

ACCESS TO JUSTICE FOR CHILDREN: BRAZIL

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I. **What is the legal status of the Convention on the Rights of the Child (CRC)?**

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Brazil signed the CRC on 21 September 1990 and ratified it on 24 September 1990.¹ In March 2004, through Decrees 5006 and 5007, Brazil ratified the first and second Optional Protocols to the CRC addressing children in armed conflict and the sale of children, prostitution and child pornography. The country was one of the first countries to sign the third Optional Protocol to the CRC on a complaints procedure, but has not yet ratified it. Brazil also ratified the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption on 10 March 1999² and the International Labor Organization (ILO) Conventions Number 138 (Minimum Age Convention) on 28 June 2001 and Number 182 (Worst Forms of Child Labour Convention) on 2 February 2000.³

Brazil also signed, on 12 December 2000 and ratified, on 29 January 2004, the Additional Protocol to the United Nations Convention Against Transnational Organised Crime to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Decree number 5017/04).⁴

B. Does the CRC take precedence over national law?

In Brazil, treaties which deal with human rights take precedence over national law - but not constitutional law - if a conflict arises.⁵

¹ Office of the High Commissioner for Human Rights, *Reporting Status for Brazil*, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=BRA&Lang=EN.

² Hague Conference on Private International Law, available at http://www.hcch.net/index_en.php?act=conventions.statusprint&cid=69.

³ International Labour Organization, *Ratifications for Brazil*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102571.

⁴ United Nations Treaty Collection, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en.

⁵ See, e.g. José Alvez Tomaz Neto and Daniel Ferreira de Lira, *A posição hierárquica dos tratados e convenções internacionais que versam sobre direitos humanos recepcionados pelo sistema normativo brasileiro após julgamento do Recurso Extraordinário 466.343-1/São Paulo* [The hierarchical position of international treaties and conventions relating to human rights in the Brazilian legal system following Extraordinary Appeal No. 466.343-1/São Paulo], *ÂMBITO JURÍDICO.COM.BR* (June 2012), available at http://www.ambito-juridico.com.br/site/?n_link=revista_artigos_leitura&artigo_id=11686 (affirming the supralegality of international law); Antonio Moreira Maués, *Supra-Legality of International Human Rights Treaties and Constitutional Interpretation*, *SUR –INTERNATIONAL JOURNAL ON HUMAN RIGHTS*, available at http://www.surjournal.org/eng/conteudos/getArtigo18.php?artigo=18.artigo_11.htm (describing a shift in Brazilian constitutional law in 2008 in which it was determined that international treaties could supersede national laws, but Supreme Court justices disagreed on whether human rights treaties are constitutional in nature).

C. Has the CRC been incorporated into national law?

Yes. On 21 November 1990, Brazil issued Decree No. 99,710, ratifying Legislative Decree No. 28 of 14 September 1990, which approved the CRC, fully incorporating it into Brazil's positive law.⁶

Additionally, the Brazilian Constitution of 1988 incorporates certain principles of the CRC, particularly Article 227 of the Brazilian Constitution, which provides that: 'It is the duty of the family, the society and the State to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.'

In addition, the Statute of the Child and Adolescent, Law No. 8.069 of 13 July 1990 (the "ECA") was passed to revoke the previously applicable Code of Minors and to bring national law into agreement with the new constitutional principles. Between 2003 and 2007, a number of laws were enacted which deal with children's rights to education, healthcare, leisure, physical integrity and freedom from violence and discrimination, among other issues.⁷

D. Can the CRC be directly enforced in the courts?

Yes, as the CRC has been incorporated into Brazil's national law, it can be directly enforced in the courts in Brazil.

