The Promise of Citizenship for Brazilian Children: What Has Changed?

By
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This article explores the ideas behind the promise of citizenship to children in Brazil. The human rights of children has become a very important issue in Brazil. This has been especially true since the inclusion of Article 227 in the 1988 Constitution referring to children's rights and the approval of the Statute on the Child and the Adolescent in 1990, less than a year after the ratification of the United Nations Convention on the Rights of the Child (CRC). The article examines the changing discourse connected to what was promised and what the law actually accomplished. The conclusion focuses on some of the most relevant improvements affecting children's lives and some of the remaining challenges Brazilians face in the attempt to keep the promises made in the Constitution and the statute.

Keywords: citizenship; children's rights; law; implementation; public policies

Since the approval of the Statute on the Child and the Adolescent in 1990 (Brasil 1990), less than a year after the ratification of the United Nations (UN) Convention on the Rights of the Child (CRC), children's rights have become an important issue in Brazil. Before these events, Brazil had gone through 20 years of

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brutal military dictatorship, and the country was eager to see the institutionalization of democratic practices on many fronts. In the 1980s, there was a burst of social mobilization aimed at the recognition of people's rights. In 1988, Brazil completely reformulated its Constitution (Brasil 1988) to promulgate the Citizens' Constitution (*a Constituição cidadã*), as it became known, which focused on the detailed rights of all citizens.

Interestingly, children became one of the most powerful targets of these social movements, especially marginalized children. So-called "street children" (children who were visible as they spent their days on the street) became a particular focus of attention,[1] representing clear evidence of the lack of social justice in the country.

The new Constitution had one article totally dedicated to children's rights. Article 227 of the Constitution became a symbol of the struggle to improve children's lives and a major driving force for the intense mobilization that took place in the coming years. The introduction to Section 227 of the Constitution states,

> It is obligatory that the family, society and the state assure the child and adolescent as an absolute priority of the right to life, health, nutrition, education, leisure, a professional training, culture, dignity, respect and liberty, and to living together in a family and community, also to place them in safety from every form of negligence, discrimination, exploitation, violence, cruelty and oppression.[2]

There was a new sense of hope that things could indeed change, and the possibility of change was clearly associated with the idea of citizenship—a hope that was expressed in the popular motto "*de menor a cidadão*": from minor to citizens. In Brazil, the term *menor* includes, in addition to the notion of a young person, the sense of a child or young person who is seen as a threat to public safety. So the term carries some of the same stigma attached in English to the terms *abandoned* and/or *delinquent* children. The term in Portuguese implies, moreover, that these are children who should be subject to some kind of official intervention. *De menor a cidadão* was often used in Brazil in the 1990s, particularly by advocates, to mark the struggle to recognize that all children, including poor children, had rights as citizens.

This article explores the ideas behind the promise of citizenship to children in Brazil. It discusses what the 1990 federal law on the child and the adolescent promised, the changing discourse connected to what was promised, and what the law actually accomplished. The conclusion focuses on some of the most relevant improvements affecting children's lives and some of the remaining challenges that we face in the attempt to keep the promises made in the Constitution and the statute.

The Promise in Law

As the CRC was being framed and debated, the Brazilian Congress, still working on strengthening the new democracy, passed the Statute on the Child and the Adolescent (Brasil 1990).[3] The framers of the Brazilian legislation were aware of

the international debates on children's rights, and the legislation reflected some of those debates. The major conceptual change embedded in the legislation was that children were to be the "subject of rights" as citizens. The underlying rationale of the laws relating to children was changed from *Doutrina da Situação Irregular* (principles for children in irregular situations), a phrase that reinforced the stigma of the poor, abandoned, or delinquent children, to *Doutrina da Proteção Integral*, the principle of promoting full protection for all children.

