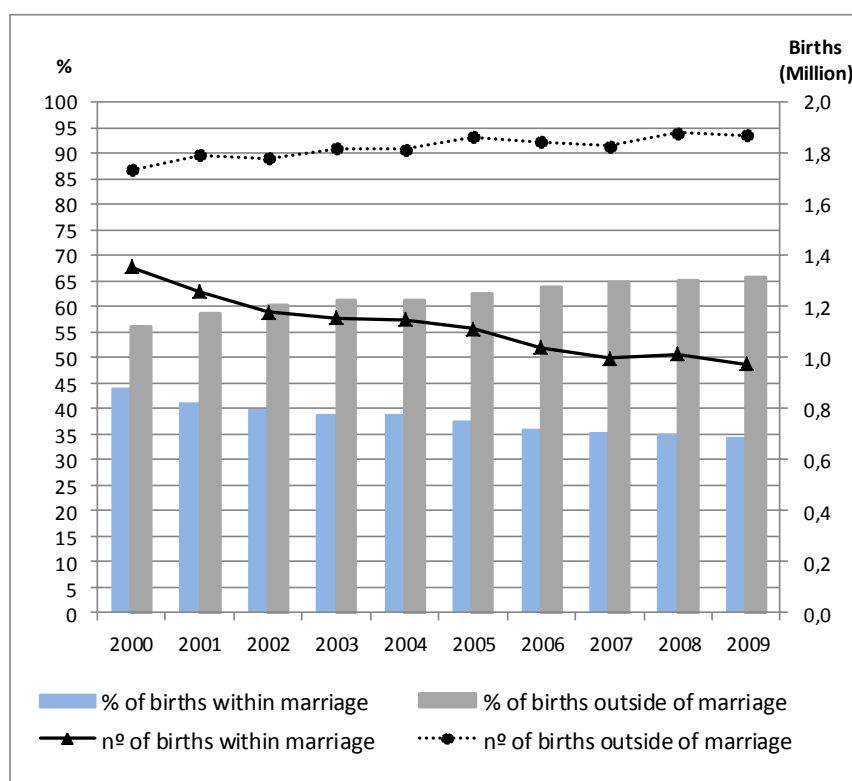


## The Evolution of Births Outside of Marriage, Paternal Recognition and Children's Rights in Brazil

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This study focuses on the evolution of the phenomenon of births outside of marriage in Brazil over the course of the last decade (2000-2009) and the legal debate resulting from this disassociation between reproduction and marriage from the perspective of children's rights. According to data from the Live Birth Information System (Sistema de Informações sobre Nascidos Vivos - SINASC), births to consensual unions and single mothers jointly represented 56.15% of the total number of births registered in Brazil in 2000. In 2009, this figure increased to 65.78% of the total. The absolute number of births outside of marriage was moderately stable, varying between 1.7 and 1.9 million per year, while the number of births to married couples experienced a significant decrease, falling from 1.4 to 1 million per year.

**Graph 1**  
**Brazil, 2000-2009: Number and percentage of births within and outside of marriage**



Source: MS/SVS/DASIS – Live Birth Information System – SINASC

Some estimates (Thurler, 2009; Bandeira, 2009) suggest that between one quarter and one fifth of children born outside of marriage end up not being legally recognized by their biological

fathers, are only registered under their mother's name and are sometimes identified as "children of undetermined paternity". This suggests a probable maternal burden to fulfill the obligations to attend to such children, bring them up and support them.

Demographic studies tackling the theme of births outside of marriage are rare in Brazil. Among existing works, most have been produced from the perspective of demographic history and cling, above all, to the reality of the eighteenth and nineteenth centuries (Marcílio, 1998; Scarano, 2000; Bacellar, 2002; Marins, 2002). According to the few qualitative studies existing on paternal non-recognition – or "paternal desertion", as Thurler refers to it in 2006 and 2009 – there are indications that the type of union or bond and the length of relationship between the parents at the moment of the child's birth seems to bear significant weight on the decision to spontaneously assume paternity or not. Of course, giving the child a surname is not a guarantee of providing affection, protection and support during the years of utmost vulnerability which characterize childhood and the teenage years. However, this is the first step for men to take on parental responsibility in the eyes of the law, society and mainly, in the eyes of the child itself.

By means of ethnographies undertaken in the Brazilian state of Rio Grande do Sul, Claudia Fonseca (2004) discovered many cases of men who, despite having lived for many years with a partner, questioned the latter's claims that they were fathers to children they had helped to bring up. Unlike children born within wedlock, whose mother's husband is legally presumed to be the father, in consensual unions there are indications that the recognition of paternity lacks greater negotiation. In considering couples in consensual unions, Fonseca noted that "paternity is not automatic; it should be voluntarily declared by the father – which means that, in practice, it depends on the mother's powers of persuasion" (Fonseca, 2004: 24). The author also highlights that the growing popularity of DNA tests has awoken a desire to confirm paternity even among married men. However, in general, many judges try to discourage this type of demand in the child's best interests, especially when the man in question is the only socio-affective father the child has ever known.

