



# Convention on the Rights of the Child

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Committee on the Rights of the Child

## Consideration of reports submitted by States parties under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Reports of States parties due in 2006

**Brazil\***

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## I. Introduction

1. Consistently with its human rights policy and its adherence to the Convention on the Rights of the Child (hereafter referred to as “the Convention”) in September 1990, on January 27, 2004 Brazil ratified the two Optional Protocols to the Convention on the Rights of the Child (the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict — OPCRC/AC, “the Protocol,” and the Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography — OPCRC/SC). The ratification of the two Protocols was made possible by the National Congress’s authorization issued through Legislative Decree No. 230 of May 29, 2003 in conformity with Article 49, of the Brazilian Federal Constitution.

2. This report provides information on the Federative Republic of Brazil’s compliance with the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in respect of Article 8, paragraph 1 of the Protocol published internally in the form of presidential Decree No. 5006 of March 8, 2004.

3. Before proceeding with the presentation of detailed information on the Protocol’s implementation in Brazil, some general aspects of Brazilian policies and norms regarding the protection of children and the Armed Forces should be pointed out for a better understanding of the circumstances surrounding Brazil’s participation in the OPCRC/AC.

4. Article 4 of the Federal Constitution establishes, as one of the principles that govern Brazil’s foreign policy, the prevalence of human rights and cooperation among peoples for mankind’s progress (Art. 4, II and IX), as well as the defense of peace and the peaceful solution of conflicts (Art. 4, VI and VII).

5. In this connection, Brazil has implemented an active policy for the international promotion and protection of human rights, based on an open, transparent, and cooperative dialogue to address human rights issues in our country; on the pursuit of a consensus conducive to advancing international respect for human rights; on the emphasis on prevention measures, such as technical assistance and training in this area; and on the advocacy of universal, nonselective international monitoring of these rights. As regards the rights of the child in particular, even before adhering to the Convention, Brazil already had internal legislation aimed at implementing the Convention’s principles: the Statute of the Child and the Adolescent (ECA, Law 8069 of July 13, 1990 and subsequent amendments).

6. The Brazilian Government carries on a significant dialogue with the Committee on the Rights of the Child so as to enhance the implementation of the provisions of the Conventions at home, particularly through its initial report submitted in 2003 and considered by the Committee in 2004.

7. In conformity with the principles of defense of peace and peaceful solution of conflicts, Brazil has been a pillar of stability in the region in respect of armed conflicts. For more than 130 years, Brazil has not been involved in any armed conflict with neighbor countries, namely, since the end of the Paraguayan War in 1870. Today, the countries involved in that conflict are partners in the Mercosur integration process. World War II was the last armed conflict, in which Brazil entered after the aggression against Brazilian merchant ships by Axis submarines. The state of war was declared through Decree No. 10358 of August 31, 1942 and ended by Decree No. 19955 of November 16, 1945.

8. Not currently involved in any international or internal armed conflict, Brazil has endeavored to contribute to international peace and security by participating in peace maintenance operations under mandates defined by the pertinent international organizations.

9. Military service in Brazil has been traditionally compulsory. Since the 1891 Constitution, this obligatory requirement has been constitutionally regulated. Law 1860 of January 4, 1908 made military service in the Army compulsory. In 1916, under the cloud of World War I, an intense civic campaign waged in favor of compulsory military service, led by intellectuals such as the poet Olavo Bilac, encouraged the extensive implementation of the military service through the drawing of lots. This system was in force until 1945, when general drafting was instituted, based on age. This system is still in place. Art. 143 of the 1988 Federal Constitution states that military service is compulsory under the law. Military service legislation requires that all Brazilian males must register in the year when they reach the age of 18 and join the Armed Forces in the year when they reach the age of 19, consistently with the provisions of the Convention and the Protocol, as will be shown in greater detail further on.

10. In addition to maintaining the compulsory character of military service in accordance with the law, the 1988 Federal Constitution introduced an important innovation — Art. 143, so that paragraph 1 should read as follows: It is incumbent upon the Armed Forces, in accordance with the law, to assign an alternative service to those who, in time of peace, after being enlisted, allege reasons of conscience, which shall be interpreted as reasons based on religious, philosophical or political belief, for being exempted from essentially military activities. In this manner, the Fatherland's and the constituted powers' defense needs are brought into harmony with the protection of the fundamental liberties of conscientious objectors. The rendering of services as an alternative to compulsory military service was regulated by Law 8239 of October 4, 1991. Article 3, paragraph 2 of this law defines Alternative Military Service as the rendering of activities of an administrative, assistance, philanthropic or even of a productive nature in substitution for activities of an essentially military character. The Alternative Service Regulation, approved by Administrative Rule No. 2681 of July 28, 1992, issued by the Armed Forces' Chief of Staff, provides in its Art. 6 for the rendering of voluntary alternative service by Brazilians, starting in the year they reach the age of 17.

