

# **PERMANENT PEOPLES' TRIBUNAL**

## **Violation of the Fundamental Rights of Children and Adolescents in Brazil The gap between law and reality**

São Paulo, Brazil, 17th. to the 19th. March, 1999.

PERMANENT PEOPLES' TRIBUNAL

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Amaral.

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- Ordem dos Advogados do Brasil — Secção de São Paulo • Conselho Federal de Psicologia • Conselho Federal de Serviço Social • Central Única dos Trabalhadores — CUT/Nacional • Social Democracia Sindical — SDS/Nacional • Conselho Regional de Psicologia — CRP/6ª. Região — São Paulo • Conselho Regional de Serviço Social — CRESS/9ª. Região — São Paulo • Universidade São Francisco • Instituto de Estudos Especiais — IEE/PUC/SP.

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#### Chairmen:

Prof. Dr. Dalmo de Abreu Dallari,  
Senior Professor of the Law Faculty of the University of São Paulo - São Paulo/Brazil, Dr. Rubens Approbato Machado,  
President of the Brazilian Bar Association, São Paulo Section/Brazil,  
Dr. Luís Moita, Vice-Rector of the Universidade Autónoma de Lisboa, Portugal.

#### Secretary General:

Dr. Gianni Tognoni,  
Secretary General of the Permanent Peoples' Tribunal.

#### Accusation:

Promotor Dr. Clinton Guimarães Santos,  
Justice Promotor for Citizenship of the Capital - São Paulo/Brazil,  
Attorney at Law, Dr. Camilo Augusto Leite Cintra,  
Executive Secretary of The Instituto para o Desenvolvimento Integral da Criança e do Adolescente -INDICA

#### Defence:

Attorney at Law, Dr. Roberto Vômero Mônico,  
Member of the Commission for Human Rights of the OAB/SP.

#### Members of the Jury:

• Dr. Philippe Texier, Magistrate and Member of the National Consultive Committee for the Rights of Man, France. • Dr. Giorgio Gallo, Engineer and Spokesman of the Rete Radié Resch, Italy. • Dr. Maria Catalina Batalha Pestana, Doctor in Educational Psychology and Director of the Plan for Elimination of Child Labour of the Ministry of Work and Solidarity, Portugal. • Dr. Melita Cavallo, former President of the Italian Magistrates' Association for Minors and the Family, Teacher, Italy. • Federal Member of Parliament, Luiza Erundina de Sousa, former

Mayor of the Municipality of São Paulo, University Teacher of Social Services, Brazil. • Dr. Dirceu Aguiar Cintra Junior, Magistrate, President of the Magistrates' Association for Democracy, Brazil. • Ms. Margarida Genevois, former President of the Justice and Peace Committee of the Archdiocese of São Paulo, Member of the Brazilian Justice and Peace Conference of the National Bishops' Conference of Brazil, Brazil. • Dr. Idibal Piveta, lawyer and playwright, member of the Commission for Human Rights of the Brazilian Bar Association — São Paulo Section, Brazil. • Dr. Edson Ulisses de Melo, lawyer and former president of the Brazilian Bar Association of the Sergipe Section, Brazil. • Father Joacir Della Giustina, priest and General Co-ordinator of the Pastoral for Minors of the Brazilian Bishops' National Conference, Brazil.

#### Regional Sessions:

Southeast Region - Held on the 16th. April, 1998, it was headquartered at Belo Horizonte, in the State of Minas Gerais and tried the situation of young boys and girls of the street and on the street. The Session was presided by Dr. Aristides Junqueira Alvarenga, member of the Brazilian Justice and Peace Commission and former Attorney-General of the Republic and, in the capacity of accusatory organism, Federal Member of Parliament Rita Camata and State Member of Parliament João Leite both intervened, while the intervention for the defence was left to Dr. Carlos Victor Muzzi, President of the Commission for Human Rights of the Bar Association of Brazil, Minas Gerais Section.

Northeast Region - Held on the 25th. May, 1998, it was headquartered at Aracaju, State of Sergipe, where Violence and Sexual Abuse against Children and Adolescents was tried. The Session was presided by Dr. Herman Assis Baeta, former President of the Brazilian Federal Bar Association. The Secretariat work for this Session was undertaken by Ms. Andréa Dipiere, with Dr. Paulo Lopo Saraiva acting in the capacity of Promotor, while Dr. Saulo Menezes Calazans Santos was responsible for the defence.

North Region - Headquartered at Manaus, State of Amazon, the Session was held on the 29th. May, 1998. The trial dealt with the theme “Children and Adolescents, Drug Victims”. It was presided by Dr. Luís Fernando Barros Vidal, magistrate and member of the Magistrate's Association for Democracy. The Accusation was left to Dr. Paulo Figueiredo and the defence to Ms. Graça Soares Prola.

Central Western Region - The Session was held on the 30th. May, 1998 and it was headquartered at Cuiabá, in the State of Mato Grosso. The theme on trial was “Exploitation of Infant and Juvenile Labour”. The Session was presided by Dr. Betsey Polistchuk de Miranda, member of the Commission for Human Rights of the Mato Grosso Section of the Brazilian Bar Association, with Dr. Lilia Alves Ferreira acting for the Accusation and Dr. Walter Santana for the defence.

South Region - With its headquarters in Porto Alegre, State of Rio Grande do Sul, the theme on trial was maternal and child mortality and the Session was held on the 29th. July, 1998. Presiding over this Session was Dr. Luís Carlos Levenzon, President of the Rio Grande do Sul Section of the Brazilian Bar Association and Dr. Jayme Paz da Silva was responsible for the secretariat work of this Session, with Dr. Nereu Lima and the journalist Télia Negrão acting for the Accusation and, for the defence, Drs. Tito Montenegro Barbosa and Carmen Mazzaro.

### Organisation and composition of the Tribunal:

1. Between the 17<sup>th</sup> and the 19<sup>th</sup> of March 1999, in the city of São Paulo, Brazil, the Permanent Peoples' Tribunal held a Conclusive Session, following five Regional Sessions in different areas of Brazil, to issue a judgement on the Brazilian government and its policy towards children, examining numerous accusations of serious and continued violations of the interests of persons under legal age and a formal appeal presented by the Brazilian Bar Association, São Paulo Section. Besides acquiring informations on these violations, the Tribunal, assisted by eminent Brazilian and foreign jurists, learned that the Brazilian Constitution and laws, especially the *Estatuto da Criança e do Adolescente*, align within the most modern legal systems with respect to the rights of persons under legal age, besides the fact that the Brazilian State has already formalised its agreement to practically all main treaties, pacts and conventions on human rights.

Thus the accusations, based on facts and very precise circumstances, suggested disrespect of the elementary principles of a democratic state subject to the rule of law - as the Brazilian state is defined in the Constitution - and inobservance of the commitments internationally assumed by Brazil, in clear violation of the dignity of millions of human beings, particularly children and adolescents, mostly poor and socially discriminated, hence outlining serious offence to the ethical and judicial demands of human rights.