Additionally, Article 109 para. V of the Brazilian Constitution provides that federal judges have the competence to institute legal proceedings and trials of crimes covered by an international treaty or convention if the crime was initially committed within the country and the result took place or would have taken place abroad, or vice versa. Further, Article 109 Section 5 provides that, in cases of serious human rights violations, and with a view to ensuring compliance with obligations deriving from international human rights treaties to which Brazil is a party, the Attorney-General of the Republic may request before the Superior Court of Justice, and in the course of any of the stages of the inquiry or judicial action, that the Courts of Federal Justice take jurisdiction over the matter.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

Yes, in 1994, for example, the Brazilian Supreme Court relied on the provisions of several human rights treaties, including the CRC, the UN International Covenant on Economic, Social and Cultural Rights and the American

⁶ Library of Congress, 'Children's rights: Brazil', available at <http://www.loc.gov/law/help/child-rights/brazil.php#f5>; Decree No. 99,710 available at http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D99710.htm.

⁷ Combined second to fourth periodic report of Brazil to the UN Committee on the Rights of the Child, CRC/C/BRA/2-4, 19 December 2012, pages 13-15, available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=BRA&Lang=EN.

Convention on Human Rights, among others, in order to provide a definition for the term “torture” in a case involving torture of adolescents by military police in order to extract confessions.⁸

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Article 141 of the ECA provides that every child and adolescent is guaranteed access to the Judiciary, the Prosecutor’s Office and the Public Defender’s Office.

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Pursuant to Article 142 of the ECA, persons under the age of sixteen must be represented by their parents or guardians in civil or administrative proceedings. Persons under twenty years of age must be assisted by their parents or guardians in civil or administrative proceedings. Pursuant to Article 142, the judicial authority will appoint a special guardian to a child or adolescent in the event that the interests of the child or adolescent are opposed to those of the parent or guardian.

C. In the case of infants and young children, how would cases typically be brought?

Cases would typically be brought by the parents or guardian of the infant or child.⁹

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Article 206 of the ECA provides that free and complete legal assistance will be provided to all children and adolescents in need. Article 207 para. 1 provides that, in the event that an adolescent is accused of having committed a crime, and he or she does not have a lawyer that a lawyer will be named for him or her by the judge, with the understanding that the attorney may be replaced at any time by an attorney of the defendant’s choice. Article 141 para. 1 of the ECA provides that free legal assistance will be provided as necessary to juvenile offenders by a public defender or public prosecutor. Further, pursuant to Article

⁸ S.T.J., No. 70.3895, Min. Sydney Sanches, 23.06.94, DIÁRIO DE JUSTIÇA DA UNIÃO [D.J.U.] 10.08.01, 3 (Braz.), available at [http://bsolucoes.com.br/projetos/novositeibccrim/artigo/314-Decisoos:-Penal.-Tortura.-ECA-\(art.-233\)](http://bsolucoes.com.br/projetos/novositeibccrim/artigo/314-Decisoos:-Penal.-Tortura.-ECA-(art.-233)).

⁹ See e.g.: *Família de prematura de sete meses terá que entrar com ação por vacina* [Family of seven-month-old premature baby will have to bring a case for vaccine], PREMATURIDADE.COM, 31 March 2014, available at <http://prematividade.com/noticias-brasil/familia-de-prematura-de-sete-meses-tera-que-entrar-com-acao-por-vacina.html> (news story regarding parents who brought a lawsuit through the public prosecutor to demand that the Brazilian State of Minas Gerais provide a vaccine for their seven-month old daughter).

141 para. 2 of the ECA, cases in the Courts of Justice for Children and Youth are free of costs and fees, except in the event of bad-faith litigation.

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

In the event of litigation brought by a private party, the consent of the individual responsible for the child or adolescent (the parents, family members or other legal guardian) is required and can be given by way of a power of attorney. However, in the event of a lawsuit brought by the Office of the Public Defender or the Public Prosecutor, consent of the parent or guardian is not required.¹⁰

III. **How can children's rights violations be challenged before national courts?**

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

A legal challenge may be brought before an Infancy and Youth Judge in locations where such a court exists, or in any trial court in locations where such a court does not exist. See section IV.A. below for further information. In individual cases, challenges may be brought by the victim him or herself, via his or her parent or legal guardian as discussed above, or by the public prosecutor or a Guardianship Council (See section IV.A. below for further information). In the case of class action lawsuits, Article 210 of the ECA provides that challenges may be brought by (i) the public prosecutor; (ii) the federal, state or municipal government, or the government of the Federal District; or (iii) certain non-governmental organisations. See section III.D below for further information on class action law suits.