This shift in the paradigm, led by the legal community, started in Brazil and spread rapidly to other countries in Latin America. References to the Doctrine of Full Protection appear in textbooks in various parts of the continent. Similar ideas and practices were finding their way in proposals to implement the idea and adopt the new conceptions of childhood in such places as exemplified in this text published in Mexico:

> The Doctrine of Full Protection . . . constitutes an interdisciplinary theoretical construct . . . which takes the shape of something that enables us to respond to the demands of various social actors—among whom are minors—in the sense that the construct modifies institutional structures from the position of new concepts of childhood and new adopted ideas. (Beristáin and Campos 2006, 16)[4]

Another key element of the statute was the provision that mandated the creation of Children's Rights Councils at the federal, state, and municipal levels. The Children's Rights Councils are mandated to develop, elaborate, and monitor the implementation of key policies on children that the responsible public departments or secretariats in the so-called System for Guaranteeing Rights (*Sistema de Garantia de Direitos*) are then to adopt and implement. In theory, this provision creates an unprecedented balance or "parity" between government and civil society as membership is equally divided between the two sectors. The reality of this theory is discussed later in this article.

The ratification of the CRC gradually has had a major impact on the history of childhood in the twentieth century. Despite the many struggles in implementing the law, the new concept that children were entitled to human rights has become firmly established in the past few decades. The same can be said about the CRC's impact on the Brazilian statute and the implications of that law in Brazil. Encompassing both broad and specific provisions, the Statute on the Child and the Adolescent includes this new concept of children in its articles.

Article 3. Without prejudice to the full protection treated in this Law, the child and adolescent enjoy all the fundamental rights inherent to the human person and, by law or other means, are ensured of all opportunities and facilities so as to entitle them to physical, mental, moral, spiritual and social development, in conditions of freedom and dignity.

Article 4. It is the duty of the family, community, society in general and the public authority to ensure, with absolute priority, effective implementation of the rights to life, health, nutrition, education, sports, leisure, vocational training, culture, dignity, respect, freedom and family and community living.

Article 18. It is the duty of all to watch over the dignity of the child and adolescent, preserving them from any inhuman, violent, terrorizing, vexing or coercive treatment.

Article 19. Every child or adolescent has the right to be raised and educated in the midst of his family and, exceptionally, in a foster family, in such a way as to ensure family and community life in an environment free of the presence of persons dependent on narcotic substances.[5]

Similar to the CRC, some of the statute's articles can be considered so broad that they become utopian. Notwithstanding this utopian element, there is general agreement in Brazil that these laws played an important role in establishing new parameters for action and in encouraging significant changes in social attitudes. Whatever Brazilians' or non-Brazilians' view of this utopian element, it is clear that the statute, building on the Constitution, deliberately takes a much broader view of human rights than constitutions that are mainly concerned with due process of law.

While we should not underplay the difficulties of even beginning to implement some of these rights, the statute represents a fundamental shift in the legal and rights frameworks for children, and that shift is a necessary condition for change on the ground. As Kaufman and I said in an earlier article,

> Even at the level of the national state, law cannot transform society over night. It can, however, set forth an expectation of governmental as well as non-governmental behavior and these expectations can in turn legitimize policies and programs which contribute to changing attitudes and actions. Normally, some attitudes have changed in order to bring about a change in law and the law can then provide a basis for moving forward that particular set of values. (Kaufman and Rizzini 2009, 425)

The Changing Discourse

Children as "subjects of rights"

Perhaps the most important change in the discourse on children, which occurred rapidly, was the understanding that all children have rights. The expression *crianças são sujeitos de direitos*—children are subjects of rights—was repeated over and over by advocates of this new idea. One consequence of the new legal language and rhetoric was that the distinction between *children* and *menores* became unacceptable in a short period, at least in public discourse. Indeed, the word *menores* and the phrase *minor in irregular situations* became politically incorrect. The discourse of protecting *abandoned and delinquent children* that predominated in the nineteenth and twentieth centuries, up to the 1980s, shifted to a discourse of guaranteeing and protecting children's rights, with an understanding that these rights are comprehensive and cover all crucial aspects of a child's life.

In this new dialogue of rights, there has been an increasing awareness about the need to provide equal opportunities for all children and to protect especially

those who are most vulnerable. One of the best-known sections of the statute is Article 19, quoted above, which specifies the right that children and adolescents have to be raised in their own families and communities. Article 23 goes on to say that "the lack or shortage of material resources is not sufficient reason for the loss or suspension of paternal power."[6] This provision is important because lack of such resources was a regularly used reason to take children away from their parents before the 1990 law.

