



Convention on the Rights of the Child

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Committee on the Rights of the Child

Seventieth session

Summary record (partial)* of the 2038th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 22 September 2015, at 3 p.m.

Chairperson: Mr. Mezmur

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* No summary record was prepared for the rest of the meeting.

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The public part of the meeting was called to order at 3.05 p.m.

Consideration of reports of States parties (continued)

*Combined second to fourth periodic reports of Brazil (continued)
(CRC/C/BRA/2-4; CRC/C/BRA/Q/2-4 and Add.1)*

Initial report of Brazil on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (continued) (CRC/C/OPAC/BRA/1; CRC/C/OPAC/BRA/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Brazil took places at the Committee table.*
2. **Mr. Brito** (Brazil) said that research had been undertaken in those municipalities where there was a high incidence of child labour. The findings would be used to ensure that policies took into account the needs of the most vulnerable children and adolescents. To that end, various educational and social assistance programmes had been introduced, including Pronatec, a project that aimed to integrate vulnerable youths into the formal labour market.
3. After giving an overview of the various federal and municipal plans in place or being developed concerning children in conflict with the law, he said that there were limits on the number of juveniles that could be held in designated detention centres at any one time. The maximum period of time that a juvenile could be held in pretrial detention was 45 days. There was, however, a preference for juveniles to be sentenced under the semi-open prison system, whereby inmates were granted day release to undertake work in the community.
4. **Mr. Torres** (Brazil) added that although the institutionalization of juvenile offenders persisted in certain areas of the country, the semi-open system was gaining ground.
5. As to the process of returning indigenous lands, he said that individuals or indigenous groups could submit a claim to the National Foundation for Indigenous People (Funai). That claim would then be investigated by a working group of experts, who would then submit a report to the Ministry of Justice for approval. It was at that point that a survey would be made of the land to be returned and, once the President's approval had been given, title to the land would be transferred. The process could be temporarily suspended if another party applied for an injunction. In such cases, the judiciary could defer the land application pending a ruling on the objections raised. The amount of land already transferred to the indigenous peoples in Brazil was equivalent in size to some European countries.
6. As to the birth registration document provided to indigenous people, he said that it was the equivalent of the birth record issued at a maternity unit. While it was useful as a temporary form of identification recognizing that person's existence and giving access to certain public services, it did not have the full legal validity of a civil birth certificate.
7. **Ms. Egas** (Brazil) said that, while it was possible for children under the age of 16 to marry with the consent of their parents, a law had been introduced in 2009 establishing that sexual activity with a person under 14 years of age would constitute statutory rape.
8. Regarding the sterilization of girls with disabilities, a new law on the inclusion of persons with disabilities had recently been passed in which the legal definition of persons with disabilities had been reformulated. Accordingly, girls with disabilities

were no longer considered to be legally incapacitated. However, the new law did not address their rights in terms of sterilization or other reproductive health issues.

9. **Mr. Torres** (Brazil) said that a multisectoral committee, comprising civil society representatives, the judiciary and other stakeholders had been created to safeguard the rights and well-being of children during the staging of national and international events, such as the 2014 FIFA World Cup and the forthcoming Olympic Games. A nationwide protection and intervention mechanism had also been established, with clear processes and procedures, to protect children from sexual exploitation, child labour and abandonment. In fact, Brazil had shared its methodology with the Russian Federation, which was due to host the 2018 FIFA World Cup, as well as with the United Nations Children's Fund (UNICEF) and FIFA. During the 2014 FIFA World Cup, some 2,500 professionals working within the protection network had been based in the 12 host cities. A human rights telephone hotline had also been set up and the increase in the number of reported incidents was linked to increased awareness of children's rights.

10. Regarding violence against children, he said that a constitutional amendment, which was currently awaiting final approval by the President, placed responsibility for public safety and security in the hands of both the Federal Government and the individual municipalities. Accordingly, the Government would now be able to intervene to quell conflicts at the local level. Other measures to tackle violence included a law banning guns above a certain calibre and a gun amnesty, through which some 600,000 firearms had been handed in to the authorities. There was also a proposal to amend a law often invoked by police officers to justify the death of a civilian on the ground that he or she had been resisting arrest. Lastly, law enforcement officials were being offered more training to help tackle and prevent violent clashes.

11. **Ms. Egas** (Brazil) said that the Human Rights Secretariat was responsible for monitoring the human rights telephone hotline, passing complaints of sexual violence to the police for investigation and following up on criminal proceedings. A strategy had been developed to help accelerate the identification of cases of sexual violence and bring perpetrators to justice. Furthermore, the National Council of Justice had recently passed a resolution pledging to treat cases of sexual violence against children as a priority.