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),¹¹ on their behalf or on behalf of third persons, regarding alleged violations of the American Convention on Human Rights.¹² A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six

¹⁰ Interview with Vitor Alencar, Executive Secretary of the National Associate of the Defense Centers of the Rights of the Child and Adolescent (Associação Nacional dos Centros de Defesa da Criança e do Adolescente, ANCED).

¹¹ The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a "dual role" as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm; American Convention on Human Rights, 'Pact of San Jose, Costa Rica', Chapter VII, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

¹² American Convention on Human Rights, Article 44.

months after the final judgment.¹³ The petition must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, the name(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.¹⁴ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.¹⁵ When a petition is declared admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).¹⁶ Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.¹⁷ The Court’s judgments are legally binding on the State against which they are made.

B. What powers would courts have to review these violations, and what remedies could they offer?

Title VII of the ECA sets forth a list of penalties for crimes and administrative infractions committed against children and adolescents. Pursuant to Article 214 of the ECA, in the event of a civil action lawsuit, any fines paid by the defendant will be paid into the fund managed by the Child and Adolescent Rights committee of the respective municipality.

Title II, Article 101 of the ECA provides that courts may order protective measures for a child or adolescent whose rights have been violated, including requiring the signing of a responsibility agreement by the parent or guardian of the child, inclusion in a community or governmental family assistance program, or, in extraordinary cases, placement in a group home or with a substitute family, among other measures.

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

For collective action lawsuits to defend the rights of the child or adolescent, naming a specific victim is not required pursuant to Article 208 of the ECA.¹⁸ Article 210 provides that these cases may be brought by (i) the public prosecutor, (ii) the national, state or municipal government, or the government

¹³ Rules of Procedure of the Inter-American Commission on Human Rights, Articles 31-32, available at <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

¹⁴ Ibid., Article 28.

¹⁵ Ibid., Article 23.

¹⁶ Ibid., Article 45.

¹⁷ American Convention on Human Rights, Article 63.

¹⁸ Interview with Vitor Alencar.

of the Federal District and the territories, or (iii) any organisation that has been incorporated for at least one year and that includes among its organisational purposes the defense of the rights and interests set forth in the ECA. As such, these entities will serve as the plaintiff, rather than the specific victim(s).

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Class action lawsuits are possible in Brazil. Article 129 of the Brazilian Constitution provides that the public prosecutor may “bring a public civil suit, in order to protect the public interest, the environment and other diffuse and collective interests.” Article 129 further provides that “the power of the public prosecutor to bring a civil suit set forth in this article does not preclude that of third parties, under the same circumstances, as set forth in this Constitution and the law;” as such, the Brazilian Constitution allows non-governmental organisations to bring litigation in the public interest.

Article 5, V of Law No. 7,347/85, dated 24 July 1985, which deals with public civil suits, provides that an organisation may bring a public civil suit, provided that it has been incorporated for at least one year at the time of the suit and its organisational purposes includes the protection of the public interest, environment, consumer, economic order, free trade, rights of racial, ethnic or religion groups, or artistic, aesthetic, historical, touristic and landscape heritage.

Further, Article 208 of the ECA provides that cases brought to defend the rights of a child or adolescent in the event of denial or irregular provision of (i) mandatory education, (ii) special education for disabled children, (iii) crèche and pre-school for children ages 0-6 years, (iv) night school, (v) supplementary educational, transport and health programs for grade school students, (vi) social assistance to protect the family, pregnancy, infancy and adolescence, as well as assistance to needy children and adolescents, (vii) access to health services, (viii) education and professional assistance to incarcerated adolescents, and (ix) educational and support services and programs to families aimed at supporting children’s and adolescents’ rights to family life, will fall under the scope of the ECA. Article 208 para. 1 further notes that these categories are non-exclusive, and that any other collective action to defend any right of children or adolescents set forth in the Constitution or state law will also be governed by the Statute. Article 210 provides that these cases may be brought by (i) the public prosecutor, (ii) the national, state or municipal government, or the government of the Federal District and the territories, or (iii) any organisation incorporated for at least one year that includes among its organisational purposes the defense of the rights and interests set forth in the ECA.