Another key provision is that there can be no deprivation of freedom, unless a child or adolescent is caught in an illegal act or by written order of the competent judicial authority (Article 106).[7] Before the statute, young people could be arrested just on suspicion and sent to institutions for their "reeducation and rehabilitation" (Rizzini 2008). Obviously not all children were so treated. This "punishment" was reserved for those whom the authorities deemed dangerous and children who were poor, black, or of mixed race, who were much more likely to be regarded with suspicion.

Children are citizens

Another promise that was part of the idea that children were entitled to human rights was the notion that children were citizens. The idea of equal rights was used to emphasize that children had rights *similar to other citizens*. In addition, not instead of, they had special protections because they were "in the special condition of development" (*em condição especial de desenvolvimento*) (Statute, Article 15). The power of the motto *de menor a cidadão* had the political effect of reaffirming that children were indeed citizens of Brazil. These ideas might sound simple or even banal 20 years after the law was passed, but they are ideas that were inconceivable before that event.

The notion of children as citizens is now commonplace in the international discourse on children's rights. It may still, however, be problematic in some countries (Taylor and Smith 2009; Rizzini, Thapliyal, and Butler 2009). It is, perhaps, less complicated in Brazil, a country that has a different history of immigration than, for example, the United States. With very little immigration in the past 30 years, the issue of citizenship is not complicated by the presence of large numbers of undocumented or underdocumented residents as is the case in the United States. In other words, the use of *citizen* or *citizenship* does not immediately raise the issue of residents who are not citizens or are undocumented. Another difference with other countries is that the question of citizenship in Brazil goes beyond a discussion of children and young people to people in general. Brazil is a country where many adults throughout history did not feel they were respected as citizens (Carvalho 2005). This feeling is still quite present in contemporary society. In consequence, the notion of citizenship is a potent rallying cry for the less powerful.

An important aspect behind the idea of a child as a citizen is that children, similar to any other people, should be respected and valued as members of Brazilian society. Another key part of the concept is that citizenship applies equally to young, disadvantaged people who have for a long time in Brazil's history not even been

regarded primarily as human beings but instead and foremost as slaves, delin-
quents, or vagrants (Filho 1996). Take, for example, these statements from two
young people who lived on the streets of Rio.[8] Priscila, 17 years old, said, "How
I would like to be seen? I only want them to see me as a person. . . . Only as a
person. Because everyone is a child of God, everyone regardless of their attitude. . . ."
Sabrina, a 15-year-old, stated, "We are also people, aren't we? It does not matter
what a person is or is not—it is still a person. I think that everybody deserves a
chance" (see Rizzini et al. 2003; Rizzini, Butler, and Stoecklin 2007).

The demography of Brazil is one reason for the emphasis on children as citi-
zens. Brazil has 60 million people under the age of 18, and half the population is
under 24. More than half of young children ages one to three live in families that
are poor. Therefore, the general development of the idea of citizenship for
everyone is made even more urgent by the fact that young people are such a huge
percentage of the population and that a large proportion of the rising generation is
growing up in conditions of poverty, poor education, and probable exclusion
from mainstream society.

The change in the law relating to children is clear and dramatic. But changes
in law are a necessary, but not a sufficient, condition for changes in children's lives.

What Has Changed? Improvements in the Condition of Children

It is important to recognize that there have been some major improvements
in the condition of children in the past 20 years. These improvements are a direct
consequence of all the discussions about rights. Listed below are some of the
most dramatic changes.

- Between 1990 and 2007, the infant mortality rate declined from 49 to 20 per
  1,000 live births.
- Between 1998 and 2008, the percentage of children at grade level increased
  from 8.3 to 30.5 percent for children in the bottom income quintile and
  from 17.5 to 42.7 percent for children in the second lowest income quintile.
- Between 1998 and 2008, the percentage of households with per capita family
  incomes (the most common indicator of income in Brazil) of less than half
  a minimum salary declined from 32.4 to 22.6 percent.
- In the same period, the proportion of nine-year-olds who could not read or
  write declined from 14.2 to 7.8 percent.
- Between 1993 and 2005, the percentage of young people 10 to 15 years of
  age in the workforce declined from 23.7 to 12.8 percent, an important victory
  in the national and international campaigns against child labor (Brazilian
  Institute of Geography and Statistics 2007).