11. Art. 143, paragraph 2 of the Constitution, also exempts women and clergymen from compulsory military service. But there are various possibilities for women to pursue a military career, after passing a higher-education level public competitive examination, or to serve as temporary members of the military, as technical or higher-education level trainees. In all cases, enlistment is voluntary and women under 18 are not admitted; thus, the application of Optional Protocol provisions in Brazil refers basically to male individuals.

12. Despite the possibility conscientious objectors have of rendering alternative service, what happens most often in Brazil is that thousands of young men aged 18 years old, who are in condition to do entry-level military service, are not taken up into the Armed Forces due to the excess of contingents. These contingents include those individuals considered unfit for military service but, above all, those that exceed the Armed Forces' needs. The traditional excess of contingents for entry-level military service in Brazil is associated with the proportion of the Brazilian Armed Forces in relation to the overall population. The feasibility of all young men aged 18 that are not conscientious objectors to be taken up into the Armed Forces would be problematic in view of the costs involved in food, lodging, uniforms, payment, equipment, and so on. In 2010, for example, out of a total population estimated at 190,755,799, of which 1,701,889 are males aged between 17 to 18<sup>1</sup>, only 78,354 young men<sup>2</sup> were screened for compulsory military service. In view of the excess of

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<sup>1</sup> Source: Instituto Brasileiro de Geografia e Estatística (IBGE), *Censo Demográfico 2010*. Available at: [http://www.ibge.gov.br/home/estatistica/populacao/censo2010/caracteristicas\\_da\\_populacao/resultados\\_do\\_universo.pdf](http://www.ibge.gov.br/home/estatistica/populacao/censo2010/caracteristicas_da_populacao/resultados_do_universo.pdf).

<sup>2</sup> Source: Ministry of Defense.

contingents, the Brazilian Armed Forces do not take up individuals under the age of 18 years old.

13. In view of the preceding, it is clear that the Optional Protocol applies to Brazil as a developing country with a tradition of peace, which endeavors to guarantee full respect for human rights, is not involved in any internal or international armed conflicts, and whose needs are fully met by the enlisting of young men the year they attain the age of 19 years, and thus has no need to induct minor volunteers.

14. In this report, the term “child” is used in the sense of Art. 1 of the Convention, but it should be added that, without prejudice to international protection norms, Brazilian legislation (Statute of the Child and the Adolescent) makes a distinction between children (those under 12 years of age) and adolescents (those aged 12 to 18 years). As regards armed conflicts, the concepts generally recognized by International Humanitarian Law have been used, encompassing the following:

(a) International armed conflicts, which involve at least two States, whether war has been declared or not, including struggles against colonial domination and foreign occupation and racist regimes, in the exercise of the peoples’ self-determination right, in accordance with Art. 2 common to the four Geneva Conventions of 1949, and with Art. 1 of the 1977 Optional Protocol I;

(b) Internal armed conflicts, which refer to “Any situation where, within a State’s territory, clear and unmistakable hostilities break out between the armed forces and organized armed groups<sup>3</sup> or in which “dissident forces are organized under the leadership of a responsible command and exercise such control over a part of the territory as to enable them to conduct sustained and concerted military operations,”<sup>4</sup> such as civil wars.

15. Special consideration has been given to the guidelines issued by the Committee on the Rights of the Child in preparing this report in accordance with Art. 8 of the OPCRC/AC. Its preparation was coordinated by the Human Rights Division of the Ministry of External Relations under consultation with the National Secretariat for the Promotion of the Rights of the Child and the Adolescent of the Secretariat for Human Rights under the Presidency of the Republic, the Ministry of Defense, the Ministry of Justice, and the Ministry of Education.

## II. Information on compliance with articles 1–17 of the Optional Protocol

### Article 1

16. Brazil has not been involved in armed conflicts since 1945. The Brazilian Constitution and legislation make military service compulsory for all Brazilian males, exception being made for conscientious objectors. This obligation begins in the year Brazilian males reach the age of 18 years but those drafted are actually inducted into the Armed Forces only in the year when they attain the age of 19 years, in accordance with the provisions of Art. 3 of the Military Service Law (LSM — Law 4375 of August 17, 1964 and amendments — Annex 2) and with the prior procedures of registration, general selection, distribution, designation, and final selection. Although the legislation allows the rendering of voluntary military service by those aged 17, at the discretion of the interested

<sup>3</sup> Cf. ICRC, *Basic rules of the Geneva Conventions and their Additional Protocols*, Geneva, 1988.

<sup>4</sup> Cf. ICRC, *Basic rules of the Geneva Conventions and their Additional Protocols*, Geneva, 1988.

Armed Force, in recent years no volunteers under 18 have been inducted, in view of the excess of contingents.

17. Brazilian legislation does not have its own concept of taking “direct part in hostilities” such as the one expressed in Art. 1 of the Optional Protocol and in the pertinent provisions of international humanitarian law. It should be recalled that Brazil has not been involved in armed conflicts since World War II, which antecedes all the above-mentioned international instruments. Brazil has followed the discussions about possible initiatives for ensuring greater comprehension of the concept of direct participation in hostilities on the international plane.