12. As to preventive measures, she said that an integrated action plan had been launched to help identify the root causes of sexual violence in a specific area. With that information, a targeted cross-sectoral response could be developed that focused on the specific conditions existing in a given locality such as a border town or an indigenous settlement. Furthermore, training was provided for professionals employed by the protection network to ensure that they could identify the signs of sexual abuse. Lastly, the Government recognized that more needed to be done to support and protect certain vulnerable groups, such as street children and indigenous communities.

13. **Mr. Perondi** (Brazil) said that there were varying levels of incarceration for children of between 12 and 18 years of age. In the most serious cases, a juvenile could be confined to a detention institution but released to attend school during the day. Once a minor reached the age of majority, however, he or she would be treated in accordance with adult law and would, if necessary, be sent to an adult prison.

14. **Mr. Gastaud**, referring to the issue of street children in Brazil, said that he would be interested to hear the findings of the "Counting the Population on the Streets" survey. Moreover, he wished to know whether that study had led to the implementation of any federal or regional programmes. If so, he would welcome specific details on such programmes and on the outcomes of any impact assessments.

15. **Mr. Cardona Llorens** said that it was still not clear as to whether, under Law No. 9263/1996, a girl with disabilities could be sterilized without her free and fully informed consent. He noted that the Committee on the Rights of Persons with Disabilities had recently expressed serious concerns about that same issue.

16. **Ms. Ayoubi Idrissi** said that she would welcome information on the country's migrant policy and whether unaccompanied minors had access to both health care and education. Expressing concern at the numbers of violent deaths among children and young people, she asked for details of any research into the root causes of the problem, the outcomes of any criminal investigations, and the level of compensation awarded in such cases. In that connection, she congratulated the Government on the broad spectrum of laws that it was introducing to tackle such violence and would welcome specific information about them. Lastly, she thanked the delegation for clarifying the position concerning the draft bill to lower the age of criminal responsibility; however, no information had as yet been provided on the alternative proposal, which was also considered to be detrimental to the well-being of children in conflict with the law.

17. **Mr. Gurán** said, with regard to the State party's plans to build small centres for children as a compromise between institutionalization and family-based care, that there were a number of countries that had used a similar model of alternative care. In many cases, however, the model had been unsuccessful and had resulted in psychological, social and educational issues for the children staying in the homes. Therefore, he wondered whether the State party had thoroughly evaluated the model to ensure that it would function as an effective form of alternative care for children.

18. In addition, he asked who was responsible for producing reports on children who had been adopted by families living abroad, how such cases of adoption were evaluated, and how Brazilian children living abroad in adopted families were assisted in maintaining contact with their biological ties in Brazil. As for the project that aimed to help incarcerated mothers stay in contact with their children, he wondered whether there was a similar project for incarcerated fathers, as it was equally important for children to maintain a relationship with their father as with their mother. Finally, in respect of the Optional Protocol on the involvement of children in armed conflict, he asked whether any steps were taken during migration procedures to identify children who might have been child soldiers.

19. **Ms. Oviedo Fierro** said that she was concerned that the discussions on reforming juvenile justice were not being given the attention and time that they deserved by the Government. Furthermore, she wondered how the financial crisis would affect the ability of non-governmental organizations to carry out their work, and whether the Government monitored maternity wards to ensure that newborns were not being directly handed over for adoption by unscrupulous officials without following established procedure.

20. **The Chairperson** said that he wanted to know whether the Committee could be assured that, although no final decision had been reached on the Government's restructuring, the high priority given to children's rights would be maintained. He also asked whether the process for seeking asylum could be made as child-friendly as possible, given recent reports indicating that that process could take up to three years. He wondered whether training, data collection and awareness-raising on the issue of femicide was taking place, and whether the well-being of children was taken into consideration when building dams, which had not been the case during the construction of the Belo Monte Dam complex.

21. **Mr. Brito** (Brazil) said that street children in Brazil were encountering a different situation to that which obtained two decades ago. The Unified Welfare

System had introduced measures to assist such children, including funding and support services for street children in metropolitan areas and in the majority of Brazil's municipalities. Civil society was strongly committed to assisting in providing care to street children, and a working group had been set up within Conanda to discuss how to further improve such support services.

22. Institutionalization of children should be the exception. A new project was being implemented which offered direct care to families in need of assistance, but an evaluation of the project had not yet been carried out. A number of different models of care that did not involve institutionalization were available in Brazil, some of which were operated exclusively by the public sector, while others involved the private sector. The "Casa-Lar" programme was one example of alternative care available in the State party.