By any measure, these are major changes that are the necessary foundation for
the many remaining challenges.

Remaining Challenges

The condition of Brazil's children is necessarily embedded in the conditions of the broader society. Some of the challenges that Brazil faces for improving the condition of children's lives are structural, and some of these structural challenges are as resistant to change as any of the specific challenges to improving the lives of children. The following are among the most important of the structural challenges.

- Brazil still has one of the most inequitable distributions of income in the world. This situation is caused in part by the fact that in the sixteenth century vast tracts of land or hereditary captaincies were granted to a diverse group of bureaucrats, merchants, and petty nobility who had some connection to the crown (see Fausto 1999, 11–13). These captaincies could not be sold or partitioned. Until the passage of the 1988 Constitution, Brazil did not have a systematic land distribution policy.
- The informal economy represents 40 percent of the gross domestic product and half of all urban employment. Workers in the informal sector lack the most basic protections and benefits.
- In 1950, 8 percent of Rio's population lived in slums or *favelas*. That figure is now estimated at between 20 and 30 percent. Living in a *favela* means constant violence, overcrowding, high levels of noise and stress, discrimination, and physical separation from the major metropolitan job markets.
- There are insufficient mechanisms for the implementation and monitoring of the extensive rights contained in the law.
- Some key actors including the police do not recognize the guaranteed rights of people including children if they are poor or nonwhite.

Another issue, widely disseminated through the media, is that the violence from drug traffickers, unofficial militias, and the police contribute to high homicide rates. In the past few years there has been an epidemic of crack cocaine use among young people. Even very young children are addicted. There are no figures about the extent of the problem, but it is highly visible in the communities, schools, and streets. The public health authorities recognize that they do not know how to deal with the problem.

These structural challenges inhibit the practical extension of the rights to children established in the law. In addition to the structural challenges, there are specific challenges relating to children. These include

- a persisting perception that all unattended, low-income children are a menace and that remedial efforts on their behalf are a waste of time;
- the fact that key actors, including the various police forces, insist that low-income children are dangerous and a threat to the social and economic order, particularly those on the streets;
- the fact that some children on the streets carry guns and engage in robbery and assault;

- the explosion of crack cocaine among children and youth;
- the continuing practice of "solving the problem" by occasionally sweeping the streets of poor children and removing them to shelters or juvenile justice facilities; and
- an inability to tackle the issue of vulnerable children at its source by improving the condition of poor children in low-income areas and the slums in which they live before they lose their connection to home, school, and their community.

The combination of the structural and specific challenges leaves many children extremely vulnerable. A frightening example of this vulnerability is the rate of homicide for youth. Indicators from the Ministry of Health in 2006 show that there has been a significant increase in the homicide rate from 1996 to 2006 in all regions. In Rio, the homicide rate for 16- and 17-year-olds is 94 per 100,000 (nationally it is 32 per 100,000). The rate for black and colored youth is more than 300 per 100,000 (SIM/DATASUS 2006).

Strategies for Implementing Rights

There is no doubt that an incredible transformation has taken place in perceiving children and their role in society, including in the family, school, and other settings. It is equally apparent that the implementation of those rights is in its earliest stages. One of the strategies for implementation, the creation of Children's Rights Councils, is embedded in the Statute on the Child and the Adolescent. There are Children's Rights Councils in practically all municipalities of the country, more than five thousand of them in all. A description of a recent attempt to use this strategy in Rio de Janeiro will give some indication of the practical struggles to implement children's rights.

The reality of the Children's Rights Councils

As stated earlier, Children's Rights Councils are mandated by federal law to develop, elaborate, and monitor the implementation of key policies on children, which are then to be adopted and implemented by the responsible public departments or secretariats in the so-called system for guaranteeing children's rights. This provision created in theory an unprecedented balance or parity between government and civil society as membership in the councils is equally divided between the two sectors.[9]

Until recently, the Children's Rights Council in Rio had adopted policies on two issues: children in shelters and the sexual exploitation of children. Both sets of policies are generally regarded as being stronger in their theoretical framework than they are on concrete, protective provisions. Indeed, it is probably fair to say that there was no deliberate provision made for their implementation, a lacuna that indicates the lack of political interest or pressure for their enforcement.