## Article 2

18. Article 143 of the Federal Constitution determines that military service is compulsory, according to the law, with the prevision of exemption for women and clergymen and the possibility of exemption for conscientious objectors. The main legal instrument is the Military Service Law (Annex 2), establishes the norms, proceedings, rights and duties of all Brazilian citizens, in relation to the obligatory nature of military service, which are more clarified in its Regulation (Military Service Law’s Regulation — RLSM, , approved by Decree No. 57654 of June 20, 1966, and amendments).

19. The obligation of Military Service begins, in time of peace, on the 1st of January of the year in which Brazilians reach the age of 18 years and extends through December 31 of the year when they reach the age of 45 years (LSM, art. 5). This obligation encompasses the recruiting process that antecedes the actual induction of conscripts into the Armed Forces and the actual service, which will take place in the year conscripts reach the age of 19 years, in accordance with the provisions of the LSM, Art. 3.

20. Article 5, paragraph 1 of the Military Service Law establishes that in war time the military service obligation may be extended according to national interests. As Brazil has never been at war since the Military Service Law was passed, this provision has never been applied. Although there are no established minimum age limits for this exceptional circumstance, the provision would naturally be applied in accordance with the international obligations undertaken by Brazil, particularly under the Convention, the Optional Protocol, and its binding declaration.

21. The proof of age obligatorily required from an individual before he is accepted for compulsory military service is the birth certificate, pursuant to Art. 43 of the Military Service Law’s Regulation (RLSM). A Brazilian whose birth has not been recorded, who has no valid identification document, or who ignores whether or where he was registered at birth will be enlisted according to the statements of two identified witnesses about his name, date and place of birth, his parents’ names, marital status, residence, and profession. These statements are recorded in a special book and have a provisional character, exclusively for military service purposes (RLSM, Art. 43, paragraph 2). After enlisting, whether he will be inducted into the Armed Forces or not, the conscript must regularize his situation by recording his birth and obtaining proof thereof or a valid legal justification.

22. Broadly speaking, compulsory recruiting in Brazil encompasses the following five steps:

(a) *Call up.* Call up refers to the summoning of Brazilians of a given class [year of birth], or of previous classes who are still in noncompliance with the military service, to report for the compulsory entry-level military service. This calling up is done each year through a General Conscription Plan approved by Presidential Decree. The term “class” refers to all Brazilians born between January 1 and December 31 of a given year. Pursuant to art. 17 of the LSM, a conscript class consists of all Brazilians who will attain the age of

19 years between January 1 and December 31 of the year in which they will be inducted into an Active Military Organization or inducted into Reserve Training Organizations. Taking into account the enlisting, selection, and assignment procedures, the General Conscription Plans are approved the year preceding compulsory enlisting. Thus, to enlist in 2011 and to serve in 2012, the class of those born in 1993 was called up through the General Conscription Plan approved and published in 2010;

(b) *Enlisting.* Enlisting refers to the reporting of Brazilians for recruitment for entry-level military service. Each year, when they attain the age of 18 years, Brazilians must report for enlisting to a Military Service Board (JSM), which has offices in most Brazilian municipalities. This must be done by April 30. To enlist, the young men must submit a birth certificate — as explained in the preceding paragraph — and a 3 cm x 4 cm photograph. The Military Enlistment Certificate is the document that proves that a Brazilian has enlisted;

(c) *Selection.* Selection refers to the phase in which the men enlisted for entry-level military service are subjected to a physical, cultural, psychological, and moral evaluation (LSM, art. 13). The selection is carried out by stationary and mobile selection commissions distributed throughout the national territory, in July, August, and September. After selection, those considered apt receive instructions about the date and place for presenting themselves to learn about their assignment. The medical examinations for evaluating the conscripts' health are described in detail in Annex 4 (General Instructions for the Health Evaluation of Conscripts in the Armed Forces, approved by Decree No. 60822 of June 7, 1967, and amendments);

(d) *Assignment.* At this stage, conscripts are told in which military organization they will serve. To the extent possible, an effort is made to assign the conscript to a military organization near his home;

(e) *Induction or Registration.* This is the stage when those considered apt in the selection process and have been assigned to a military organization are inducted into the Armed Forces. Induction is the incorporation of the conscript or volunteer into an Active Armed Forces Organization (LSM, art. 20). Registration refers to the conscript's or volunteer's enrollment in an Active Military Training School, Center, or Course or in a Reserve Training Organization (LSM, art. 22). Conscripts who have completed the upper stage of secondary education may enroll in a Reserve Officers Training Center (ROTC), or in a Reserve Officers Training Nucleus (ROTN), where they discharge their entry-level military service obligation as students and, if they so wish, may thereafter serve in the Army as temporary officers. Students who, at the time of enlisting, are enrolled in a School of Medicine, Pharmacy, Odontology, or Veterinary will have their induction deferred until they finish school. The year after finishing school, these health professionals must report to the Special Selection of Doctors, Pharmacists, Dentists, and Veterinarians. Those selected will do military service for one year and may continue as Health Service officers for an undetermined period.