23. **Mr. Torres** (Brazil) said that the current law pertaining to the sterilization of women with disabilities was brought into consideration only when it was medically determined that an individual was not able to use contraceptives due to the risks to health or life that contraceptive use would entail. However, the new law on persons with disabilities that would enter into force in January 2016 would supersede the existing law on female sterilization.

24. Child asylum seekers were being monitored for previous participation in armed conflict. Moreover, a task force had recently been established by the judiciary and by social welfare networks to develop protocols and procedures for intervening in such cases where necessary. Homicide was a critical problem in Brazil and steps were being taken to improve the way in which the judiciary and the police followed up such cases. As for international adoption, Brazil had a very well established procedure in which children were monitored for two years and underwent an assessment every six months to ensure that they were in an adequate living situation.

25. **Ms. Egas** (Brazil) said that measures had recently been adopted by the Government to improve support services available for women living in abusive situations. One such measure was the establishment of women's centres which provided a range of services under one roof, such as social and psychological care, and assistance in reporting crimes and bringing offenders to justice. The Ministry of Health was discussing the introduction of a rule requiring health-care establishments to collect any evidence of sexual violence committed against women in order to facilitate the prosecution of the offender. No impact assessment of such measures had been carried out so far.

26. **Mr. Torres** (Brazil) said that, with regard to dam-building projects, a protocol was being developed which would enable firms to work with State bodies in protecting children living near the construction site. Lessons had been learned from the mistakes associated with the construction of the Belo Monte Dam. While no specific policy had been introduced to prevent kidnapping, kidnapping was not a widespread problem in Brazil.

27. **Ms. Egas** (Brazil) said that a report had been issued assessing the human rights violations that took place during the construction of the Belo Monte Dam. She hoped that the assessment would help Brazil to learn from its mistakes.

28. **Mr. Los Reis** (Brazil) said that, in accordance with military service law, Brazilian men must enlist for military service upon turning 18 years old. The recruitment of armed forces personnel complied with the Convention and its Optional Protocol. There had been no armed conflict in Brazil since 1870 and the armed forces had not participated in armed conflict since 1945, when Brazil fought against Nazism to liberate Italy.

29. With regard to the participation of children in armed conflict, security problems existed within Brazil, but they were not related to armed conflict. The curriculum of military academies contained the mandatory teaching of international humanitarian and human rights law, and peacekeepers were trained in accordance with United Nations standards. Brazil accepted military personnel from abroad to undergo training in its academies. Training on human rights, sexual exploitation and harassment was compulsory for all military personnel.

30. In reference to the question posed by the Committee on colégios militares, the name of such institutions did not reflect their true nature; they were non-military schools which met all national educational standards and did not offer military training to students. The name originated from the time when Brazil had fought a war with Paraguay in the late nineteenth century.

31. Women had been serving in the armed forces since the 1980s, and had been admitted to the naval and air force academies; the first woman had been promoted to the rank of General Officer of the Navy in 2012.

32. It was true that military trainees received instruction in the handling and firing of weapons. However, such training took place under the strict supervision of qualified instructors. Children under the age of 18 did not participate in any military training requiring the use of firearms. As for disciplinary measures against children under the age of 18, in accordance with the Civil Code, the full exercise of employment led to the emancipation of a minor. Emancipation could only occur if the minor had obtained his or her parents' approval in writing.

33. Finally, the assertion that Brazil was the world's fourth largest producer of weapons held true only if small arms were taken into consideration. Brazil was a signatory of the Arms Trade Treaty and the process to ratify the Treaty was ongoing in the National Congress.

34. **Mr. Saldanha** (Brazil) said that the National Human Rights Council had been set up pursuant to Law No. 12986 of 2014 and had its own complaints mechanism. Students at military academies could report human rights violations to the Council, or through a dedicated telephone helpline or mechanisms within their schools. The Optional Protocol was an integral part of the domestic legal framework. Replying to a question about extraterritorial jurisdiction, he confirmed that Brazil applied the principle of double criminality.

The meeting was suspended at 4.15 p.m. and resumed at 4.40 p.m.

35. **Mr. Morais** (Brazil) said that Law No. 9263/96 covering the issue of family planning made no reference to disabled persons and provided that persons who were completely incapacitated could be sterilized only following a legal ruling to that effect. Under article 3 (II) of the Civil Code of 2002, the term "incapacitated" was used to refer to persons unable to carry out civil acts owing to mental illness or mental disability. However, under a new law on the inclusion and status of persons with disabilities that would enter into force in January 2016, article 3 (II) of the Civil Code would be repealed. Under article 6 (IV) of the new law, enforced sterilization of persons with disabilities was prohibited. The law also made a clear distinction between persons declared to be completely incapacitated and persons with disabilities.

