. At the Center for Provisional Internment Don Bosco - CEIP I, an adolescent was found lying on the floor without medical attention in an overcrowded cell.<sup>42</sup>

According to this research, the units do not have public defenders and access to them is generally difficult for adolescents. The best practices found were the cases when the defender visited the unit from 15 to 15 days to provide advice to all adolescents. The worst practice was reported by the institution Espaço Recomeço. The institution denounced that it had been two years since the adolescents were visited by the judge or the Public Defender.

Data was collected by prosecutors across the country, by conducting inspections (visits), in March 2012 and March 2013, in 88.5% of units for adolescents deprived (fully) and restricted (partially) from their liberty. The report of the research *A Closer Look at the Units of Internment of*

<sup>41</sup> Jurisprudence from the Superior Tribunal of Justice (STJ – RESP 200201045409 – (457684 SP) – 6ª T. – Rel. Min. Hamilton Carvalhido – DJU 13.12.2004 – p. 00465).

<sup>42</sup> FEDERAL BOARD OF PSYCHOLOGY AND FEDERAL COUNCIL OF THE BRAZILIAN BAR ASSOCIATION. A portrait of inpatient units for adolescents in conflict with the law, in 2006.



*Adolescent Deprived and Restricted from Liberty*, implemented by the Commission on Children and Youth of the National Council of Public Prosecutors was launched in August 2013.<sup>43</sup>

### **Overcrowding**

This research shows that there is overcrowding in units in sixteen states. Altogether, there are 15.414 vacancies for 18.378 inmates. The states with the worst rates are Maranhão, with 73 vacancies and 335 inmates, capacity exceeded by 458%; Mato Grosso do Sul, with 220 779 vacancies and capacity exceeded by 354%; and Alagoas, with 154 vacancies and 500 inmates, capacity exceeded by 324%.

In units of semi-liberty (partially deprived from liberty), there are 2.193 vacancies for 1.703 teenagers attended. Overcrowding was recorded in Alagoas, 15 places for 175 young people attended, capacity exceeded by 1166%; Mato Grosso do Sul, with 16 vacancies and 51 youth, capacity exceeded by 318%; and Ceará, with 125 vacancies and 171 young people capacity exceeded by 136%.

### **Separation of young**

Among the points noted by prosecutors during inspections is the fulfillment of art.123 of ECA, requiring the strict separation according to admission, type of offense, age and physique. The separation of adolescents is also ruled in the United Nations Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty, especially the separation between those under provisional and definitive internment. Moreover, according to the report, the separation by type of infraction is critical criterion, since "prevents exchange of information and experiences among adolescents infraction history that are quite different."

In the Southeast the percentage of units that did not segregate provisional and definitive internal were 45%. In other regions, the rates are 55% (North), 55.6% (South), 68% (Northeast) and 72% (Midwest).

The separation of adolescents by age is made in only 20% of units in the Southeast and South; 16% of units in the Midwest, 32.5% in the North and 44% in the Northeast. The situation is the same in units of semi-freedom: the highest rate of separation of adolescents by age was found in the Northeast: 30% of the units inspected. In the other regions, the percentages are: 22% in the Southeast, 20% in the Midwest, 17% in South and 8% in the North.

Separation by type of infraction was only observed in 14% of inpatient units visited in the Southeast: 13.3% in the Southern Region and in only 8% of units in the Midwest. In the North and Northeast, the percentages were 32.5% and 30%, respectively.

In semi freedom, according to the report, there is practically no internal separation by type of offense in the Southeast units, where it has the largest population of adolescents in conflict with the law: only 3% of the units visited make this separation. In the Midwest and Northern none of the units visited separates adolescents. In the South and Northeast, the indexes are very shy: 13% and 9%, respectively, of the units that separate the adolescents depending on the type of infraction. Between March 2012 and March 2013, it was reported the occurrence of 129 evasions in the units inspected by the Public Ministry, which resulted in the escape of at least 1.560 adolescents, corresponding to 8.48% of the total number built in the country.

### **Profile of Adolescents**

<sup>43</sup> Found at: <http://www.cnmp.mp.br/portal/noticia/3708-infancia-relatorio-mostra-superlotacao-insalubridade-e-fugas-nas-unidades-de-internacao-e-de-semiliberdade-para-adolescentes>



The inspections conducted in 2013 recorded the presence of 20.081 adolescents in compliance with measures of deprivation and restriction of liberty. Of these, 18.378 were deprived from liberty, while 1,703 were restricted from liberty (semi-freedom regime).

The great majority of 95% of them are male, 70% are between 16 and 18 years. The second largest group are boys from 12 to 15 years. The report compares the profile of young people with data of school dropout *Synthesis of Social Indicators*, published in 2010 by the IBGE, to show the relation between the two indicators - e.g. the age group with the highest dropout rate is also the one that presents more interns in deprivation or restriction of liberty ranges from 16 to 18 years.

