Examining The Legal Landscape for Street Involved Children and Youth:

Brazil 2015

By Pro Bono Volunteers From

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International Street Youth Project
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This summary contains an overview on the law and regulations that apply to different issues affecting street youth in Brazil, as well as a few comments on their current enforcement.

I. Introduction and Applicable Law.

A. Introduction.

As shown below, a number of rules have been enacted in Brazil during the last 40 years or so, seeking a significant improvement in the protection of rights of children and adolescents – including street youths. These rules represented a drastic progress about this matter, as they created a priority in the protection of the Brazilian children and adolescent who were not contemplated in any specific legal provisions (i.e., broad individuals’ principles and rights applied to children and adolescents without prioritizing them).

Nowadays, Brazil has a rather sophisticated system – and sometimes a bit confusing as far as responsibilities’ allocation – seeking the protection of children and adolescents. It is worth saying however that there are significant differences in the development of different Brazilian regions and as a consequence, the applicable rules may be more strictly enforced in some cities – which have more resources to implement the systems imposed by law – than others. Moreover, it is also uncommon to see the enforcement of the rules that apply to the responsibilities of these authorities when they fail to protect some even basic rights of the children and adolescents.

In practice, the application of the rules and principles that protect youth’s rights in Brazil is insufficient generally due to lack of resources or organization – otherwise there would not be a huge contingent of children and adolescent living in the streets, without regular access to health, education and other basic means. In Brazil, street youth generally suffers from prejudice and fear from the society.

Irrespective from this lack of application of very essential children’s and adolescent’s rights, the Brazilian Congress is currently discussing the possibility to lower the age for the application of criminal responsibility. Based on a bill of amendment to the Brazilian constitution that was recently approved by the Deputy Chamber, the 16-year-old adolescents will be held liable for certain crimes – considered more severe, including murder (the original bill that was rejected provided for a broad decrease of the majority to 16 year-old for all and any criminal law infraction). This amendment to the Constitution is still subject to further approvals before it becomes enforceable.


Before the Brazilian Constitution was enacted back in 1988, the Brazilian legal system only contained some sporadic references to children’s and adolescents’ rights – who were broadly referred to as “minors”. Most of these provisions contemplated the punishments for law infractions practiced by “minors”.


In this sense, paragraph 1 of article 227 of the Brazilian Constitution determines that it is the responsibility of the families, of the society and of the state to guarantee the youth’s rights. In other words, any of these bodies have clear responsibility in the observance and observance of the children’s and adolescents’ rights. More specifically, article 229 defines that it is the parent’s duties to guarantee the rights of their own children and adolescents – re-emphasizing thus the important role of the families. It is worth emphasizing however, that due to social issues, a still large number of Brazilian families face material difficulties to sustain themselves.

This may be one of the reasons why in other provisions of the Federal Constitution, some provisions determines that the youth’s treatment involves directly other institutions than the families.

Article 203 – II of the Brazilian Constitution states that one of the objectives of the social assistance is to help unassisted children and adolescents. As further detailed, a number of additional rules were enacted after 1988
creating different structures relying on governmental, on private entities and on the community to help improving the enforcement of the principles of the Constitution. In a broader principle, article 3 – III of the Constitution defines as a national priority to eradicate the poverty and marginalization.

More specifically articles 7 – XXXIII and 227 of the Constitution contain broad rules that apply to adolescents engaged in compensated work. Among other principles (e.g., the need of programs to protect orphans), these provisions prohibit adolescents’ work before they reach 14-year-old – except for apprentices – and protect the young workers’ right to have access to school education.

Article 229 of the Brazilian Constitution determines that minors – i.e., people with less than 18 year-old – who commit a criminal law infraction shall not be condemned under criminal law. As already mentioned, an amendment to this provision is currently under discussion.


Brazil executed on January 26, 1990 and ratified on January 26, 1990 – through Federal Decree No. 99,710 – the United Nations Convention on the Rights of the Child of November 1989. Even if some of the basic rights provided in the United Nations Convention were already contemplated in the Constitution of 1988, upon ratifying this Convention, it became clear then that Brazil needed to approve more detailed rules protecting the youth’s rights.

In this sense, strong debates started then not only at the governmental level, but also involving different parts of the Brazilian society who emphasized the importance of more detailed and effective rules to protect children and adolescents in Brazil. These debates also raised the importance of the involvement of local governments – i.e., at the State and municipal levels.

D. The Statute of the Child and Adolescent. (Federal Law No. 8,069/90).

Federal law No. 8,069 was approved on July 13, 1990 with a number of more detailed provisions on the youth’s protection. This law was enacted with the purpose of this law was to protect what it defined as children (anybody aged up to 12 years) and adolescents (from 12 to 18 years). It was called the Statute of the Child and Adolescent (the “Statute”) and it contains the most important provisions that apply to young Brazilians in any conditions – even if obviously focuses children and teenagers in risky and/or poor conditions.

