

ACCESS TO JUSTICE FOR CHILDREN:
COUNTRY REPORT CARD¹

Brazil

I. Legal Status of the Convention on the Rights of the Child (CRC)	
A. CRC takes precedence over conflicting legislation (/10) (no = 0; partial = 5; yes = 10)	10
B. CRC has been incorporated into national law (/10) (no = 0; partial = 5; yes = 10)	10
C. CRC is directly enforceable in domestic courts (/10) (no = 0; interpretive guidance = 3; some direct, some interpretive guidance = 6; yes = 10)	10
D. CRC has been applied in legal proceedings (/10) (no = 0; not systematically = 5; systematically = 10)	5
E. OP3 is ratified (/5) (no = 0; yes = 5)	
SCORE /45:	35

II. Legal Status of the Child	
A. Full range of legal claims is available to challenge rights violations (/20)	
Specific standards: (2.5 each)	
<ul style="list-style-type: none"> ● violations can be challenged even if they are not crimes 	2.5
<ul style="list-style-type: none"> ● can bring private prosecutions where the State will not carry out a criminal prosecution itself 	2.5 ²
<ul style="list-style-type: none"> ● can challenge deprivation of liberty and/or lawfulness of detention 	2.5 ³
<ul style="list-style-type: none"> ● mechanisms exist to investigate allegations against officials 	2.5
Independent bodies capable of taking complaints before or on behalf of children: (2 each)	
<ul style="list-style-type: none"> ● Independent institution exists with mandate that covers the protection and promotion of children's rights 	2
<ul style="list-style-type: none"> ● There is a specific department or person within the relevant institution that specifically deals with children's rights 	0
<ul style="list-style-type: none"> ● Institution is empowered to receive and address complaints in relation to violations of children's rights 	0
<ul style="list-style-type: none"> ● Institution has a transparent appointment procedure 	2
<ul style="list-style-type: none"> ● Institution is empowered to review State's progress in realising children's rights 	2
B. Children can bring cases alone or via a representative (/7.5)	
Case can be brought in child's name (no = 0; yes = 2.5)	2.5
Is generally not required to bring proceedings through a guardian ad litem or litigation friend (no = 0; yes = 2.5)	0

¹ This report card is based on CRIN's Access to Justice for Children: Model Report, available at www.crin.org/en/node/31972.

² Art. 100, § 2º, Criminal Code; Art. 100, § 3º, Criminal Code and Art. 29 Code of Criminal Procedure.

³ *Habeas corpus* is provided by Article 5.LXVIII of the Constitution.

No conflict of interests in appointments of representatives (no = 0; yes = 2.5)	2.5
C. Parents/guardians can bring cases on behalf of very young children (/10)	
Parents' ability to act on behalf of child is tempered by the principle of the best interests of the child (no = 0; partial = 5; yes = 10)	5
D. Children/representatives are eligible for free legal assistance (/30)	
Settings: (2 each)	
• civil	2
• criminal	2
• administrative	2
• family	2
• all other judicial settings	0
Right to a lawyer of own choosing (no = 0; yes = 5)	5
Right to lawyer with experience commensurate with nature of claim / offence (no = 0; yes = 5)	0
Right to legal aid throughout the criminal process from arrest to trial and appeal (no = 0; partial = 5; yes = 10)	5
E. No further legal limitations/conditions on children/representatives bringing, running or settling cases (/5) (deduct 1 for each limitation/condition)	4
SCORE /72.5:	48

III. Challenging Children's Rights Violations	
A. Children have complete access to all courts, complaints mechanisms (/10)	
Settings: (2.5 each)	
• criminal	2.5
• civil	2.5
• administrative	2.5
• informal, customary or alternative justice mechanisms available where appropriate	0
B. Courts have broad powers to remedy rights violations (/16)	
Remedies: (2 each)	
• restitution	2
• compensation	2
• stop the enforcement of a law	2
• stop the enforcement of subsidiary legislation	2
• order government to take steps to prevent a violation	2
• launch investigation or bring proceedings at the court's initiative	2
• guarantee non-repetition	2
• repeal of law (partial = 1)	2
C. Widespread violations can be challenged without naming individual victims (/10)	
Named victims are not required (no = 0; partial = 5; yes = 10)	5
D. Children can file group litigation to challenge multiple violations (/10)	
Group and collective litigation available (no = 0; partial (selected types of actions only) = 2.5; yes = 7.5)	7.5

Courts have the power to combine cases to offer clear, consistent pronouncements of the law (no = 0; yes = 2.5)	2.5
E. Non-governmental organisations can file, intervene in cases (/10)	
Can file (no = 0; yes = 7.5)	7.5
Can intervene (no = 0; yes = 2.5)	2.5
SCORE /56:	48.5

IV. Practical Considerations	
A. Venue (/5)	
Formal restrictions relaxed as necessary and appropriate (no = 0; partial = 2.5; yes = 5)	2.5
B. Legal aid / costs (/5)	
Court fees and case related expenses are not payable (no = 0; yes = 5)	5
C. Pro-bono / financing (/10)	
Active legal and bar associations that offer pro-bono representation (no = 0; yes = 5)	5
Systematic procedures to promote pro-bono (no = 0; yes = 5)	0
D. Timing (/10)	
Limitation periods do not begin to run until a child reaches the age of 18 (no = 0; yes =5)	5
No time limitation period for “serious violations of international humanitarian law” (no = 0; yes = 5)	0 ⁴
E. Evidence (/7.5)	
Children may testify or give evidence in court proceedings (no = 0; yes = 2.5)	0
Opportunity to give evidence not under oath where this is not understood (no = 0; yes = 2.5)	0
Child friendly procedures to facilitate the giving of evidence (no = 0; yes = 2.5)	2.5
F. Resolution (/10)	
Cases involving children are resolved without undue delay (no = 0; partial = 5; yes = 10)	5
G. Appeal (/10)	
Children have right to appeal (no = 0; partial = 5; yes = 10)	10
H. Impact and follow-up (/10)	
Judicial decisions are enforced and respected (no = 0; partial = 5; yes = 10)	5 ⁵
I. Privacy (/10)	
Privacy of children involved in legal proceedings guaranteed by law;	10 ⁶

⁴ Racism (Constitution, Art. 5.XLII) and actions of armed groups, civil or military, against the constitutional order and the Democratic State (Constitution, Art. 5.LIV) are imprescriptible crimes. Brazil is a party of the International Criminal Court (under which crimes against the Humanity, Genocide, and war crimes are imprescriptible), but it has not yet incorporated the Statute of Rome in domestic law. The bill PL 301/2007 incorporating the Statute of Rome provisions in domestic law is still awaiting to be heard by the plenary of the chamber of Deputies, available at: <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=343615&ord=1>.

⁵ Freedom House reports that the judiciary is largely independent but there are reports of corruption. See: <https://freedomhouse.org/report/freedom-world/2015/brazil#.Vd2jAca6k7A>

⁶ ECA, Art 143

public can be excluded; personal details unpublished (no = 0; yes = 10)	
J. Right to be heard (/10)	
Explicit provisions in place to guarantee children's right to be heard and for his or her views to be taken into account during legal proceedings (no = 0; partial = 5; yes = 10)	5 ⁷
SCORE /87.5:	52.5

TOTAL WEIGHTED SCORE /261 = 186.5

⁷ Right to be heard appears to be guaranteed in foster care and juvenile proceedings (for adolescents) only: see ECA http://www.planalto.gov.br/ccivil_03/LEIS/L8069.htm.