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Yes, non-governmental organisations are permitted to file challenges to potential children's rights violations. For example, in April 2007, a Rio de Janeiro-based non-governmental organisation working in the area of protection of the human rights of children, adolescents and young people called *Projeto Legal*

(<http://www.projetolegal.org.br/>) brought a case against the National Public Safety Department, a Brazilian federal government entity, to challenge a programme aimed at removing homeless children and adolescents from the streets of Rio de Janeiro during the 2007 Panamerican Games.¹⁹

IV. **Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Cases may be filed in an administrative mechanism called Guardianship Council (Conselho Tutelar). Article 132 of the ECA provides that each municipality in Brazil will have at least one Guardianship Council, to be composed of five members selected by the local community for terms of three years. No specific professional education is required to serve as a member of a Guardianship Council. Pursuant to Article 136 of the ECA, the responsibilities of the Guardianship Council are to (i) attend to children and adolescents in the event that their rights are violated, or they break the law, (ii) attend to and advise parents or guardians, (iii) ensure the enforcement of its decisions by requesting public services in the areas of health, education, social services, social security, employment and security and by returning to the courts in the event that its decisions are not complied with, (iv) notify the public prosecutor in the event of an administrative or criminal violation against the rights of children or adolescents, (v) refer to the courts cases that fall within their jurisdiction, (vi) enforce remedies ordered by the courts, (vii) assist the local executive authority in the preparation of budget proposals for programs in support of the rights of children and adolescents, (viii) represent the person or family involved in the event of violations of the rights of the child set forth in Article 220, paragraph 3 of the Brazilian Constitution (which deals with inappropriate public events and television and radio programming and advertisements), and (ix) in the event that it determines that the child should not remain with its biological family, refer the case to the public prosecutor for suspension or loss of familial power. According to Article 13 of the ECA, cases of suspected or confirmed mistreatment of children or adolescents must be reported to the Guardianship Council of the respective locality, without prejudice to other legal proceedings.

In terms of legal rather than administrative proceedings, Article 145 of the ECA provides that the Brazilian states and the federal district may create special courts to exclusively deal with issues relating to children and young people, which are referred to as Infancy and Youth Judges (*Juiz da Infância e da Juventude*). In municipalities where no such court exists, cases involving the rights of children and adolescents will be brought in the regular courts.²⁰ In places where an Infancy and Youth Judge exists, pursuant to Article 148 of the ECA, the court is empowered to (i) hear suits brought by the public defender to

¹⁹ *ONG entra com ação judicial contra “projeto higienista” durante o PAN 2007* [NGO brings a complaint against “public hygiene project” during the PAN 2007], ANDI COMUNICAÇÃO E DIREITOS, 4 May 2007), available at <http://www.andi.org.br/infancia-e-juventude/pauta/ong-entra-com-acao-judicial-contr-projeto-higienista-durante-o-pan-2007>.

²⁰ Interview with Vitor Alencar.

prove a criminal act attributed to an adolescent, (ii) suspend or dismiss a case, (iii) hear adoption suits and related cases, (iv) hear public civil suits based on the individual, diffuse or collective rights of children and adolescents, (v) hear suits alleging irregularities by public assistance agencies, (vi) apply administrative penalties in the event of infractions committed against rules related to the protection of children or adolescents and (vii) hear cases referred by the Guardianship Councils.

Pursuant to Article 147 of the ECA, in cases involving the rights of children and adolescents, domicile will be determined, both in front of the Guardianship Councils and courts, by the domicile of the parent or guardian of the child or adolescent. In the event that the child or adolescent is without a parent or guardian, domicile is the place where the child is found.