In 2008, however, the council began deliberations on policies for children living on the streets, children who are constantly exposed to poor health, violence, separation from school and community, and arbitrary police and vigilante power. These children, in short, are the most visible examples of the denial and violation of rights.

The council formally adopted the policy in June 2009, having survived a change in mayoral administrations in January 2009 and in key positions beyond the mayoralty. The council's policy is, arguably, more concrete, and therefore potentially more capable of implementation, than the policies on children in shelters and the sexual exploitation of children.

The policy is stated in a nineteen-page document, much of which sets out the key national and international agreements that guarantee specific and wide-ranging rights to children and youth. The document also contains key data, much of which were provided by the International Center for Research on Childhood (CIESPI) to set the specific problem of children on the streets in the context of vulnerable children in general. This is one of the first times that the council made such a deliberate and extensive use of existing data and research in the development of its policies. These data include rates of poverty, school achievement, teenage pregnancy, and violent deaths. These data were included in the policy statement to underline the fact that children who ended up on the streets came, in general, from very vulnerable situations and that this contemporary vulnerability had deep antecedents in the history of the Portuguese settlement, the empire, and the republic. This section of the document stresses, in particular, the history of slavery, the massively unequal distribution of income, and the long history of the denial of basic rights to much of the population.

The inclusion of these data was also seen as a reminder to the council, once it had completed its work on street children, to pay attention to the more general harms that many low-income children in Rio face. Such research on the demography of vulnerable children might at some point indicate which low-income children are particularly likely to end up on the streets and so permit prevention strategies for these specific children. It is not clear, however, that moving from the regular daily life of a low-income community to a life on the streets is a predictable event.

The key component of the policy document is a set of specific instructions to specific city departments or secretariats on their actions toward street children. For example, the Secretariat of Education is instructed to include street children on the list of priority children for vacant places in child care centers and to make sure that older street children get placed in various educational programs. The Secretariat of Sports and Leisure must reserve places in municipally sponsored youth sports for street children. The Secretariat of Health and Civil Defense must promote the attendance of street children at public health clinics and work out strategies to prevent the spread of key communicable diseases among this population. The Municipal Guard, one of the local police forces and a group with a reputation of being deeply hostile to street children, has to train its officers in how to protect these children's rights. The Municipal Street Cleaning Company

(COMLURB), whose employees come across street children in their daily work, has similarly to instruct those employees in street children's rights. The policy also includes provisions for the responsibilities of civil society. These include the responsibilities of keeping the issue of street children in the public view and of proposing and monitoring the use of resources to assist these children. All of these organizations are also instructed to encourage and guarantee the participation of children and youth in the implementation of the policy.

Reflections on the Council's Process

Its successes

The council's work in constructing a policy on street children was, in significant ways, a success. In the first place, the policy that the council approved was based on a deliberate analysis of a range of existing data and research. The process involved considerable input from both the relevant municipal secretariats and key representatives of civil society. The policy document included concrete and detailed instructions to a number of public bodies and some continuing responsibilities for organizations of civil society.

A key to the council's success was the early decision to establish a "working group" (Grupo de Trabalho or GT) within the council that had the responsibility of drafting the policy. The GT respected the important principle of having equal representation of the public and nonprofit sectors, which federal law established for the council. The council's knowledge of the day-to-day realities of street children was enhanced by involving other nonprofit organizations that were actively engaged with street children in the GT's discussions. While the involvement of civil society organizations respected the principle of equal participation, the presence of the public bodies was necessary for the passage of the policy.

The meetings of the GT and of the council also permitted an exchange of information and viewpoints that led to a greater degree of a shared and deeper understanding about the problem and possible solutions. The key agreement, only achieved after a great deal of discussion, was a working definition of "children in the situation of the streets." There was also a series of discussions on the divisive issue of how, in general, such children should be regarded, the central division between seeing children as "subjects of rights" and children who should be subject to forceful control. But whatever those tensions (and they were certainly not fully resolved), the final policy document came down clearly on the side of regarding street children as first and foremost the subjects of rights.