2. The organisers and the members of the Tribunal were highly qualified people, with vast knowledge of the circumstances of fact and of law characterising the serious violations of the rights of children and adolescents. At the same time, a circumstantial and precise gathering of instances of the most frequent and repeated violations was carried out, acquiring information, listening to witnesses directly involved in the defence of the rights of those under legal age, and collecting written statements from specialists of different scientific areas concerned with the study of the circumstances of children and adolescents in Brazil.

3. The preparatory Sessions were organised in different states of the Brazilian Federation, with the objective of obtaining the most complete and precise information on the occurrence of repeated and serious violations perpetrated against children and adolescents, in the absence of specific actions on the part of the relevant governments and societies, aimed at implementing and guaranteeing the respect of rights and of human dignity. The themes in agenda for each preliminary Session were suggested by the more or less visible occurrence of certain types of violence, notwithstanding the awareness of the existence of other, equally serious, kinds of violence. Following this procedure, the presentation of the evidence was considerably enriched, allowing the acquisition of substantial elements on which the members of the jury could form a

judgment, while providing them with other information which could help in the formulation of a well-founded judgment.

4. In the conclusive Session social agents were heard, deeply aware, due to their social commitment, of the individual and social circumstances in which poor Brazilian children are born and live, as well as of the serious and profound consequences of reiterated governmental policies ignoring the human being and the social necessities, directing social resources to the maintenance of an obviously unjust social order, cause per se of discrimination and marginality.

5. The solemn opening session was presided by Dr. Rubens Approbato Machado, President of the OAB/SP, by Ms. Luiza Erundina de Sousa, Federal Member of Parliament, and by Gianni Tognoni, Secretary General of the Permanent Peoples' Tribunal, together with Dr. Dalmo de Abreu Dallari, Dr. Luís Moita and Cardinal Paulo Evaristo Arns.

6. Opening the proceedings of this Tribunal, on March 18, 1999, the verdicts passed in the regions were read as follows:

- South Region - Dr. Jayme Paz da Silva and Dr. Luís Carlos Levenzon
- Southeast Region - Father Plínio Possobom
- Central Western Region - Dr. Betsey Polistchuk de Miranda and Dr. Walter Santana
- North Region - Sister Giustina Zanatto
- Northeast Region - Dr. Cezar Brito and Dr. Ulisses Edson de Melo.

7. Father Júlio Lancelotti read the Bill of Indictment and suggested that the jury of the foreign delegation of the Permanent Peoples' Tribunal might visit the Provisional Internment Unit - UAP of FEBEM - Fundação Estadual para o Bem Estar do Menor de São Paulo.

#### Testimonies on specific themes, heard at the Conclusive Session

Theme: Child Mortality

Dr. Ana Volochko

Dr. Zilda Arns Neumann

Theme: Children of and on the Street

Sister Maria do Rosário Leite Cintra

Prof. Rodrigo Stumpf Gonzalez

Theme: Violence and Sexual Abuse of Children and Adolescents

Dr. Albertina Duarte Takiuti

Professor Myriam Gomes da Silva

Theme: Exploitation of Child and Juvenile Labour

Professor Irandi Pereira  
Ms. Suzana Sochaczewski

Theme: Children and Adolescents as Drug Victims

Dr. Auro Danny Lescher  
Mr. Francisco Rodrigues

Reference documents considered by the Tribunal:

• Constitution of the Federal Republic of Brazil - CF/88 • *Estatuto da Criança e do Adolescente* - ECA/90 • United Nations Convention on the Rights of the Child - 20/11/89 • Convention number 138 of the International Labour Organisation - 1973 • *Plano Nacional de Direitos Humanos* - 1996 • Other sources of national and international law specifically used in this session are mentioned throughout the text.

The members of the jury also used as reference texts UNICEF reports dated 1997, 1998 and 1999 on the State of the World's Children **[GT: verifica il nome che non mi convince, anche pag.9].**

The foreign members who integrated the jury went on an official visit to one of the establishments of the *Fundação Estadual do Bem Estar do Menor* (FEBEM) in São Paulo, to directly observe the internment conditions of persons under legal age without families or abandoned, or convicted for unlawful behaviour. The formal report was presented by Dr. Melita Cavallo.

The jury was also given a technical report on the situational panorama of the *Conselhos de Direitos e Tutelares*, under the responsibility of Father Plínio Possobon, Sister Miriam and Sister Odete Vieira.

The indictment and the evidence

The bill of indictment, with details of facts and indications of juridical foundations, requested acknowledgement of the political authorities' responsibility, including Federal, State and Municipal governments, in terms of proven omissions or abuse of power, with respect to:

- a) sexual abuse and exploitation of children and adolescents (sections 1 to 7 of the bill of indictment);
- b) maternal and child mortality and its relationship with minimum standard livelihood conditions and health services' performance (sections 8 to 11);
- c) exploitation of child labour (sections 12 to 15);
- d) drug trafficking and prevention, and specialised aid programmes for children and adolescents (sections 16 to 19);
- e) children of and on the streets, with specific reference to preventive measures aimed at the mechanisms of social and moral exclusion, as well as of tolerance towards the existence of

- illegalities (sections 20 to 26);
- f) disrespect towards the *Conselhos de Direitos e Tutelares* (sections 27 to 30).

### Specific Types of Violence

#### **Maternal and child mortality**

In open contradiction with the economic indicators which place Brazil among the first countries in the world, the indicators on the level of life of children, and more specifically those concerning maternal and child mortality, outline a very unfavourable position of Brazil with respect to worldwide statistics. It is also important to underline some quantitative aspects:

- a) maternal mortality is 30 to 50 times higher than that of first world countries;
- b) child mortality continues to be, on average, four times higher than that registered in Western capitalist countries and in Cuba.

The documents and the testimonies presented to the PPT show that the structural problems of the Brazilian society outline a much greater complexity than that indicated by statistical data:

- The domination of a model of care pathologically concentrated on hospitalization for childbirth (the rate of caesarean sections reaches 52% in the State of São Paulo), and the scarce attention given to prevention practices such as education;
- The indiscriminate use of this medical practice, which marks the beginning of life by a violent separation between mother and baby — owing to its surgical nature — increases the waste of public resources (when it takes place under the SUS) and exposes poor mothers and babies to risks and complications;
- The relevance of social and economic characteristics as risk factors, dramatically present in some regions (lack of drinking water, of minimum housing conditions, of hygiene, and of health education).

During the Tribunal's Session, on the other hand, some other very well founded experiences were presented (mostly developed by non-governmental organisations) on the possibility of avoiding such customary and numerous violations of the mother and the child's right to life whenever prevention is recognised and practised as a priority, and aggressiveness is replaced by the participation of women and of the community: the health of mother and child can become an instrument of awareness and autonomy of the entire community and may provide answers to its problems.

#### **Violence and sexual exploitation**

The Tribunal was presented striking oral and written evidence on the increase in violence and sexual exploitation mainly victimising young girls and adolescents. A report based on official statistics and therefore probably underestimated, outlined a dramatic situation of violence rooted

in the family, in a culture considering the woman's body as a market commodity, and favoured by the various means of communication specifically aimed at younger generations: the 31,000 10- to 14-year-old girls hospitalised in the maternity wards each year represent (since none of these pregnancies can be considered a free choice) a portion of an unquestionably wider reality, often ending dramatically and likely causing irreversible consequences to girls and adolescents.