The main criminal offenses committed by young people who are in these units are: theft (38.1% of cases), drug trafficking (26.6%) and homicide (8.4%), according to the National Survey by SINASE, 2012.

### **Escapes and rebellions**

Between March 2012 and March 2013, it was reported the occurrence of 129 evasions in the units inspected by the Prosecution, which resulted in at least 1.560 inmates, corresponding to 8.48% of the total number of interns in the country. It was also recorded 103 rebellions, occurring in 20.2% of the units, one third of them only in the state of São Paulo.

In 70.7% of the rebellions in the country, there were injured victims. The most violent rebellions occurred in the Southeast, where there was record of injury in 88% of rebellions. The lowest percentage of rebellions with victims injured occurred in the South: 27.3%.

### **D) Social inclusion program for young people (R 70.j)**

The educational measures may be established under progression regime. An adolescent who has been sentenced to serve time in the deprivation of liberty unit can upon his behavior and legal technical evaluation be applied to semi freedom (restriction of liberty). However, most units do not offer psychological or legal services. To make it worse, some states do not have either semi freedom units or reintegration of egress system, as described below.

Adolescents do not have the necessary educational support when they are within the system to prepare them to the moment they will leave the unit. There are positive performances with excellent results proving that recidivism is based on a system that does not offer opportunities for training, psychosocial support, which, when existent, cause decreased recidivism.

According to the report *A Closer Look at the Units of Internment of Adolescent Deprived and Restricted from Liberty*, quoted above (2013), over 80% of the units in the country offers no service to egresses by the technical staff of the unit. In the North, 73% of units do not offer monitoring of egresses. In the Southeast and South, the percentages are very close, 81.3% and 80%, respectively. In the Midwest, in 84.6% of the units visited there is no multidisciplinary support to egresses, which in the Northeast, rises to 89.6% undesirably. In the semi freedom programs, the rates are better. But in most units visited, there is no follow-up action to the egresses. The national average, almost 70% of the units currently do not develop this work. The biggest deficiency is in the Northeast, where 83.3% of the units do not offer that follow up. At the other extreme, the Southern Region, where the percentage of units visited with a follow up system the graduates falls to 58.3%.

The equation remains the same as in past years. Adolescents are being denied their rights since early childhood, when they were arrested for offenses they face an unfair system that does not allow them alternatives, they are thrown on these internment, closed units similar to adult prisons



for years and no opportunities to them are granted. By becoming egresses, they have no support. However, it is expected that they are recovered and do not break the law again. How this is expected if they were given no condition to do so is still a mystery.

**E) CASE STUDY: THE RIGHT TO LIVE WITH DIGNITY - Killing of adolescents interned under socio measurement, conducted by ANCED (2007-2010)**

This survey is about the violation of the right to life, through the investigation about the total number of murders and their causes, of adolescents who were under State custody, deprived of liberty.

In the universe of 8 states, ANCED obtained documented records in 7 states of 23 adolescents who were homicide victims between January 2001 and January 2010.

It was also obtained information about 47 more cases, undocumented, of adolescents victims of homicide, from 2005 to 2010. In addition, there are 03 "post-data collection cases" that could not be included among the documented cases because they occurred after January 2010.

Thus, if the three gathered types of data obtained in this study, increases from 23 to 73 teenagers who were homicide victims being admitted under socio measures of deprivation of liberty in eight Brazilian states (CE, MG, PA, PE, RJ, DF, SP, RO) from all regions, except from the South, .

The causes of the deaths recorded in official reports were suffocation/hanging, head trauma/brain hemorrhage, suicide by hanging, wounds in the heart, killing bullet. Thus, one finds the point of entanglement between the institutional routine and homicide cases of adolescents inside the units. Importantly, these were the official causes, recorded in police reports and technical terms, and do not translate, how the teenager died.

The number of reported cases (73 adolescents) points to the question of how much can still happen to adolescents being appointed as subjects of rights in official projects of inpatient units; but, there is the institutional practice in what is invented and held are devices that only perpetuate institutionalization, segregation and exclusion.

As occurred in the ancient institutions, there is still a structure of institution in full operation in some units, where most of the activities offered to adolescents are restricted to the inner space of these. This is consistent with the logic of incarceration and not with childcare service, as required by the ECA. A unit of internment strengthens the mistake of looking at the adolescent who meets socio-educational measures as a subject to be re-formatted, repressive adaptive logic not consistent with the conception of childhood and adolescence with which all legislation and SINASE requires. ANCED reported 73 unique stories should not be dissolved in a caricature of social violence or on an excluding political and ethical project for Brazilian children and adolescents. They require to be treated in their singularity and humanity. They continue to demand it, the 14.722 boys and 639 girls admitted under socio educative system of deprivation of liberty throughout the Brazilian territory.