23. Art. 3 of the Military Service Law establishes that the entry-level military service shall be rendered in the year when citizens reach the age of 19 years. Only after induction or registration, the recruits, now aged over 18 years, will be considered as members of the Armed Forces.

## **Article 3**

### **Paragraph 1**

24. In addition to compulsory military service by Brazilians aged 18 years, art. 27 of the Military Service Law provides that the Armed Forces may at any time of the year authorize

the acceptance of volunteers, reservists or not. Art. 127 of the RLSM explains that the purpose of such authorization is to meet the Armed Forces' normal, occasional, or specific needs. Volunteers are accepted through an act by the interested Armed Force, stating the conditions of the service to be rendered, the attendant obligations, and the volunteer rights to be ensured (RLSM, art. 173, paragraph 2).

25. Notwithstanding the legal possibility, for years Brazil has not authorized the acceptance of volunteers for entry-level military service, given the excess of contingents. Accordingly, there are no data or statistics on such volunteers since the Optional Protocol for Brazil entered into force.

26. As regards an Armed Forces' authorization to accept volunteers, art. 5, paragraph 2 of the LSM allows volunteers to render military service beginning at the age of 17 years. A volunteer reporting for enlistment for entry-level military service may do so as of the day he reaches the age of 16 years, pursuant to art. 41, paragraph 1 of the RLSM.

#### **Paragraphs 2 and 4**

27. The adoption of the binding declaration took into consideration the internal legislation in force about the recruiting of volunteers under the age of 18 years for the rendering of entry-level military service, as well as the fact that, given the excess of contingents of drafted recruits, Brazil has not accepted volunteers under these conditions.

#### **Paragraph 3**

28. The procedure for recruiting volunteers, from the moment they express their intention to join the Armed Forces as volunteers to the time of their actual induction, follows in general the same stages as the recruitment of conscripts, save for the specificities of this modality of entry-level military service and the specific terms and conditions each Armed Force establishes when authorizing the acceptance of volunteers. As the Brazilian Armed Forces have not accepted volunteers for entry-level military service, information on this item is limited to the existing legal provisions and regulations.

29. Pursuant to the RLSM, art. 49, paragraph 4, after they attain the age of 16 years, Brazilians residing in any municipality may present themselves for selection, provided they meet the conditions set by the Armed Forces for their acceptance as volunteers. Rules and procedures pertaining to proof of age and the medical examinations set for their selection are the same as those applicable to conscripts, as mentioned in paragraphs 21 and 22(c) of this report. Under no circumstances, registration before the year in which the volunteer attains the age of 17 years shall be valid for rendering military service, given the minimum age established by the RLSM, art. 85, sole paragraph.

30. For the purposes of military service, a minor's civil incapacity will cease on the day he attains the age of 17 years, pursuant to art. 73 of the Military Service Law and to art. 239 of this law's Regulation. The sole paragraph of art. 239 of the RLSM provides that volunteers that have not yet attained the age of 17 years at the time of induction or registration must provide valid proof of his guardian's consent.

31. As no volunteers under the age of 18 years have been accepted by the Armed Forces, there is no specific documentation for informing about volunteers and their parents or legal guardians in connection with the military service obligation, other than the existing laws and regulations on the matter. For the same reasons, there are no incentives for attracting volunteers.

32. The minimum duration of actual service by volunteers depends on the act of the interested Force authorizing their acceptance. As no volunteers have been accepted into the Armed Forces, it may be mentioned, for illustration purposes, that the normal duration of



entry-level military service by those inducted is 12 months, in accordance with art. 6 of the LSM.

33. Volunteers will end their time of service at the completion of the term for which they have committed themselves, in accordance with the act authorizing their acceptance, consistently with arts. 147 and 127, paragraph 2 of the RLSM. The general rules set out in art. 31 of the Military Service Law for the early interruption of service envisage the following possibilities:

(a) Annulment of the induction, if irregularities are detected in the recruitment procedures, including selection. Art. 139, paragraph 4 of the RLSM provides that, in the case of age-related irregularities, the inducted volunteers that do not attain the age of 17 years in the same year as that of their induction should be given back their Military Enlistment Certificate, with the notation that they should return for selection with their class. If they attain the age of 17 years in the same year as their induction, volunteers may, at the discretion of the Military Organization's Commander, continue to serve and no annulment takes place;

(b) Release, in case of illness or accident, or if the volunteer assumes the condition of breadwinner after induction or is convicted of felonious crime, pursuant to art. 31, paragraph 2 of the LSM;

(c) Dishonorable discharge, in case of conviction for ordinary or felonious crime, the commission of acts that under the military law or regulations make the person unworthy of belonging to the Armed Forces, or contumacious behavior, pursuant to art. 31, paragraph 3 of the LSM; and

(d) Desertion after conviction for desertion crimes defined in the Military Penal Code (see Annex 5 for definition of types of penalty and minimum and maximum sanctions contemplated and the attendant circumstances for exemption, mitigation, or aggravation of the penalty).

According to the RLSM, art. 138, sole paragraph, these provisions apply, pursuant to specific legislation, to all inducted men, including volunteers, who are rendering military service in other forms and at other stages.