In this context, the absurdity of a recent interpretation of the Supreme Court of Justice should be stressed, which declared non punishable rape of father on daughter (incest) when the victim is over 14 years old, and therefore - according to the Court - capable of consent. Such jurisprudence contradicts constitutional and legal dispositions on paternal responsibility and contributes to legitimating domestic sexual violence.

Within this overview of violence the relevance of prostitution, which was the specific object of one of the regional sessions, is so evident that quantitative estimates are deemed unnecessary. According to the information of an official report presented internationally on the same days of the PPT, the qualitative and quantitative map reflects the economic and social differences of the various regions of the country. There are different ways of exploiting children and adolescents, depending on the profile of their "sinister" clients (gold/diamond prospectors, tourists, "common people", etc.), which nonetheless share common exploitation patterns: the bodies of children and adolescents are raw materials, goods to be used to ensure their own, and their family's, survival (prostitution is sometimes the continuation of domestic violence), still representing a profit instrument for organised groups. The legislative and judicial means so far adopted to restrain this "market" seem entirely insufficient: there is no real capacity, nor will, to control it (at least with respect to sexual tourism). Child and adolescent prostitution is a hidden product of a society characterised by social and economic unrest which shall likely be worsened by structural and administrative adjustments solely inspired by economic objectives.

### **Child labour**

Concerning the exploitation of child and adolescent labour, the witnesses' statements showed that, besides harmful or dangerous labour activities, formally condemned by all, there are also many types of labour exploitation which are deemed light and therefore tolerated, and in some instances even encouraged. According to some, these jobs could serve to educate children and would represent a way of taking them off the streets.

In fact, all jobs carried out by children are damaging: they always constitute a form of exploitation and of violence on their psychological and social development. Children who work while managing to go to school rarely obtain good results (which represents an important factor for leaving school). Field investigators have underlined the fact that teachers ignored or were not particularly concerned with the quality of their students' work. There is therefore a cultural



problem requiring a change of mentality, in order to make society understand how harmful and violent the deprivation of childhood can be for children.

It was also made obvious that child labour is an expression of the family's difficulties of survival; it is, in many cases, the only available option to raise the family income (See family income indicator, *The State of the World's Children 1997*, UNICEF, p.80).

The source mentioned above reports research data referring to 1995, according to which throughout Brazil there were 583.000 children in work between the ages of 5 and 9. In São Paulo, about 1/3 of the children who work do so 7 to 11 hours per day.

### **Children of the street and on the street**

The story of the boys and girls of and on the streets is, to some extent, a synthesis of the social history of Brazil:

- of its accelerated urbanisation, which has led to multiple urban realities with massive social and economic marginalization;
- of the precarious and unstable working and living conditions of a very high number of families;
- of violence within the family (often as a consequence of dramatic economic difficulties and of even greater cultural poverty);
- of the absence of educational projects answering to the specificity and diversity of the students coming from different social contexts, worsened by the absence of supervision and of economic and institutional support of schools.

Relevant information describing the complexity and the extension of the problem was analytically and critically presented to the Tribunal, as well as information on the increasing degree of violence and criminality among children and adolescents.

There is a clear tendency (not stimulated by the actions of the competent authorities, albeit frequently promoted by some means of communication maintaining their prejudice) of considering these boys and girls as aggressors, more in need of repression than of rights. The massive cutdowns of the budget meant to implement the mandatory principles of the ECA at the Union's, States' and Municipalities' level, indicate the absence of a long term project for this population at times protagonist of violence, while mainly suffering from being the victim of a model of society and of authorities which, inverting the perspective, blame the most excluded subjects for their marginalization criminalizing them.

### **Children and adolescents victims of drugs**

The Tribunal heard the testimonies of those responsible for intervention and aid programmes for children and adolescents victims of drugs, who are particularly affected by street violence and

are drug addicts. Criminalization, rather than prevention and damage reduction, continues to be the rule on the part of the authorities. The same authorities, on the other hand, allocate scarce resources to institutional and non governmental initiatives intended to reverse this situation.

Such programmes are by nature long term projects, so as to have a chance of positively influencing a very deteriorated situation, widely controlled by illegal groups who hold the power over areas excluded from State control.

Besides being victims of the violence of personal imprisonment represented by drug addiction, these children and adolescents appear to undergo the frequently fatal violence of being "permanent clients" of a market that competent authorities do not seem capable or want to control seriously.

### ***In loco verification by members of the jury***

The global and truly tragic implications of the absence of a positive project for children and adolescents, together with the disrespect of the basic obligations provided for by the Brazilian legislation, became obvious to the European members of the Permanent Peoples' Tribunal during a long visit to the structures of the FEBEM, following the advice of Father Júlio Lancelotti, an experienced and determined militant in favour of the rights of children and adolescents with a deep knowledge of this reality.

The overcrowding of the structure — 1600 adolescents aged 14 to 18, as opposed to 350 expected — is the product of a policy of unfair penalization, which represents the answer of the political powers to the pressure of the part of civil society privileging the security of its patrimonial rights at the expense of the basic respect for the rights of people. The conditions of detention — exceeding the maximum of 45 days provided by the law — can only be classified as sub-human; adolescents are forced to remain seated and still throughout the day; 12 to 15 people sleep in rooms without enough air or light, designed to shelter only two persons. The judges of the Permanent Peoples' Tribunal observed that physical punishment and “degrading” treatments classifiable as torture are daily practice.

On the other hand, the existence of a pilot project for progressive social rehabilitation of adolescents deprived of their freedom serves only to bring more in evidence the intolerable degree of violation of rights - defined by law as inviolable - which takes place there and possibly in other structures intended to shelter adolescents.

The Tribunal learned that many charges and parliamentary investigations have already been filed against FEBEM, which has also very recently been the stage of tragic events involving detained adolescents. Its nature and characteristics embody the essence of the bill of indictment, while clearly indicating the responsibility of those institutionally in charge, directly or indirectly, for maintaining this frightening structure.

The FEBEM prison, located in the centre of the State producing 40% of the wealth of Brazil, a country which is a legislative paradise for children and adolescents, is the concrete demonstration, both symbolic and tragically real, of the intolerable condition of children and adolescents living in a concentration camp that could only be imagined in a nightmare.

### **Worsening of budget limitations**

The Tribunal was presented evidence documenting the extension of substantial budgetary reductions recently adopted in Brazil, to adjust public expenses to the International Monetary Fund model, without any consideration for the government's constitutional obligations and for the highly damaging social effects of such a policy. The cutdowns have already substantially touched the budget allocated to the protection and promotion of the rights of children and adolescents. Such budgetary decisions are the current demonstration, based on concrete data, of the denial of the principle of absolute priority of children and adolescents, established in article 227 of the Brazilian Constitution and confirmed by the *Estatuto da Criança e do Adolescente* (ECA), which is a federal law. This clearly indicates a responsibility of the Brazilian government in a serious violation of rights.