Given that the Guardianship Council is an administrative body and not a court, no initial documents are required to file a complaint with the relevant local Guardianship Council. In contrast, in order to file a case in court, the plaintiff must follow the existing rules under Brazilian law, including presentation of a complaint or statement of claim.²¹ Paperwork will depend on the court in which the case is brought; however, the plaintiff will also need to provide identity documents, a tax ID number, proof of residence, and a power of attorney appointing his or her lawyer. In cases involving family law, copies of marriage certificates (if applicable) and birth certificates are also required. In the event that the litigant wishes to exercise his or her right to free legal assistance, he or she will also need to provide a copy of a document showing proof of income, copies of his or her last two annual tax returns, and an original signed declaration of economic lack of sufficiency.²²

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

Article 206 of the ECA provides that free and complete legal assistance will be provided to all children and adolescents in need. Article 207, paragraph 1 provides that, in the event that an adolescent is accused of having committed a crime, and he or she does not have a lawyer that a lawyer will be named for him or her by the judge, with the understanding that the attorney may be replaced at any time by an attorney of the defendant's choice.

C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of

²¹ Ibid.

²² Flávio Augusto Marins, *Documentos Para Entrar com uma Ação Judicial* [Documents to Bring a Lawsuit], FJM ADOGADOS BLOG, 26 February 2013, available at <http://fjmadv.blogspot.com.br/2010/10/documentos-para-entrar-com-uma-acao.html>.

legal fees up front?

In Brazil, free legal assistance is provided to all citizens, regardless of age, by the Public Defender's Office. Some non-governmental organisations, such as the Center for Defense of Children and Adolescents' Rights (Centro de Defesa da Criança e do Adolescente, CEDECA), may bring emblematic cases on a pro bono basis in order to promote a shift in law or public policy with respect to children's rights. This litigation is normally financed in cooperation with the Brazilian government or international organisations.²³

D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

The statute of limitations for bringing a case varies depending on the nature of the violation; more serious crimes which are punishable with longer periods of incarceration have longer statutes of limitations.²⁴ Pursuant to Law No. 12.650, dated 17 May 2012, the statute of limitations for bringing a complaint of crimes of a sexual nature committed against children or adolescents will only begin to run as of the victim's eighteenth birthday.²⁵

E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The Brazilian rules of evidence in civil proceedings are set out in Chapter VI, Section I of Law No. 5,869/1973 (Brazilian Code of Civil Procedure), and for criminal cases in Law No. 3,689 (Brazilian Code of Criminal Procedure).

There are no special rules of evidence set forth in the Statute of Child Rights with regards to evidence presented by children. In criminal cases, children under the age of 14 cannot serve as witnesses.²⁶

One pending special measure is an examination procedure called "Testimony without Harm" (Depoimento sem Dano), set forth in Bill No. 7,524/2006, according to which the testimony of children and adolescents who have been victims of violence would be taken by a psychologist or a social worker in a special room, which would be connected in real time by audio and video equipment to the courtroom. Through this system, judges would relay to the psychologist or social worker the questions to be addressed to the witness.²⁷ As of now, this bill is still pending in the Brazilian House of Representatives

²³ Interview with Vitor Alencar.

²⁴ Article 109 of Law No. 2,848, dated 7 December 1940 (the Brazilian Penal Code), which sets forth statutes of limitations from three to twenty years (Decreto Lei No. 2.848, de 7 de Dezembro de 1940, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 31.12.40), available at http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848.htm.

²⁵ Lei No. 12.560, de 17 de Maio de 2012, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 18.5.2012, available at http://www.planalto.gov.br/ccivil_03/Atos2011-2014/2012/Lei/L12650.htm.

²⁶ Art. 208, Decreto Lei No. 3.689, de 3 de Outubro de 1941, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 13.10.1941, available at <http://www3.dataprev.gov.br/sislex/paginas/18/1941/3689.htm>.

²⁷ Projeto de Lei No. 7.524 de 2006, de 24 de Outubro de 2006, available at http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=421972&filename=PL+7524/2006.