34. As regards the application of military discipline to recruits under 18 years of age, volunteers are subject to the same obligations and rules imposed on the class to be called, from the time of selection to the time of release, in keeping with the conditions set out in the instructions for their acceptance, issued by the Military Commanders (RLSM, art. 49, paragraph 5). The extent of the application of military disciplinary rules to volunteers under the age of 18 years will thus depend on the act of the interested Force authorizing their acceptance. For illustration purposes, it is worth noting that the Disciplinary Regulations of each Armed Force, approved by presidential decree, provide that, after investigation through the appropriate disciplinary procedures, the application of disciplinary sanctions include from warning or reprimand for lighter infractions to expulsion from the Force for the sake of discipline in case of infractions of utmost gravity, and may include in-between imprisonment or disciplinary detention for a maximum of 30 days.

35. The Military Penal Code (MPC) prescribes the application, under certain circumstances, of its provisions to persons under 18 years of age, placing them under the Military Judiciary. According to the general rule set out in art. 50 of the MPC, a person under 18 years of age is not indictable. Exceptionally, if the person has already attained the age of 16 years and demonstrates enough psychic development to understand the illicit nature of the fact and, if based on this understanding, he is deemed indictable, the penalty imposed, in this case, is reduced by one third to one half. MPC's art. 51, in turn, treats such an individual as being over 18 years of age, even if that age has not yet been actually

reached, for the purposes of applying the military penal rules, placing him on the same level as: (a) the military; (b) those called up, those who report for induction, and those that have been given temporary leave and fail to report themselves at the expiration of their leave; and (c) the students of military schools or other educational institutions under military control and discipline, who have already attained the age of 17 years.

36. As no volunteers under the age of 18 years have been accepted into the Brazilian Armed Forces, there are no data on such persons being subject to prosecution or to deprivation of their freedom as a result of a military, disciplinary, or penal proceeding.

#### **Paragraph 5**

37. With respect to educational institutions under the control of the Armed Forces in Brazil, it is important to distinguish, in connection with the Optional Protocol, between Military Schools (CMs) and Military Preparatory Schools (EsPCEX, CN, and EPCAr).

38. The Military Schools are educational institutions of the Army, which offer education from the 5th to the 8th grade of elementary school and from the 1st to the 3rd grade of secondary school. Military School students are not members of the military do not receive military training, may leave school at any time they wish, and are not under the obligation to follow a military career. In case of mobilization, they are not subject to it. The only Military School students who receive military training are those that present themselves as volunteers for the Reservist Training Courses. These courses last six months and are taught without prejudice to the hour load of regular teaching. Admission to the Reservist Training Courses is restricted to Military School Students that belong to the class that has been called for the entry-level military service (aged 18) or that, although belonging to another class, meet the legal requirements for being accepted as volunteers, as explained in paragraphs 28 to 30 above.

39. Currently, there are twelve Military Schools in Brazil:

- (a) Colégio Militar de Brasília-CMB;
- (b) Colégio Militar de Belo Horizonte-CMBBH;
- (c) Colégio Militar de Curitiba-CMC;
- (d) Colégio Militar de Campo Grande-CMDG;
- (e) Colégio Militar de Fortaleza-CMF;
- (f) Colégio Militar de Juiz d Fora-CMJF;
- (g) Colégio Militar de Manaus-CMM;
- (h) Colégio Militar de Porto Alegre-CMPA;
- (i) Colégio Militar de Recife-CMR;
- (j) Colégio Militar de Rio de Janeiro-CMRJ;
- (k) Colégio Militar de Salvador-CMS;
- (l) Colégio Militar de Santa Maria-CMSM.

40. The course of studies at the Military Schools usually lasts seven years (from the 5<sup>th</sup> grade of elementary school to the 3<sup>rd</sup> grade of secondary school). The minimum enrollment age varies according to basic education, from age 10 for enrollment in the 5<sup>th</sup> grade of elementary school to age 16 for enrollment in the 3<sup>rd</sup> grade of secondary school. Eligible candidates are either the children of military or those that pass competitive entrance examinations.

41. Education in Military Schools follows the norms and principles laid out in the Guidelines and Bases of National Education, the Law on Education in the Army, the Military Schools Regulation, and the Military Schools Internal Regulations (cf. Annexes 6 to 8), among others. The teaching of the principles of human rights and humanitarian law, particularly with respect to children, forms part of the disciplines of Ethics and Introduction to Philosophy and to Sociology, which allow for a contextualized approach to the matter. An effort is also made to mainstream the teaching of said principles through other subjects in the curriculum whenever possible, bearing in mind that human rights are one of the cross-discipline themes contemplated in the National Curriculum Parameters.

42. Military School facilities are compatible with the objectives of Basic Education and the pedagogical approach of Brazil's Military Schools System. All Military Schools have classrooms, equipped laboratories, computer-equipped libraries, sports courts and gyms, athletics fields, swimming pool, and green areas.