Besides budgetary reductions, the diversion of resources originally allocated to programmes of child and adolescent care to reinforce federal police activities is even more serious in the absence of an institutionally competent police organisation, or at least specifically formed to respond to the situations experienced by children and adolescents. The responsibility of governmental agents deciding such cutdowns and diversions is thus increased.

Some data and testimonial informations are provided below:

The *Departamento da Criança e do Adolescente* of the Ministry of Justice in 1995 had a budget endowment of R\$ 97.500.000,00 (ninety seven million five hundred thousand *reais*), while in the 1998 mandate the amount was brought down to R\$ 19.300.000,00 (nineteen million three hundred thousand *reais*); in 1999 it suffered a new reduction, with only R\$ 16.300.000,00 (sixteen million three hundred thousand *reais*) provided.

With respect to the budget of the National Fund for Education Development, which shows an apparent increase — only due to the inclusion under this chapter of a school meal for children (from 603 million *reais* to 903 million *reais*) — there have been major cutdowns (between 10,45% and 13,5%) of plans concerning education: "Development of pre-school education", "Distribution of books and libraries", "School health", "Production of educational programmes" and "Programme against illiteracy".

A cut down of 13,98% of the resources affected the school management democratisation attained over the last years with the *Fundo de Municipalização do Ensino Fundamental e Valorização do Profissional da Educação*.

The policy against child and juvenile labour was also affected: the "Programme against child labour" suffered a 50% reduction; the "Integral care for the child and the adolescent facing poverty" has 79,21% less resources than in 1998, and the "Minimum income project", providing funds for scholarships throughout the country, approved in 1997, was reduced by 83,13%.

Programmes that very significantly affect children and adolescents, such as the "Urban housing" and the "General sanitary measures" programmes were respectively reduced by 69% and 58%.

Last January 7th, the World Bank approved the "Social Network Protection Programme", with the objective of supporting social protection plans for children of poor families, for families who need public health services and for the unemployed. The project budget amounts to US\$ 252.520.000. The witnesses of the Tribunal declared that the Ministry of Public Finances, in its message sent to the Senate, made clear the government's intention to use part of those resources to pay the external debt.

Decree number 43.591, of October 26, 1998, of the government of São Paulo, froze R\$ 876.823,00 of the *Fundo Estadual dos Direitos da Criança e do Adolescente*; these funds were used for the salaries of the personnel employed in the social department.

### **Violations of international laws and judiciary obligations**

On January 26, 1990, Brazil endorsed the United Nations' Convention on the Rights of Children, validated by legislative decree on September 14, 1990.

On July 13, 1990, the *Estatuto da Criança e do Adolescente* was approved. In the same year Brazil endorsed both international and national obligations with respect to ensuring "integral protection of children and adolescents" (article 1 of the Statute).

Article number 4 of the Statute established as an absolute priority for the family, the community, society at large and the public authorities the task of guaranteeing the necessities concerning the rights to life, health, food, education, sport, leisure, work, culture, dignity, respect, freedom and social cohabitation within the family and society.

### **On the right to life and health:**

The high average child mortality rate, together with the high child malnutrition and maternal mortality rates prove the insufficient care provided by the Union, the States and Municipalities given the limited financial resources made available for public policies which should be implemented to effectively translate in practice an absolute priority. The insufficient attention provided in this respect constitutes a violation of the right to life, health and food, as mentioned in articles 3 and 25 of the Universal Declaration of Human Rights, articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, article 6 of the Convention on

the Rights of the Child and, at the national level, article 227 of the federal Constitution and article 4 of Chapter 1 of the *Estatuto da Criança e do Adolescente*.

Equally, article 24 of the Convention on the Rights of the Child and article 227, paragraph 1 of the federal Constitution, both providing the establishment of programmes of care intended to guarantee the health of children and adolescents, have not been respected. Article 10 of the International Covenant on Economic, Social and Cultural Rights also outlines special care for children and adolescents.

In the terms of articles 30, paragraph VII, and 195 of the federal Constitution, the Union and the States are obliged to make available to the municipalities technical and financial cooperation capable of ensuring health services. The original testimonies and reports prove that this cooperation has not reached levels that can be considered satisfactory.

### **On the children of and on the streets:**

The size of the problem was substantially documented through various testimonies. It implies the violation of many rights, first of all the right to education (articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, articles 28 and 29 of the Convention on the Rights of the Child, articles 53 to 59 of the *Estatuto da Criança e do Adolescente*). These violations make children and adolescents more vulnerable to all types of physical and moral violence (article 19 of the Convention on the Rights of the Child).

But, above all, the State has the duty to guarantee that children receive protection and special support, especially "rehousing protection according to national legislation" (article 20 of the Convention on the Rights of the Child). Specifically, the *Estatuto da Criança e do Adolescente* provides, in Chapter II, Title II, specific protection measures, particularly article 101. The persistence of a high number of children of and on the streets indicates negligence on the part of the State at its various levels with respect to its duty to create favourable conditions for the establishment of the necessary connections of children and adolescents with social institutions, especially the family and the school. The set of texts referred to above, as well as article 227 of the federal Constitution, are not respected.

### **On violence and sexual abuse against children and adolescents:**

Violence and sexual abuse assume various forms and happen within the family as well as in society at large, and involve both national and foreign citizens (paedophilia, sexual tourism). Each instance represents a serious violation both of international conventions and of national laws. The Convention on the Rights of the Child condemns in the first place violence towards children in all of its forms (article 19), and particularly sexual exploitation and violence (article 34). Similarly, article 227 of the federal Constitution and article 5 of the *Estatuto da Criança e do Adolescente* also condemn these kinds of violence.

It was documented that the federal executive government does not adopt the necessary means to prevent and repress sexual exploitation of children and adolescents, which should, according to paragraph 48 of the Vienna Declaration, be actively hindered.

As far as sexual tourism is concerned, the State has the duty to implement restrictive measures and to prevent a practice essentially involving foreign citizens.

**On children and adolescents victims of drugs:**

The State, society and to a certain extent the family itself are jointly responsible, owing to their negligence and inefficiency, with respect to a problem which represents an offence against the health and at times the life of children and adolescents. Even if State intervention is represented by the action of a big number of agents strongly committed in defending the rights of children and adolescents, it is nonetheless frequently inadequate, since it reduces the problem to its repressive aspect rather than adopting a preventive methodology of multidisciplinary approach; on the other hand, it is largely insufficient owing to the scarcity of financial resources made available and the lack of attention on the part of society.

Furthermore, the Union and the federal police have not implemented an efficient policy of prevention and repression of international and national drug trafficking. There are no specialised programmes of prevention and care for children and adolescents addicted to drugs, in contrast with the provisions of article 227 of the federal Constitution. Judges and public prosecutors do not adopt adequate social educational measures as the appropriate legal remedy for convicted children and adolescents.