There is no doubt that this Statute is a landmark legislation as it clearly emphasizes the rights of children and adolescents and also provides for the basis of the required organization to enforce these rights, in its 266 articles. To give a better idea about how comprehensive this Statute is, below is a rough translation of its index:

- Book I - General Provisions
- Title I - Preliminary Provisions;
- Title II - Fundamental Rights;
- Chapter 1 - The Rights of Life and Health;
- Chapter 2 - The Right to Freedom, Respect and Dignity;
- Chapter 3 - The Right to Family and Community Life;
- Section 1 - General Provisions;
- Section 2 - The Natural Family;
- Section 3 - The Foster Family (including details on the adoption procedure);
- Chapter 4 - The right to Education, Culture, Sports Practice and Leisure;
- Chapter 5 - The Right to Vocational Training and Protection at Work;
Title III - Prevention;
Chapter 1 - General Provisions;
Chapter 2 - Special Prevention;
Section 1 - Information, Culture, Leisure, Sports, Entertainment and Shows;
Section 2 - Products and Services;
Section 3 - Authorization to Travel;
Book II - Special Part;
Title I - Enforcement Policy;
Chapter 1 - General Provisions;
Chapter 2 - Enforcement Entities;
Section 1 - General Provisions;
Section 2 - Inspection of Entities;
Title II - Protection Measures;
Chapter 1 - General Provisions;
Chapter 2 - Specific Protection Measures;
Title III - The Practice of Infractions;
Chapter 1 - General Provisions;
Chapter 2 - Individual Rights;
Chapter 3 - Procedural Guaranties;
Chapter 4 - Social Educational Measures;
Section 1 - General Provisions;
Section 2 - Admonition;
Section 3 - The Obligation to Repair Damage;
Section 4 - The Rendering of Services to the Community;
Section 5 - Assisted Freedom;
Section 6 - The System of Semi Liberty;
Section 7 - Internment;
Chapter 5 - Remission;
Title IV - Measure Pertinent to Parents or Guardians;
Title V - the Council of Gardianship (“Conselho Tutelar”);
Chapter 1 - General Provisions;
Chapter 2 - Duties of the Council;
Chapter 3 - Authority;
Chapter 4 - The Choice of Members of the Council;
Chapter 5 - Impediments;
In November of 2008, this Statute was amended to include tougher provision against child pornography and pedophilia through the Web.

II. Public Institutions - Welfare

After the Statute was enacted, subsequent rules created in Brazil a number of organizations seeking the protection of children and adolescents.

By the mid’90s that the authorities and the society promoted discussions to organize themselves seeking the creation of the main bodies needed for the youth protection as preconized on the Statute. At this time, the Ministry of Justice created the Department of the Child and the Adolescent. A new organization named National Council for the Rights of Children and Adolescents was also created and it approved the “National Guidelines for the Policy on Assistance to Children and Adolescents”. Later the same Department also published “Policy to Promote and Defend the Rights of Children and Adolescents”.

The application of the all the provisions enacted in regard to the protection of children and adolescents in Brazil involves however a very demanding organization with the participation and/or control of different governmental jurisdictions (i.e., federal, state and municipal). Discussions involving local authorities (i.e., municipal authorities in most cases, as they are more exposed to local issues) arose and still continue nowadays in view of the lack of resources and organization in certain locations.

The Statute expressly refers to different entities that should be involved to discuss and implement plans seeking the protection of the children and adolescents the federal, state and municipal levels, respectively. In this sense, there is a National Council of the Children and Adolescents (“Conselho Nacional da Criança e do Adolescente”), State Councils of the Children and Adolescents (“Conselhos Estaduais da Criança e do Adolescente”) and Municipal Councils of the Children and Adolescent (“Conselhos Municipais da Criança e do Adolescente”).

Another kind of entity named the Guardianship Council (“Conselho Tutelar”) has a more direct involvement and as it has among its main duties:

- to assist the children and adolescents whenever their rights are threatened or violated as a consequence of acts or omissions of the society or the government, their parents or due to their own behavior;
- to assist and advise their parents or tutors;
- to enforce their own decisions requesting the required governmental services (e.g., access to the health public system) or the courts;
- to report to the Public Ministry (i.e., District Attorney Office any violation to the applicable rule or rights;
- to involve the court whenever required; and
- to implement the court’s order when it is the case.

Generally, these Guardianship Councils are organized at the municipal level and one city may have more than one Council. Each Council has five members who are elected by the community and who should meet the requirements that may vary from city to city. Initially that the members of the Guardianship Councils had no compensation but after some difficulties arose, some cities had to compensate them and even to facilitate the criteria for their elections. In locations with huge social problems, the role of the members of Guardianship Councils may even be a dangerous duty.

There is no doubt that in most Brazilian cities the Guardianship Councils have a number of issues to denounce and to try to remediate – and in summary, there is still a lot to be done to achieve the level of observance of the children’s and adolescent’s rights in furtherance to the Statute.

### III. Labor Law

The Brazilian Constitution contemplated the possibility to have children and adolescents engaged as apprentice before they reach 14 years old. In these cases, that they are hired to act in a professional environment – but this activity is considered as a complementary part of their education, considering that they also have the obligation to attend school. After they complete 14 years, these apprentice adolescents are entitled to all labor and severance rights provided under Brazilian law – meaning that hiring them may then become more costly.

This kind of arrangement should be seen as a good alternative to help children and adolescents continuing their education and staying out of the streets – as they receive a scholarship as a compensation. This possibility opens some possibilities for the street youth, but in practice it is very difficult to have a child or an adolescent in street conditions been enrolled as an apprentice or trainee.
IV. Criminal Law

Children and adolescents are not criminally liable under Brazilian law currently in force – but again there are ongoing discussions on the possible amendment of the Constitution to lower the limit of the adolescents’ criminal liability to 16 years-old, in the case of more severe crimes.

The currently determines that law infraction committed by children and adolescents shall be punished alternatively by penalties that range from a simple notice to the imprisonment of the children or adolescent in a re-educational institution. In all cases, the Statute’s rule prioritizes the educational goal of the penalty.

Unfortunately, children and teenagers who live in the streets commonly end up involved in law infractions – small problems in the beginning that may afterwards reach a considerable level of gravity. When they are caught, children and adolescents who violate repeatedly the law are generally forced to go to institutions that should somehow “reeducate” them, but are often inefficient in this task. More than that, in these institutions, children and teenagers who have practiced minor law infractions often have contact with and get some bad influence from other children and teenagers who practiced more severe law infractions.