43. The application of discipline in Military Schools is governed by the Regulatory Norms of the Military Schools' Disciplinary Regime (Annex 9), adopted in July 1996, in harmony with the principles laid out in the Statute of the Child and Adolescent and in the Convention on the Rights of the Child. The disciplinary system in Military Schools has solely educational objectives and is monitored by psychologists/pedagogues, who provide assistance to students and guidance to teachers' assistants, teachers, and officers. Penalties vary from warnings for minor infractions to expelling for graver infractions, preceded by rigorous investigation. A reward system for good behavior and good performance is also in place.

44. In addition, Military School students who are enrolled in the Reservist Training Course (RTC) as mentioned in Paragraph 38 above, are subject to the Military Penal Code and to the Army's Disciplinary Regulations, although the limitations imposed by the peculiarities of school life are taken into account and, in RTC cases, this applies only to disciplinary transgressions.

45. Disaggregate data on Military School students and teachers are shown in Annex 10 hereto.

46. Military Preparatory Schools, in turn, prepare cadets or officer candidates for entering the Armed Forces' officers training academies, and seek to instill in students the motivation for a military career and enthusiasm for their respective Force. They operate on a boarding-school system and offer secondary education and military instruction compatible with reservist training, in addition to the practice of sports. Enrollment in these schools is voluntary and open only to male candidates. To be admitted, students must clear selective procedures that involve intellectual tests, health examinations, and physical and psychological aptitude tests. Candidates that have not yet attained 18 years of age when they register for the selection procedure must provide a written consent of their parents or legal guardians.

47. After enrollment, students become members of the respective Force as students, are entitled to a monthly pay, lodging, uniform, and food, in addition to medical/hospital, dental, and psychological and pedagogical care. However, the employment of these students in case of mobilization or armed conflict is not contemplated. The discipline required from students at EsPCEx, CN, and EPCAr is consistent with the Disciplinary Regulations of the respective Forces and with the specific rules of each educational establishment. Students may drop out at any time and are not required to follow a military career upon completion. As they finish their respective courses, they receive a certificate of completion of secondary school and a reservist's certificate, and may enter higher-level education military schools if they so wish and meet other pertinent legal and regulatory requirements.

48. The above-mentioned Armed Forces preparatory schools are as follows:

(a) Army Cadets Preparatory School-EsPCEEx, located in Campinas, State of São Paulo. It is a military educational institution that prepares young men to enter the Agulhas Negras Military Academy (AMAN), where combat officers of the Brazilian Army are trained. Successful graduates are eligible to enter AMAN, provided they meet the other requirements under the law and regulations. The course lasts one year on a half-board regime and covers the 3rd and last grade of secondary school in addition to the disciplines necessary to the professional military initiation, consistent with the category B reservist training. Enrollment in the EsPCEEx is through an annual national competitive examination, open to young men aged 15 to 20 who are attending or have completed the second grade of secondary school. Currently, there are 475 students enrolled in the EsPCEEx, which employs 13 civilian teachers and 74 members of the military, including teachers, instructors, psychologists, pedagogues, educational technicians, and General Staff Officers. The sociology, anthropology, and political science courses offer programmatic contents in respect of Citizenship and Human Rights to encourage students to reflect on their condition as citizens and on these disciplines' importance for building ethical values;

(b) Naval College (CN). Located in Angra dos Reis, State of Rio de Janeiro, the Naval College is an educational establishment belonging to the Navy. The Naval College's objective is to prepare and screen students for the Naval School's Graduate Course. The Naval College program of studies, known as Training Course for Admission to the Naval School's Graduate Course, lasts three years on a boarding-school system and is equivalent to the three years of secondary education plus military-naval training. Each year, 200 candidates are screened through a Selective Admission Process (PSACN). They must be aged 15-18 and have completed the 8th grade of elementary school by the time the course starts. In 2005, enrollment at the Naval School totaled 628 students;

(c) Air Cadet Preparatory School-EPCAr. This educational establishment belonging to the Brazilian Air Force is located in Barbacena, State of Minas Gerais and prepares candidates for entering the Aviator Officers Training Course at the Air Force Academy (AFA). To be admitted to the EPCAr Course, known as Air Force Cadet Preparatory Course (CPCAr), which lasts three years and corresponds to the last three years of secondary education, candidates must have completed or be in condition to complete the 8th grade of elementary school and have not yet attained the age of 18 years. Each year, 150 candidates can be admitted to the first year of CPCAr. Admission to the 3rd year of CPCAr is possible for candidates that have completed or are about to complete the 2nd year of secondary education and have not yet attained 20 years of age at the time of enrollment. Usually, 20 to 30 candidates can be admitted in this category each year. In 2005, total enrollment at the EPCAr was 438 students in the three grades of secondary education.

#### **Article 4**

49. Brazil has not been involved in situations of armed conflict, either internally or internationally, so that Art. 4 has not been applied since the entry into force of the Optional Protocol for Brazil.

#### **Article 5**

50. As children make up one of society's most vulnerable segments, particularly during armed conflicts, Brazil, in addition to participating in the OPCRC/AC, is party to the main international humanitarian law instruments that guarantee the protection of the rights of children in such situations. Some of the major normative instruments in this connection are:

(i) the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of August 12, 1949 (Convention IV) and (ii) the Rome Statute of the International Criminal Court.