**On the exploitation of infant and child labour:**

Even though ILO conventions 5 and 138 on the minimum age for children to work was taken into consideration by the Brazilian internal legislation, violations are not yet sanctioned. The minimum age for child labour is set at 16 years of age by article 7, clause XXXIII of the federal Constitution, which also prohibits night shifts, dangerous and unhealthy for children under 18, but allows, exceptionally, work as an apprentice from the age of 14. The *Estatuto da Criança e do Adolescente* dedicates a special chapter to the issue of labour, Chapter V, and the *Consolidação das Leis do Trabalho*, article number 401 and following, also deal with labour protection of children and adolescents.

Not only was the existence of many instances of children and adolescents working under the age of 16 widely documented, but also that they were often employed in unhealthy and dangerous night shifts, and that, on the strength of authorised apprenticeship provided in the Constitution, children were brought to work at the age of 12. These practices contradict the numerous ILO conventions, particularly conventions 5 and 138 (minimum age), 6 (night work), 29 (forced labour) and article 10 of the International Covenant on Economic, Social and

Cultural Rights, besides article 32 of the Convention on the Rights of the Child.

Even in this area, therefore, the gap between (international and national) law and concrete reality is rather wide.

### **On children and adolescents facing justice:**

This theme has been abundantly dealt with by international and national norms. To mention but a few examples, articles 8 to 11 of the Universal Declaration of Human Rights; articles 14 and 15 of the International Covenant on Civil and Political Rights; article 40 of the Convention on the Rights of the Child mentions the adoption of procedures and the creation of institutions especially for children.

In the same way, the UN outlines special rules for the protection of young people deprived of their freedom (Resolution 45/113 of the General Assembly, December 14, 1990) and basic rules concerning the administration of juvenile justice (Beijing Rules, Resolution 40/43 of the General Assembly, November 29, 1985).

At the national level, the *Estatuto da Criança e do Adolescente* outlines a particularly protective system for the adolescent responsible for illegal actions (Title III of Book II — Special Part), defining the principle of immediate release (article 107), the limitation of preventive detention up to 45 days (article 108), the obligation of providing legal aid (article 111); the need of privileging social and educational measures (articles 112 to 120) and the exceptional character of internment (article 121).

Similarly, title VI of the Special Part concerns the access to justice; free legal aid (article 141), nomination of a special curator (article 142), specialised judges (145 and following) specialised educational internment centres (185), specialised police force (172).

If such a regime were applied, the situation of the adolescent facing justice and police forces would be ideal. Reality, however, is very distant from the ideal situation: the police is still a military force and does not include specialised units – i.e., trained to deal with children and adolescents and in prevention. Public Prosecutors do not have enough means to adequately deal with juvenile delinquency despite their efforts in this direction. The mandatory legal defence of adolescents is by no means assured in a satisfactory manner due to lack of funds. The judges resort too systematically to adolescent internment, instead of adopting alternative measures of releasing adolescents charged with misdemeanours.

The Tribunal observed, during the visit to FEBEM in São Paulo, the following serious anomalies:

- overcrowding of a unit with the capacity of lodging 350 adolescents, in fact lodging 1600;
- excess of the maximum provisory detention time limit (45 days), with many adolescents spending in that establishment as long as 3, 4 or 5 months;
- unacceptable sanitary conditions;

- absence of educational activities;
- sanctions comparable to brutal, inhumane or degrading treatment (torture).

The set of evidence presented shows serious and repeated violations of international and national norms with respect to child and juvenile justice.

### **Causes and responsibilities**

The growing number of violations of rights of children and adolescents in Brazilian society can be attributed to a substantial worsening in the living conditions of wide portions of the population. The middle classes are progressively impoverished, because the standard of life of underprivileged social groups — who had previously benefited from the policy of monetary stability specifically with respect to the improved capacity of acquiring basic necessities — is once again at disadvantage. The concentration of wealth entails the dramatic counterpart of the worsening of social exclusion.

The deactivation of wide economic sectors due to the high interest rates and the introduction of advanced technologies determine massive unemployment and new causes of family disintegration. Therefore family destructuring, particularly in large urban areas, is a relevant cause of marginality of children and adolescents, thrown into the street in degrading circumstances.

External impositions, with the International Monetary Fund in the leading role in the framework of structural adjustment policies, together with dominant liberal currents, lead to programmes of privatization of strategic economic sectors. Such privatizations have not only alienated important sectors of national property, but have also generated perverse effects, since objectively the absurd costs of servicing the internal and external debts and the irresponsible maintenance of the currency anchor (the latest in January 1999) have consumed the entire revenue deriving from the alienation of public properties. The privatization of the telecommunications system and of several firms in the energy sector fully illustrate the economic and social cost of disastrous policies.

Simultaneously, the downsizing of the State is constantly being promoted, reducing its role to that of regulator of market mechanisms. The funds allocated to social policies are drastically reduced, determining the loss of guarantees which had been gained with tremendous difficulty, as for instance the restriction of the maternity salary refund by the social welfare, which causes serious consequences to the employment possibilities of women.

Social welfare policies reappear, in a frustrating compensation attempt. At the same time, the political power is concentrated at the Union level, weakening the State's and to a wider extent the Municipal power, the latter nonetheless being the one directly confronted by social demands. It is not surprising that, in this context of social policies' deflation, the rights of



children and adolescents are those most frequently violated.

After all, this is only another demonstration of a process dominating present times: an apparently contradictory process, calling for wider integration of human spaces in the market economy while large numbers of people are excluded from basic benefits. The logic of the world market tends to absorb new sectors of consumers, while simultaneously disregarding the segments of the population who do not have the means to acquire the goods and the services offered by the "global market". Integration generates also exclusion. The increasing social and human costs of the current circumstances worldwide, which seriously affect especially the most vulnerable groups and among these children and adolescents, originate from this situation.

### **Responsibilities of the government and of society**

The framework presented above outlines a wide network of interests both at the national and international level, the concerted action of which does not hesitate to disregard the basic rights of large population groups. But the general and anonymous character of the agents determining social exclusion cannot allow to forget the personal responsibilities of those who take strategic decisions for the future of human communities.

The persistence and seriousness of the violations of the rights of children and adolescents in Brazil do not warrant to overlook the responsibility of those holding political power in the three forms: legislative, executive and judicial; and at three levels: federal, state and municipal.

One of the manifestations of the freeze of measures in favour of childhood and adolescence, motivated by political decisions, may be observed with respect to the *Conselhos de Direitos e Tutelares*. The integral protection of children and adolescents (core concept for structuring the norms outlined in the ECA), requires an articulation of factors and a cultural change in the quality of the relationships between all the agents involved and between them and children and adolescents, defining new paradigms and forgoing restrictive criteria and occasional interventions directed at specific clients. The current framework, on the contrary, determines a sharpening of the conflicts between governmental entities and civil society representatives, paralysing both the introduction of new paradigms and the strict application of laws in effect.

On the other hand, the judicial power and the public prosecution reveal in certain circumstances a weak permeability to the direct participation of society, besides the persistence of tendencies of excessive criminalization of adolescent behaviour, who are too easily sent to internment institutions.