(Câmara dos Deputados)²⁸, but a study by the National Council of Justice found that 42 “Testimony without Harm” or “Special Testimony” projects have already been implemented in 15 of the 26 Brazilian states and the Federal District, with the state of Rio Grande do Sul accounting for 20 of the 42 projects.²⁹ In the state of São Paulo alone 26 new special deposition spaces were being put in place in 2014.³⁰ However, these new measures are controversial, as the Brazilian Federal Psychology Council has expressed its opposition to their use, arguing that children and adolescents should not be permitted to give testimony at all.³¹

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Litigation in Brazil can be lengthy, and it is difficult to predict how long it will take for a decision to be reached in any given case, as this will depend on the type of case (civil, administrative, criminal, etc.) and the State in which the litigation takes place.³²

G. Appeal. What are the possibilities for appealing a decision to a higher court?

According to Article 137 of the ECA, the decision of a Guardianship Council may be overruled by a court decision upon the request of those legally interested in the case.

With respect to court decisions related to infant and youth justice, Article 198 of the ECA provides that the provisions of Law No. 5,869, dated 11 January 1973 (the Brazilian Code of Civil Procedure) shall apply with respect to appeals, with certain exceptions set forth therein. Article 199-C of the ECA provides that appeals from adoption cases, or cases of destitution of family power, will have absolute priority and be classified as urgent.

H. Impact. What are the potential short-term and long-term impacts of a

²⁸ Câmara dos Deputados, *Projetos de Leis e Outras Proposições* [Bills and other Proposals], available at <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=334860>.

²⁹ Benedito Rodrigues dos Santos, et. al., CONSELHO NACIONAL DA JUSTIÇA, *Cartografia Nacional das Experiências Alternativas de Tomada de Depoimento Especial de Crianças e Adolescentes em Processos Judiciais no Brasil: O Estado de Arte* [Mapping of Experiences of Alternative Methods of Taking Testimony of Children and Adolescents in Legal Proceedings in Brazil: State of the Art] (2013), available at http://www.crianca.mppr.mp.br/arquivos/File/publi/childhood/cartografia_depoimento_especial.pdf.

³⁰ Conrado Paulino de Rosa, *Tomada de Depoimentos Especiais de Crianças Tem Reforço com Novas Capacitações* [Taking of Special Testimony of Children is Reinforced by New Facilities], CONRADO PAULINO DE ROSA BLOG, 12 August 2014, available at <http://www.conradopaulinoadv.com.br/index.php/tag/depoimento-sem-dano/>.

³¹ Conselho Federal de Psicologia, *Nota sobre a Resolução CFP nº 010/2010 que institui a regulamentação da Escuta Psicológica de Crianças e Adolescentes envolvidos em situação de violência, na Rede de Proteção, vedando ao psicólogo o papel de inquiridor (prática conhecida como “Depoimento sem Dano”) no atendimento de Crianças e Adolescentes em situação de violência* [Note regarding Resolution CFP no. 010/2010 that sets forth the regulations regarding Psychological Examinations of Children and Adolescents involved in situations of violence, in the Protection Network, forbidding that the psychologist assume the role of inquisitor (practice known as “Testimony without Harm”) in providing assistance to Children and Adolescents in situations of violence], available at http://www.crpsp.org.br/portal/midia/pdfs/nota_resolucao_cfp_010_2010.pdf.

³² Interview with Vitor Alencar.

negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

A court decision on a certain subject will be reflected going forward by the trial courts, standardising future decisions. In some more emblematic cases, the media and NGOs will debate the consequences of the decision and will lobby for political change.³³

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

The degree of enforcement of any protective measures ordered by the court varies greatly throughout Brazil and is dependent on the quality of the local protection system (health, education, social services, etc.).³⁴

V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

It is worth noting that due to the institution of Guardianship Councils in Brazil, established pursuant to the ECA, cases relating to the violation of children's and adolescents' rights are rarely brought in the federal and state courts.³⁵

This report is provided for educational and informational purposes only and should not be construed as legal advice.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.