The Rio Children's Network (Rede Rio Criança), a civil society group, was a member both of the council and of the GT, and through its work, the voices of street children were brought into the process of developing the policy. In April 2009, the network organized a major debate among street children and youth on the issue of their rights relating to education. This debate involved about sixty children. The debate widened into other areas of their lives, and the results of the discussion were summarized and presented to the GT.

While the establishment of the policy and the process to do so was a success, the policy encountered major difficulties along the way, some of which are likely to impede its implementation.

Its challenges

A "Municipal Fund for Children and Youth" exists in Rio's budget. Before the council's work on street children began, there was a major dispute in the council about this budget line's inadequate funding. There was also a major dispute about how the funds should be spent. After major debates, essentially among the representatives of civil society and of the public sector, the council voted in 2008 and 2009 for a policy approving funds specifically for assisting street children. But the municipal council, the final public budget authority in Rio, did not include the 2009 recommendations in the municipal budget. Without budget provisions, the policy cannot be implemented, so the budget decisions in the Rights Council and the Municipal Council will be critical in future years (Princeswal and Caldeira 2010).

Another source of tension between the two groups represented in the council was the different reaction of the public sector representatives to initiatives that the secretariats they represented proposed and initiatives that civil society groups proposed. When a public proposition was on the table for discussion, the public officials showed up in force. When a civil society proposal was on the agenda, the public sector representatives often failed to respond to requests for key data about existing programs or delayed the discussion to future meetings. In addition, representatives of some of the key secretariats were not senior enough to be part of the executive teams in their departments. This meant that they lacked knowledge of important aspects of their departments' work and the status to commit on behalf of their departments. This lack of senior representation will also be a problem for implementation.

Despite the data the CIESPI provided to the council, the council still lacked some basic information. Some of the secretariats were also unable to provide accurate information about the various services that they were currently providing. Such a critical lack of knowledge meant it was difficult to assess the levels of service or the gap between current and needed services and to measure the implementation of the new plan.

There was a particular difficulty associated with the timing of the council's process. As mentioned above, in January 2009, mayoral elections were held in Rio. As the elections approached, two considerations cast a cloud over the deliberations of the GT. First, senior officials in the secretariats were becoming lame ducks as it became clearer that the mayoral candidate of the current ruling party was losing ground. Second, the civil society members of the council were concerned that if a policy were finally approved prior to the election, the new mayor and his appointees would be reluctant to implement the policies of the former mayor. This second fear was reinforced when the new mayor, from a different party than the former mayor, returned to the policies of "cleaning the streets" in his first few days in office. In consequence of this political calendar and the fact that some important

presentations and discussions had not yet occurred, in November 2008, the GT made the decision not to present a final draft of the policy to the council until a few months into the new administration.

The Challenges of Implementing Such Policies

It is clear from the foregoing analysis that the implementation of the policy is going to be a challenging task. A number of key actors, including the various police forces that operate in Rio de Janeiro, believe that unattended poor children are, first and foremost, a threat to social and economic order and should be treated as such. At the very least, this attitude—now sanctioned by the current policy—results in the occasional sweeping of street children into shelters, the criminal justice system, or poorer neighborhoods. At its worst, such a viewpoint sanctions the use of excessive force against such children, including killing of street children by on-duty policemen and the murder of children and youth by the militias of off-duty public officials who operate in some of Rio's low-income neighborhoods. These actions are justified by reference to the small minority of street children who carry guns and engage in robbery and assault. The public officials who hold this view of the problem see little point in assisting street children to improve their lives, let alone granting them their constitutional and legal rights.

The normal difficulties that result when public sector bodies need to cooperate, along with the added challenge of benefiting from the participation of civil society organizations, complicate the development, implementation, and monitoring of the policy's many goals. Cooperation between the public sector and the nonprofit sector is a special challenge in Brazil, where the history of such cooperation as it is today only dates back to the end of the dictatorship. The most current manifestation of this struggle in relation to the policy on street children is the council's public sector members' reluctance to fulfill one of the provisions in the policy to establish a monitoring committee to check whether the policy is actually being implemented.