Furthermore, persistent and systematic violations of human rights in these institutions can be documented, which the Permanent Peoples' Tribunal vehemently condemns. Children

and adolescents are victims of torture and of cruel, degrading and humiliating treatments. Political agents throughout the State's hierarchical ladder must be held responsible for such attempts against the basic requirements of human dignity. With equal vehemence the Tribunal reports and condemns the tragic ease with which the police forces assault and kill children and adolescents on the streets, not only in sporadic collective massacres, but also quite commonly through murder.

The executive power at its various levels — Federal, State and Municipal — is also to blame for criminal negligence, by not translating into practice constitutional directives and legal provisions requiring that priority be assigned to the integral protection of children and adolescents. Their responsibilities, however, are not limited merely to negligence. It cannot be ignored that the concrete adoption of political measures seriously harmful to children and adolescents constitutes a setback with respect to previous orientations. As an example, it is worth recalling what was previously reported with respect to budgetary cutdowns for social programmes or to the freezing of the funds allocated for their implementation. Such measures cannot be considered conjunctural decisions with temporary effects. On the contrary, they indicate the absence of supported social policies and the choice on the part of the powers in charge to allocating resources to the disadvantage of the needs of the most vulnerable.

The legislative power itself is not free of responsibility in this respect. Although the principles of the Brazilian legislation concerning the protection of children and adolescents establish very high standards, the members of Parliament elected by the people have completely failed their duty by not complementing the basic laws with the necessary regulations. Moreover, they have slowed down their supervision on the government's fulfilment of the laws, and have connived at the approval of the budgetary measures deliberately cutting down social policies investments.

Finally, it can be stated that Brazilian civil society as a whole is also partly to blame for the repeated violations of the rights of children and adolescents. At least through its passivity, society is also conniving at social exclusion by stigmatising those whom it excludes, and becomes an accomplice — if only through silence — in attempting on the dignity of children and adolescents.

### **Necessary social measures**

The Jury of the Permanent Peoples' Tribunal, in assessing the situation of the violations of the rights of children and of adolescents in Brazil, does not limit itself to passing a judgment, albeit undertakes at the same time to formulate proposals aimed at the introduction of improvements to the present situation.

Confronted with the facts presented, the Tribunal is aware of the complexity of the

measures needed to eliminate the violations of the rights of children and adolescents and to fulfil the international commitments assumed by Brazil in this matter, besides fulfilling its internal laws. However, it seems possible to outline a strategy for the application of the principles at issue.

A first line of intervention should privilege the awareness, education and training of the various agents within the civil society and the public administration. To know in order to intervene correctly appears to be an immediate necessity. Efforts should also be made opposing that the age limit for adolescents' imputability be reduced.

A second line of intervention should hinge on preventive measures with respect to risk situations. Structural policies that guarantee a basic income to families are clearly urgent and indispensable. The effective structuring of the *Conselhos Tutelares* is a necessary condition for a consistent prevention policy. The universalisation of the National Health System, the reorganization of the public education system, with the objective of an inclusive school structure, articulated measures to hinder drug trafficking and treatment for drug addicts, implementation of ethical norms for advertising — particularly concerning the tourism sector — are essential short, medium and long term measures for a preventive approach.

In the third place, immediate measures are needed to confront some of the striking phenomena presented to the Tribunal — namely, the elimination of child and juvenile labour exploitation; the suppression of cruel, degrading and humiliating treatments in internment institutions, starting by forbidding overcrowding; repression of paedophilia and sexual violence against children and adolescents also within the family. Logically these measures require multi-sector and multi-professional support, pragmatic capacities and systematic evaluation.

This set of facts presented and proved to the Permanent Peoples' Tribunal configures a situation which urgently needs to be stopped. However, the phenomena analysed should not be considered a national calamity any longer, albeit be assumed as a national cause. Around them a sort of social contract or institutional pact could be formed, resulting from a wide agreement between political agents and the civil society, so that the policies in question could be ensured application and continuity beyond electoral oscillations and democratic power alternation.

It is therefore urgent that the Brazilian civil society outline an action programme including, among other initiatives, the formulation of plans of legislative changes with punctual efficiency measures, as is the case of the heavy sanctions applied to companies that exploit child and juvenile labour, with the cancellation of their work permits and licences; the precise definition of the crime of paedophilia and its upgrading in the criminal law, besides crucial measures to resolutely fight the propagation of child pornography throughout the various communication nets, as for instance "Internet".

## VERDICT

1. The Permanent Peoples' Tribunal held its 27<sup>th</sup> Session in the utmost respect of the general principles of law, starting from very precise accusations and undertaking a substantial effort in order to obtain concrete and trustworthy evidence to confirm or deny the facts presented in the indictment.

As was previously pointed out, the evidence presented in the accusation originating the request for undertaking a Session of the Permanent Peoples' Tribunal in Brazil focussing on the problem of the violation of the fundamental rights of children and adolescents and considering the gap between law and reality, configured serious violations of the rights of subjects under legal age. The elements which accompanied the request were clearly suitable and fully justified the organization of a Session of the Tribunal, being compatible with its finality to operate in favour of the rights of the peoples, endeavouring to build a just society, in the absence of which humanity cannot live in peace.

For such reasons it was decided to hold the 27<sup>th</sup> Session of the Tribunal in Brazil, which was possible thanks to the extremely valuable collaboration of many people and Brazilian institutions committed to human spiritual values and especially concerned with the protection and promotion of the dignity of children and of adolescents who, owing to their natural fragility, need constant support. The preliminary Sessions were carried out in various parts of Brazil, with wide publicity, as was the case with the conclusive Session, having previously presented to the relevant authorities all the matters brought to the Tribunal.

The collaboration of foreign specialists, involved both in the organisation of the Session and acting as members of the jury, also contributed to the deepening of the analysis in a universal perspective, thus concurring to legitimate the Tribunal's conclusions.

2. According to the general principles of law and in respect of the elementary right to defence, the Permanent Peoples' Tribunal informed the Brazilian government that the 27<sup>th</sup> Session of the Tribunal, dedicated to the theme "Violation of the Fundamental Rights of Children and Adolescents in Brazil - The gap between law and reality" would be held in the city of São Paulo. A copy of the bill of indictment was sent to the government through the Presidency of the Republic, accompanied by an invitation to appoint a counsel for the defence and to provide the Tribunal with all the information and documents deemed relevant. The government was informed that, if nobody was appointed — as was in fact the case — a counsel would be appointed by the Tribunal, according to its Statute.

The witnesses' statements were heard, including those of experts and investigators, as well as directors and members of Non-Government Organisations who are involved in many fields of activity in favour of persons under legal age. The witnesses presented the Tribunal with

concrete facts of which they had direct knowledge and added evidence and proof of the reality of the violence carried out against the rights and dignity of children and adolescents, providing also an account on the extension of such violence. The members of the jury proceeded to question the witnesses to complement and clarify some relevant accusations. To acquire more precise knowledge of the situation of children and adolescents without a family or guilty of a crime, detained in both instances at the FEBEM establishments – a public institution responsible for children and adolescents, under heavy accusation by almost all of the witnesses for the treatments to which detainees are submitted - the members of the jury visited one of those places, near São Paulo. On the occasion they obtained very precise information and saw for themselves the degrading situation in which children and adolescents live in that institution.