36. **Ms. Egas** (Brazil) said that domestic legislation had been amended to ensure that children of detainees could visit their parents in prison, in keeping with parental rights. A bill on early childhood currently before Congress provided for children's rights with respect to family and community life.

37. **Mr. Torres** (Brazil), turning to the question on refugees and unaccompanied minors, said that the National Committee for Refugees was working to reduce red tape

and ensure prompt processing of requests for refugee status, and that applicants awaiting decisions could benefit from public services.

38. **Mr. Dodsworth Magnavita de Carvalho** (Brazil) said that Syrian children granted refugee status in Brazil had access to education and municipal authorities. Civil society bodies and religious organizations were working to ensure their integration into wider society.

39. **Mr. Brito** (Brazil), turning to the issues of alternative care, children's institutions and related methodologies, said that both the public and private sectors were involved in the running of the care and social protection systems and there had never been any discussion of the possibility of blocking or suspending funding for bodies working in that field. Changes were currently being introduced to ensure that bodies received financial support as and when required and that funds were used more effectively. In total, 85 per cent of care institutions had met the target of a maximum of 20 children or adolescents per unit. Each Casa Lar home took no more than 10 children or adolescents. Qualified multidisciplinary care teams had been set up and tailored care plans were designed for individual children involving access to education, health and social protection services. Discussions were currently ongoing on the prioritization of care and the establishment of quotas relating to education for children and adolescents placed in institutions. Together with a working group, the National Council of the Rights of the Child and the Adolescent was looking at ways to better tackle the issue of street children.

40. **Mr. Torres** (Brazil), replying to a question on the role of civil society organizations and NGOs in promoting the rights of children and adolescents, said that such organizations played a vital role in complementing State actions targeting vulnerable groups and continued to receive public funding for that purpose despite the recent financial crisis. Under the Statute of the Child and Adolescent, society as a whole was responsible for safeguarding children's rights. In 2014, a law establishing a regulatory framework for civil society organizations had been adopted, facilitating access to public institutions and funding. A bill on the transfer of juvenile detainees to adult prisons once they reached the age of 18 years and other ongoing efforts to restrict the rights of minors had met with widespread opposition. No amendments had been made to the Statute of the Child and Adolescent, which was still in line with the Convention.

41. **Ms. Egas** (Brazil) said that follow-up reports on adopted Brazilian children living abroad were prepared every six months during the first two years after adoption and were sent to the central adoption authority, which worked closely with the Secretariat for Human Rights and the courts of the federative state of origin of the child in question. Should any issues subsequently arise, monitoring was carried out until the age of 18 years, after which time such children could seek consular assistance if need be and could also retain their Brazilian nationality.

42. **Mr. Madi** said that Brazil had done much to implement the Optional Protocol. However, the State party had argued that article 4 of the Optional Protocol did not apply to Brazil, as there were no non-State armed groups operating in its territory. Article 4 was closely linked to the issues of extraterritorial jurisdiction and double criminality. He asked how, given that Brazil had not criminalized the recruitment of children by non-State armed groups, it could request the extradition of a foreign national who had recruited a Brazilian child abroad or try a foreign national or a Brazilian citizen present in Brazil who had recruited foreign children abroad. Regardless of whether there were non-State armed groups operating in their territory, all States parties to the Optional Protocol should criminalize recruitment of children by non-State armed groups.

43. As to the issue of hosting Syrian child refugees and asylum seekers, it was important to establish a mechanism for the early identification of children traumatized by armed conflict and former child soldiers, in order to provide them with psychological and physical rehabilitation and social reintegration services. Training should also be provided to border officials in that regard.

44. **Ms. Ayoubi Idrissi** said that the concept of “enough psychic development” referred to in paragraph 35 of the State party’s initial report under the Optional Protocol gave cause for serious concern in that it allowed for penal sanctions designed for persons over 18 years of age to be imposed upon minors between 16 and 18 years of age. She asked the State party to reconsider its position in that regard. Many births were not registered in Brazil, but individuals could be conscripted into the armed forces only if they had a birth certificate, or if two witnesses could testify to their age. She asked whether such testimony was backed up by a medical examination to determine the age of the person in question.