All this said, the fact that there now exists a broad, yet specific, policy to help street children to attain their rights, and that this policy is set in the clear context of their constitutional and legal rights, is a major step forward. Without the more accurate statement of the problem in the policy document, and without the clear agenda for change, change would be at best partial, fragmentary, and haphazard.

Conclusion

No one who lived under the dictatorship would underestimate the changes that the return to democracy brought to Brazil. While Brazil has not yet gone through the open process of truth commissions that, for example, occurred in Chile and South

Africa, it is in political terms a fully functioning democracy with extremely efficient and open elections. Indeed, voting is mandated, and there are a variety of penalties for failing to vote. The Constitution and the statute on the child contain a broad range of conceptual and concrete guarantees that provide for positive freedoms as well as negative freedoms.[10] These freedoms were lacking even in theory to individuals, including children, under the dictatorship. The two critical legal documents, the Constitution and the statute, make it clear that all Brazilians, including children, are entitled to those rights and that children are citizens.

I have sketched out some of the shortcomings in the implementation of these rights. I have also pointed out that in addition to the difficulties of implementing rights-related legislation in any country, Brazil has the special challenge of the newness of its democracy and the lack of experience in the strategies, practices, and monitoring of the implementation of children's rights. As one more example of the problem, public budgets in Brazil are opaque. It is almost impossible to find out in concrete detail what sums of money have been allocated to what detailed line item in the federal, state, or municipal budgets. It is hard to monitor the practical implementation of children's rights without knowing how much money is supposed to be spent on what aspects of implementation and how much money has already been spent.[11]

The legal existence of rights and the lack of implementation of the rights of child citizens, particularly poor children, exist together. The former should be and is the essential foundation for the latter. The latter has yet to be built.

Notes

1. The notion in the 1970s that street children actually lived on the streets was corrected in the following decades as research that the International Center for Research and Policy on Childhood and others conducted revealed that most of these children in fact circulated between sleeping at home, with relatives and friends, and in shelters or detention centers (Rizzini 1986).

2. This provision appears in Title VIII, Chapter 7, Section 227 of the Brazilian Constitution as adopted in 1988 and amended in 1996. See http://pdba.geogretonw.edu/Constitutions/Brazil/english96.html (accessed 28 March 2010).

3. Democratic government was restored in Brazil in a series of steps in the mid-1980s.

4. For other references to the legal shift in paradigms at the time of the ratification of the CRC frequently found in Latin American manuscripts, see Costa (1991), Pilotti (1994), Méndez (1998), Baratta (1992), Belfoff (1999), and Cillero and Madariaga (1999).

5. See www.eca.org.br/ecai.htm (accessed 17 March 2010).

6. Ibid.

7. Ibid.

8. The young people were interviewed in Rio de Janeiro, October 2001.

9. Note that CIESPI is currently involved in a research project, which Brazilian and European sources fund, to monitor the process of the Rio Council's work on children of the streets and assist the council members by providing them with relevant research on street children and children in situations of vulnerability in urban Brazil. CIESPI is also monitoring the work of councils in the municipalities of eight other states as part of the same funded research. The author is grateful for the dedicated work of two associates, Paula Caldeira Sampalo and Marcello Princeswal, respectively cocoordinator and researcher, in the project and to Malcolm Bush, from Chapin Hall, University of Chicago, who serves as a consultant to CIESPI and to the project. His long-term dialogue with the author as well as his insights and comments on this article were a precious contribution.

10. "Negative liberty is the absence of obstacles, barriers, or constraints. One has negative liberty to the extent that actions are available to one in this negative sense. Positive liberty is the possibility of acting—or the fact of acting—in such a way as to take control of one's life and realize one's fundamental purposes." This definition is taken from the Stanford Encyclopedia of Philosophy at http://plato.stanford.edu/entries/liberty-positive-negative/ (accessed 29 March 2010). A full description of the two concepts can be found in Berlin (1969).

11. For a full description of this problem, see Sadeck (2005).

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