On the basis of all these elements, the Tribunal considered proven the accusations with respect to the serious violations of rights, and recognising that the Brazilian government has judicial obligations to which it is not complying, and that the government's offence could be classified as fraud and negligence, the damage caused through such unlawful behaviour having also been proven. The grounds for this conclusion shall be further argued more fully in the following paragraphs.

3. Through the information collected and the reports of the witnesses' personal experiences, it was confirmed that in all big and medium sized Brazilian cities a very high number of boys and girls live permanently on the streets, have no family, no protection and no care, do not receive any education or health care, any kind of support towards social integration or guidance towards personal development and ethical and peaceable cohabitation. There are some millions of children and adolescents who receive no recognition or respect for their basic rights as human beings and, therefore, are not entitled to any right and are submitted to all sorts of physical, psychological and moral violence.

The right to recognition as a human being and to the special protection due to developing persons, inherent to age, derives from international treaties and conventions and from the provisions of the Brazilian Constitution, a chapter of which is dedicated to the rights of children, attributing to the governments the responsibility of giving priority to children, besides also giving responsibility to the family and to society. This responsibility of the Brazilian government also derives explicitly from the norms of the *Estatuto da Criança e do Adolescente*, a law approved by the Parliament, as well as from various international judicial instruments formally endorsed by Brazil, such as the Conventions on Human Rights and the International Convention on the Rights of Children.

It is obvious that the government has not confronted its responsibility nor has it complied with its legal obligations, as indicated by the simple fact that though the number of children living on the streets is very high there are no consistent plans nor public national

organisations capable of producing measurable results, aiming at the correction of this serious human and social anomaly. The situation found at the FEBEM establishment visited by the members of the Tribunal is a concrete demonstration of such negligence and proves the testimonies of several witnesses, i.e. that there are no well-structured official institutions with adequate human resources and material conditions intended to promote child integration within the family and the society. Through institutions such as FEBEM and also – as the judges were told – using the police, trained to fight criminals and not to support children, Brazilian authorities in general favour repression, almost always enacted through violent means, as a way of dealing with negative social repercussions of abandonment of such a high number of children and adolescents.

As is foreseeable and inevitable, such a situation of material, psychological and spiritual abandonment produces as a result a very serious damage, which immediately affects children and adolescents, causing their degradation, forcing them to endure physical suffering and humiliating situations, preventing them from enjoying the benefits proportioned by society which they should relish in freedom, as would be appropriate to their age. In addition, this situation of social marginality and of continuing threats and repression kills the future of those children. In truth, there is no future for them: constantly worried by physical survival, they have no projects for their lives, no hope nor dreams. The damage caused by neglecting their rights today persists in the future, because abandoned children and adolescents, among other things, do not receive education nor training to practice a profession.

All this, which outlines a human tragedy, was demonstrated through testimonies and also confirmed by statistics. Millions of children have no family and receive no education or basic health care. The numbers are equally impressive for child mortality, sexual violence, child and adolescent prostitution, and labour exploitation of persons under legal age; moreover, it should be added that there are situations of slavery or semi-slavery, the impossibility for these children to attend school, to enjoy any recreation or to experience loving cohabitation within the family. The number of boys and girls consuming drugs is also very high, as well as of those starting as traffickers, and learning very early the way to crime while being exploited by adult criminals.

Without ever having been treated as human beings, these children and adolescents are unaware of the existence of rights inherent to the human condition. Since they have never experienced respect as people, the notion of the human being as a person is unknown to them, hence they easily resort to violence. Similarly, since they have never possessed any property, it is logical and understandable that they try to appropriate whatever pleases them or might be useful to satisfy their needs, in so far as they have no notion of patrimonial rights. This behaviour of children and adolescents fills society with indignation; hence, while refusing to assume legal responsibility with respect to the care of children and to show any solidarity, with

few exceptions, society demands even more repressive actions of the government against children and adolescents, and such actions are frequently undertaken arbitrarily, once more increasing the violations of their rights.

4. The government defender's arguments, confined to the repetition of the reasons generally presented by the government, concerned four issues: 1. These problems are not new, but were accumulated over several generations: the present government therefore cannot be blamed for a neglect of rights which represents a chronic condition; 2. The government has been doing as much as possible, but not enough financial resources are available, the number of children and adolescents is very high, and at the same time there are many other social problems requiring funds. Moreover, Brazil has been trying to deal, albeit through many difficulties, with meeting the financial obligations deriving from the external debt, compelled to honour its commitments towards international creditors in order to preserve its image and encourage investments; 3. The federal government cannot be blamed, because the Brazilian Constitution establishes a federal form of State and the separation of powers, hence determining a dilution of the responsibilities; 4. The Brazilian society should assume its responsibilities in relation to children and adolescents, as established by the Constitution, since finding solutions for the problem of abandoned children and adolescents is part of the duties also of private initiatives within the civil society, which should undertake independent actions rather than simply expecting initiatives from an already overburdened government.

With respect to the first argument — the chronicity of the problem— it is true that abandoned children and adolescents are a long-standing issue in Brazil, but this does not justify neglect on the part of the present government, which does not assign priority to children and adolescents and has done almost nothing to correct such a long-standing anomaly. Aware of its judicial obligations deriving from the Constitution, from national laws, and from the international judicial obligations endorsed, the government has the duty to deal with the problem, establishing a plan for the gradual correction of the situation in a concrete way, not solely confining itself to the publication of theoretically correct programmes devoid of practical effects. The government should establish concrete programmes, planning and engaging the necessary means and defining time schedules, rather than remaining at the stage of generic and abstract intentions, depending on the unlikely surplus of budget resources.

The government's programmes in this area should assume the features of a judicial commitment, to allow the activation of judicial actions in case of disobedience. It is worth remembering that the current President of the Republic of Brazil was elected and re-elected by the people through direct elections. Therefore, besides having the constitutional responsibility to perform the functions inherent to his office as chief of the federal government, it can logically be assumed that the President had full knowledge of the situation of abandonment affecting

children and adolescents and of his duty to confront it when he presented his candidature twice. Therefore, there is no legal consistency to the argument of the duration of the problem as a means to exempt the present government of its responsibility.

The second argument — the high number of abandoned children and adolescents and the existence of other social problems requiring major financial resources, which are not available due to the external debt — brings to evidence the central issue of the problem and requires several remarks. In the first place, political and economic analysts register the assent of the present Brazilian government to the policy of the International Monetary Fund, which in theoretical terms may be defined neo-liberalism while being, in essence, a modern version of unethical capitalism exclusively oriented to economic and financial objectives. This hinders assigning priority to social objectives and requires obedience to "market laws", while norms and judicial limitations are downgraded to a secondary position. This explains the priority attributed by the Brazilian government to international creditors, forsaking its constitutional duty to respect the Constitution and to prioritise the rights and interests of Brazilian people. From a judicial point of view, nevertheless, the rights and interests of international creditors deserve a lower priority level.