51. The Geneva Convention IV, adopted on August 8, 1949 and internationally in force since October 21, 1950, has been incorporated into the Brazilian legislation by Decree No. 42121, of August 18, 1957. Convention IV devotes several articles to the protection of children in armed conflicts, including articles 14, 23, 24, 38, 50, 89, and 94. For example, under the title concerning the general protection of populations from certain consequences of war, art. 14. provides that “In times of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.” Art. 24 provides that “the Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition. The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph. They shall, furthermore, endeavor to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.”

52. Art. 50 of the Geneva Convention IV addresses the protection of children in occupied territories: “The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children. The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it. Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.”

53. Under the Rome Statute, incorporated into Brazilian law by Decree No. 4388 of September 29, 2002, the International Criminal Court has jurisdiction over the following crimes: (a) the crime of genocide; (b) crimes against humanity; (c) war crimes; and (d) crimes of aggression (art. 5). One Statute definition of “genocide” is the forcible transfer of children of the group to another group, carried out “with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group” (art. 5, paragraph 2, 1). Enslavement is considered as one of the crimes against humanity (art. 7, paragraph 1, c). The Statute defines “enslavement” as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children” (art. 7, paragraph 2,c). For the purposes of judgment before the International Criminal Court, “crimes of war” means “grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.” In this case, Brazil complies with the provisions of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which establishes 18 as the minimum age.

54. Brazil is part to Convention No. 182 and to Recommendation No. 190 of the International Labour Organization concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, of June 17, 1999. Convention 182 has been in force in Brazil since February 2, 2001 and has been incorporated into Brazilian law by Decree No. 3597 of September 12, 2000. According to art. 3a of Convention No. 182, one of the worst forms of child labor is “forced or compulsory recruitment of children for use in armed conflict.”

55. Brazil is actively participating in the General Assembly’s and the Security Council’s discussions on the protection of children in armed conflicts. It has also taken active part, for instance, in the negotiations and adoption of resolutions 1261 (1999), 1539 (2004), 1612 (2005), and 1998 (2011) adopted by the Security Council.<sup>5</sup>

56. Brazil is a traditional co-sponsor of the General Assembly resolution on the Rights of the Child, which every year includes some provisions regarding the protection of children affected by armed conflict.<sup>6</sup>

## Article 6

### Paragraphs 1 and 2

57. In view of the fact that the internal and international legislation in force in the country is consistent with the provisions of the Optional Protocol and that for years Brazil has not been involved in armed conflicts nor accepted the induction of volunteers under 18 years of age into the Armed Forces, no changes in the national legislation have been needed for making possible the proper implementation of the OPCRC/AC.

58. The Optional Protocol was published internally through presidential Decree No. 5006 of March 8, 2004 and is in full force within the internal jurisdiction. The legal status of international treaties on human rights in general has been the object of jurisprudential divergence in Brazil. Some judges and courts, based on art. 4, paragraph 2 of the Federal Constitution (“The rights and guarantees established in this Constitution do not preclude other rights arising out of the regime and principles adopted herein or out of international treaties to which the Federative Republic of Brazil is Party”), have accorded international treaties the status of constitutional norm. Other jurisprudential line accords them the value of ordinary law. As yet, there have been no specific decisions on the statutes of the Optional Protocol.

59. Constitutional Amendment No. 45, in force since December 30, 2004, added a 3rd paragraph to art. 5 of the Federal Constitution, establishing that “international treaties and conventions on human rights approved by each chamber of the National Congress on two voting sessions by three fifths of the votes of the respective members are equivalent to constitutional amendments.” The status of the international treaties on human rights approved by Congress before the entry into force of this new rule, including the Convention and its two Optional Protocols, is still under internal discussion.

60. As Brazil strives for the universal implementation of the rights of the child in all its public policies as well as the particularities of the norms for the protection of children in armed conflicts, there are various governmental agencies entrusted with the application of the Optional Protocol.

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<sup>5</sup> In 2000 and 2003, Brazil did not participate in the Security Council.

<sup>6</sup> For instance, the Resolutions A/65/197 “Rights of the Child” and A/64/146 “Rights of the Child”.

61. The Ministry of Defense and the Army, Navy, and Air Force Commands play a fundamental role in implementing the provisions of the Protocol with respect to the prohibition of forced recruiting of children for direct participation in hostilities and to the regulation of the induction of volunteers under the age of 18 years into the Armed Forces. In this connection, this report has already made several references to the fact that for more than 60 years Brazil has not participated in any armed conflict and that it does not accept volunteers, given the excess of contingents of inducted 18-year old males. The Ministry of Defense, together with the Ministry of Education, also sees to the observance of Protocol norms in Military Schools.