45. **Mr. Los Reis** (Brazil) said that the Convention and the Optional Protocol on the involvement of children in armed conflict had been incorporated into the Brazilian legal system through federal laws and that many stakeholders were involved in their implementation at the municipal level. From January to June each year, young men who had reached 18 years of age went to the military service offices located in all municipalities throughout the country to formally register for military service. In each municipality, the mayor and his staff were responsible for running the office, and no military personnel were present.

46. **Mr. Torres** (Brazil) said that Brazilian law provided for penalties, including imprisonment, for anyone who engaged in the grooming, recruiting or forcing children to participate in any kind of dangerous or criminal activity. Any Brazilian or foreigner who engaged in such activity in Brazilian territory could be punished under Brazilian law, although the penalties for such offences needed to be strengthened. Cases involving other States were subject to the rules of international law.

47. The Statute of the Child and Adolescent was based on the concept that children and adolescents were rights holders who were still developing. The Government was working to strengthen the capacity of health-care professionals and social workers to cater for child refugees with particular needs, such as Syrian children who had been involved in armed conflict or Haitian children traumatized by the earthquake that had taken place in their country. Guidelines on caring for children from such backgrounds were being prepared.

48. He wished to clarify the statistics provided on the underregistration of births. Five per cent of children were not registered within their first year of life; that did not mean, however, that they had not been registered at a later date. In any case, it was important to ensure that no one under 18 years of age was recruited into the armed forces.

49. **Mr. Los Reis** (Brazil) said that, although the Brazilian military was based on a conscription system, in reality only 10 per cent of 18-year-old males actually performed military service. In many areas, especially those where prospects of employment were poor, all the young men who performed military service did so on a voluntary basis.

50. **Ms. Oviedo Fierro** asked what mechanisms were in place to prevent children from gaining access to firearms. She also wished to know whether Brazilian law expressly prohibited the exportation of arms to countries where children were involved in armed conflict.

51. **Mr. Madi** said that he was aware that Brazilian law criminalized the recruitment of children into gangs, drug trafficking and other dangerous activities. However, he wished to know specifically whether the law criminalized the recruitment of children into non-State armed groups.

52. **Mr. Torres** (Brazil) said that Brazil had adopted the Disarmament Statute, which set out a number of restrictions on the purchase and use of firearms, including a prohibition on the purchase of such weapons by children. The Statute had made it possible to collect more than 600,000 weapons in a collective effort to combat violence in the country.

53. **Mr. Saldanha** (Brazil) said that, when Brazil became party to an international instrument by presidential decree, that instrument became part of the legal framework at the federal level. Thus, all provisions of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict were applicable throughout the country. While there was currently no situation of armed conflict in the country, in the event of such conflict the recruitment of children would be punished pursuant to the prohibition under the Optional Protocol.

54. As for the exportation of firearms, the Ministry of Foreign Affairs analysed all such transactions, and if it determined that children were participating in armed conflict in the country concerned it would issue an opinion advising against the transaction.

55. **Ms. Oviedo Fierro** said that, despite the great progress made in guaranteeing the rights of children in Brazil, major challenges still remained. One such challenge was to find a way for the country to emerge from the economic crisis without having an adverse impact on the rights of the child. Children should be the top priority, and every effort should be made to protect their rights immediately, so as not to perpetuate the effects of the crisis for years to come.

56. The Committee had serious concerns about the proposed changes to the juvenile justice system. That system had served as a model of best practices for many countries around the world, and a step backwards in that regard would thus set a terrible example. She hoped that lawmakers in the country would take the Committee's recommendations into consideration. The violence affecting children in the country was also of major concern. It was important to effectively implement the many laws already adopted to combat violence.

57. **Ms. Cordeiro Dunlop** (Brazil) thanked the Committee for its interest in the children of Brazil and said that significant efforts had been made in recent decades to fully implement the Convention. The Constitution provided the foundation for a system of comprehensive protection for children that was based on the principle of the best interests of the child. Her Government was committed to implementing the Convention and the Optional Protocol, collecting relevant data on the situation of children, and ensuring children's participation in all processes affecting their rights. The Government worked in close cooperation with civil society and United Nations bodies to give effect to children's rights, while focusing on sustainable development based on social and economic inclusion as well as environmental protection. Brazil looked forward to receiving the Committee's recommendations, which could serve as an important tool for the realization of the Convention rights in the country.

58. The Chairperson said that the Committee hoped Brazil would consider ratifying the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and that it looked forward to receiving the State party's report on its implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. In the light of the ongoing structural changes, the Committee was counting on the

Government to ensure that implementation of the Convention continued to move forward. He hoped that serious attention would be given to the Committee's concluding observations, with a view to improving the situation of children in Brazil.

The discussion covered in the summary record ended at 5.40 p.m.