The alleged need to honour the commitments undertaken with international creditors to maintain the flow of investments in the Brazilian people's best interests, thereby justifying withdrawal of resources meant for children, is an argument both unethical and juridically unacceptable, besides being extremely dubious from a practical point of view. In the first place it must be remembered that treaties, pacts and conventions and other international agreements on human rights, endorsed by government representatives and ratified by the National Congress, are obligations assumed by the State and by the Brazilian people before other peoples and other States. Unless such obligations are honoured, Brazil will be held in contempt by other peoples, and this is obviously not in the interest of the Brazilian people. Moreover, these obligations have been assumed in favour of humanity, and more specifically of the Brazilian people, and therefore represent priority objectives with respect to the investors' interests.

At the same time, it is worth stressing that the financial investor, obeying only market laws, is attracted by a security for high income investment. It is now perfectly clear also to potential investors that injustices and social unbalances generate conflicts extremely dangerous for political stability and consequently for the safety of investments. Beyond these practical aspects it is nonetheless worth remembering that it is unethical and illegal to withhold resources intended for social objectives simply in order to guarantee the profits of private investors.

Furthermore, with respect to the argument that resources are needed in other areas and that there is no surplus for social objectives, the Brazilian press reported that the members of the President's political party and their allies in the National Congress have already expressed their dissent with the attitude of the government, deemed utterly unconstitutional and causing serious



damage to the poorest people of Brazil. It was already indicated that the government has been using the artifice of presenting a budgetary bill to the Parliament which includes substantial financial resources for social sectors. Once the necessary approval was obtained, the President did not allocate such resources, arguing that the approval of the law serves simply to authorise the expenditure without implying an obligation to carry it out. From the judicial point of view this is once again disrespect of the law, since budgetary laws involve commitments as any other law; hence its provisions are mandatory for the government, unless a disaster intervenes or tax revenues prove substantially below expectations. But even in those instances, unless it is needed to meet the emergency ensuing a disaster, the authorised expenditure is still a priority and continues to represent a judicial obligation of the Executive, with a reduction in expenditure proportional to that in revenue. On this basis, also the second argument of the defence proves unacceptable.

The third argument — the dilution of the responsibilities owing to federalism and to the separation of powers — cannot be accepted being juridically unsound. Although Brazil is organised as a federal state, the Constitution confers preponderance to the federal government with respect to the definition of general norms, which are mandatory for the states and for municipal governments, and confers competence to the Federal Supreme Court, an agency of the Union, over the verification of constitutional obedience and judicial review, which entails interpretation of the Constitution and control of the constitutionality of all the laws and judicial acts enacted at all governmental levels. It is worth recollecting that the *Estatuto da Criança e do Adolescente* is a mandatory federal law, and it is the duty of the federal government to see that the law is enforced, both by the federal and by the states' and municipal authorities. In fact, not only the federal government has not fulfilled all the Statute's provisions, but it has also been negligent by passively accepting the disrespect of the federal law by other authorities. One of the obligations of the President of the Republic is to abide by the federal laws and to ascertain that they are respected.

With respect to the Federal Supreme Court, eminent Brazilian jurists reported a conservative attitude, according to many contrary to the Constitution, on the part of the highest Brazilian Court. Especially with respect to the internal application of the international conventions on human rights, the jurisprudence of the Supreme Court has been exceedingly restrictive. For instance, in relation to the treaties on human rights endorsed by Brazil and approved by the National Congress, according to the Constitution, the Federal Supreme Court considers such steps insufficient for the integration of international conventions in the Brazilian positive law, although in compliance with all of the formalities provided by the Constitution. This has reinforced the resistance of the Brazilian government to applying the international conventions entailing responsibilities, and has hindered in many instances the promotion and protection of the rights of children and adolescents. In conclusion, federalism or the separation

of powers cannot be deemed to exempt or reduce the federal government's responsibility in the disrespect of the rights of children and of adolescents.

Finally, there is the argument of society's responsibility, which should take initiatives, create organisations, prepare and develop programmes aimed at social integration of children and adolescents, and above all prevent that child abandonment be continued, acting so as to interrupt the long-lasting repetition of immoral and unjust events, contrary to the fundamental principles of the law. In fact, the existence of a large number of abandoned children and adolescents throughout the country and the continued occurrence of these events are public and well known facts, widely reported by the press, as are common knowledge the illegal acts on the part of the authorities, who decline their responsibilities with respect to enforcing the laws providing protection and human promotion of these children, and continue to act arbitrarily against them.

The Brazilian society seems to consider such occurrences natural and inevitable or does not recognise its responsibility, expecting initiatives on the part of the government. Such clearly unjust behaviour reveals that the solidarity of the people, often shown in specific and temporary situations, is selective and non permanent, and needs to be awakened and stimulated by educational campaigns which should stem from government initiatives. The lack of these permanent solidarity actions is a fact, but does not exonerate the government from its responsibilities; therefore the last argument is also insubstantial, from a judicial point of view, with respect to acquitting the government of its responsibilities.

5. On the grounds of all that was presented and proven during the trial session, of the quantity and the solidity of the evidence and of the arguments presented and of the legal sources considered, the Permanent Peoples' Tribunal considers the Brazilian government guilty of actions contrary to the rights of children and adolescents and of negligence. The government has systematically violated the elementary rights of children and adolescents by not fulfilling constitutional obligations and ignoring laws and treaties that are part of the Brazilian system of positive law. As was pointed out earlier, treaties, conventions and international agreements that have been endorsed and ratified are judicial, not simply ethical, commitments which must therefore be fulfilled.

A very important issue which ought to be stressed here is that, together with the recognition, in theory and in international jurisprudence, that treaties on human rights constitute a special category and are always of immediate application, the Brazilian constitution explicitly determines their immediate application, considering the norms of those international judicial instruments as part of the constitutional norms on human rights. Brazil therefore is juridically obliged to apply those principles, and the attitude of the Brazilian government, heading the opposite way or shirking its duty, infringes the national and the international law.

With respect to the practical effects, it is clearly proven that this behaviour on the part of the government, contrary to ethics and law, has seriously damaged the rights and interests of Brazilian children and adolescents, especially of those born in poverty and marginalized from society or public life from the earlier stages of existence. Without real integration in society, children and adolescents do not receive the necessary protection and support to enable them to dream of a future without hardships or violence, in which to be free and equal in dignity and rights, like all human beings.

Because of all of these facts and arguments, the Permanent Peoples' Tribunal sentences the Brazilian government to assuming its ethical and judicial responsibilities towards children and adolescents, to respecting the Constitution, the laws, the treaties, the pacts, the conventions and all the international instruments endorsed by Brazil, and to fulfilling and enforcing the fulfilment of the provisions of such judicial instruments. It is an ethical and judicial requirement which should be attended: to allow children and adolescents of Brazil to live with justice and dignity since birth and to attain full material, psychological, moral and intellectual development is part of a commitment towards contributing to the valorisation of the human being and to peace among all peoples.

São Paulo, 19th. March, 1999.

Presidents of the Session:

Dr Dalmo de Abreu Dallari

Dr. Rubens Approbato Machado

Dr. Luís Moita