62. The Secretariat for Human Rights under the Presidency of the Republic (SDH), the federal body responsible for coordinating public policies of protection and promotion of human rights, also plays an equally fundamental role in the implementation of the Optional Protocol provisions. It is incumbent upon the SDH to advise the President of the Republic directly and indirectly in the formulation of policies and guidelines aimed at promoting the rights of citizenship, children, adolescents, the aged, and minorities and at defending the rights of the handicapped and their integration into community life, as well as to coordinate the national human rights policy in accordance with the National Human Rights Program (PNDH). The SDH also coordinates initiatives and supports projects geared to the protection and promotion of human rights nationwide, implemented by both government bodies, including the Executive, the Legislative, and the Judiciary Branches, and civil society organizations. Moreover, it discharges an ombudsman's function in matters regarding citizenship, children, adolescents, the aged, and minorities. It should be pointed out that one of the main guidelines of the National Human Rights Program has to do with the implementation of the international agreements on human rights ratified by Brazil.

63. SDH's work necessarily involves close coordination with other Ministries and federal government agencies, the Executive, Legislative, and Judiciary Branches, the Department of Justice, the States and Municipalities, and civil society. The National Secretariat for the Promotion of the Rights of the Child and the Adolescent (SNPDCA) is SDH's main arm to ensure full respect for the rights of the child.

64. The National and the State and Municipal Councils on the Rights of the Child and the Adolescent discharge equally relevant functions in the application of the Optional Protocol. They are responsible for decision-making and verification in respect of the promotion and protection of the rights of the child and the adolescent at all government levels. These councils are an important, privileged channel for popular participation in deciding and controlling public policies aimed at children, because they consist of government and civil society representatives on a parity basis and because civil society representatives are elected by their peers without government interference. In addition to the National Council on the Rights of the Child and the Adolescent (CONANDA), there is a State Council in every state, and in each one of the 4,873 municipalities there is a Municipal Council. Every two years, a National Conference on the Rights of the Child is held, preceded by State and Municipal Conferences, at which civil society actively participates in defining the main lineaments of the policy aimed at ensuring the rights of children and adolescents. The Brazilian State calls attention to its report on compliance with the Convention on the Rights of the Child and to the dialogue maintained with the Committee as the Committee was considering the report, which discussed in depth the Councils' functions and role.

65. November 2003 saw the establishment of a National Commission for Dissemination and Implementation of International Humanitarian Law in Brazil. It is incumbent upon this Commission to propose, to the pertinent authorities, measures necessary to the implementation and dissemination of international humanitarian law nationwide, in particular the Geneva Conventions of 1949 and the Additional Protocols I and II of 1977, as

well as the other instruments on the subject, to which Brazil is Party. The Commission consists of representatives of the Ministries of External Relations, Justice, Defense, Health, Education, and Culture, the President's Office, the Secretariat for Human Rights under the Presidency of the Republic, the Chamber of Deputies, and the Senate. The Brazilian Red Cross and the International Committee of the Red Cross also participate, as observers. The Commission may also invite entities and specialists in specific thematic areas to help it in its work. The National Commission's role in the implementation of the Optional Protocol is highly significant, given the convergence of the norms of the International Human Rights Law and the International Humanitarian Law as regards the protection of children in armed conflicts.

66. The Ministry of External Relations has a role in coordinating Brazilian positions at multilateral forums on human rights, humanitarian law, and promotion of international peace and security, at which attention is given to the involvement of children in armed conflicts, and particularly in connection with the dialogue with the Committee on the Rights of the Child about the implementation of the Optional Protocol.

67. The main mechanism prescribed for the periodical verification and evaluation of the Optional Protocol's application is the process whereby this initial report is prepared, submitted, and discussed, as will also be the pertinent parts of future reports about compliance with the Convention on the Rights of the Child, in accordance with art. 8 of the Optional Protocol.

68. As regards the measures adopted for the training of peace maintenance personnel in respect of the rights of the child, including the Optional Protocol provisions, all Brazilian troops that participate in peace maintenance operations receive prior training in the norms of the International Human Rights Law, the International Humanitarian Law, and the United Nations Code of Personal Conduct for Blue Helmets. During this training, emphasis is laid on the protection of the rights of children, both as regards involvement in armed conflict and preventing and combating sexual exploitation. The Ministry of Defense has worked in partnership with the International Committee of the Red Cross to strengthen and consolidate the training in International Humanitarian Law not only of contingents sent on peace missions but of the Armed Forces in general.

69. In addition to being published in the Official Gazette, the Optional Protocol is available on the Web sites of the official bodies associated with its application.

### **Paragraph 3**

70. As Brazil has not been involved in situations of armed conflict, whether internal or international, paragraph 3 has had no application since the entry into force of the Optional Protocol for Brazil.

### **Article 7**

71. As Brazil has not been in a situation of armed conflict, whether internal or international, it has not received or rendered any technical cooperation, nor received any financial assistance in this connection.

72. To the extent of its possibilities as a developing country, Brazil has sought to contribute financially to organisms, agencies, funds, and multilateral programs that have a role in protecting children involved in armed conflicts. In 2010, Brazil contributed with US\$1,000,000 to the Office of the United Nations High Commissioner of Human Rights for the protection of victims of sexual violence in the Democratic Republic of Congo.