Legal developments in Brazil led us to finally recognize the total equality of children born within and outside of marriage in the Constitution of 1988. Law 9278 of 1996 practically made the rights and responsibilities of partners in stable unions and those married the same, defining a stable union as "a *lasting, public and continuous* relationship between a man and a woman living together established with the objective of forming a family". However, the moment of registering the birth of a child is a situation in which subtle procedural differences emerge, depending on the type of bond between the parents. According to data from the Association of Civil Registrars (Associação dos Registradores de Pessoas Naturais - ARPEN), registering children born to a married couple may be completed with just one parent present, upon the presentation of the marriage certificate. The association justifies this procedure affirming that: "Maternity is always certain, whereas paternity is

based on the act of recognition or legal presumption of paternity through marriage (180 days after marriage and up to 330 days upon dissolution of the conjugal society)”. When the union between the mother and the father of the child to be registered is not formal, both should be present at the notary office or send a power of attorney authorizing the inclusion of their name on the birth certificate. If only the mother is present at the notary office, the father must produce a declaration recognizing paternity. Similarly, a father registering the birth at the notary office must provide the mother’s consent. Both the declaration recognizing paternity and the maternal consent must include a notarized signature attesting to the veracity of the documents presented.

### **What the data shows**

Considering that currently around 65% of Brazilian children are born outside of marriage, estimates that approximately one fifth to one quarter may not have their father’s name on their birth certificates mean that between 13% and 16% of all children born in Brazil are not initially recognized by their biological father.

Unfortunately, SINASC only registers the mother’s marital status on giving birth and not her conjugal status, which means that it does not offer the possibility of securely distinguishing between births from consensual unions and those in which the mother is actually a single mother. However, even this most basic of information on marital status allows us to identify the distinct profiles of mothers most likely to have children within or outside of marriage (data developed in the final text).

The only source of socio-demographic data which facilitates an estimate of the number of children with undetermined paternity is the school census, a survey carried out by the Anísio Teixeira National Institute of Educational Studies and Research (INEP), linked to the Ministry of Education. Since 2007, the survey has recorded the father’s name alongside that of the mother. The school census is national in scope and collects data from everyone frequenting public and private educational institutions (crèches and schools) of all ages and educational backgrounds. The 2010 school census was carried out on 53 million students of all ages. Here we have considered students from 0-17 years old, corresponding to around 42 million children and teenagers. Of these, 12.4% are children yet to reach school age (6 years old) and attend crèche as part of the school system.

Information on each student is provided by the educational institution itself by consultation of its own files. Information on parentage should be taken directly from the copy of the birth certificate which schools normally request upon the child’s enrolment. According to the 2010 school census, 9.5% of children and teenagers do not have their father’s name on their birth certificate (a detailed profile of the children and teenagers of undetermined paternity is presented in the final document).

**Graph 2**  
**Age pyramid of children aged 0-17 in the educational system, highlighting those of undetermined paternity**



Source: The Anísio Teixeira National Institute of Educational Studies and Research (INEP). 2010 School Census.

There are important differences between regions, skin color and the child’s social circumstances in determining their chance of having their father’s name on their birth certificate. Undetermined paternity is more common among non-white children and teenagers, residents of the north and north-east of Brazil, and those enrolled in public schools (data summarized from Table 1). In Brazil, wealthier families prefer their children to attend private institutions for elementary and high school. Therefore, the fact that the absence of the father’s name on a child’s birth certificate is more common among students from public schools points to an important differentiation regarding social background. As for gender, undetermined paternity is indistinct in its affecting of girls and boys and there are no fundamentally significant differences for this variable.

Grade retention is more frequent among children and teenagers with undetermined paternity. Although we do not have more substantive information on these students’ real family environments, this data is revealing, in spite of the knowledge that undetermined paternity must be associated with other disadvantageous social variables. We cannot isolate the absence of known paternity as the determining factor in grade retention, not least because grade retention among students with known parentage is also not negligible. At any rate, there is a differential between the category of determined paternity and undetermined paternity in terms of grade retention (Table 4). Children

who only have their mother’s name on their birth certificate are 79.9% more likely to be in a grade unsuitable for their age range (grade retention – Table 4).

It is worth highlighting that among teenagers who have come into conflict with the law, those with undetermined paternity account for 16.3% of students in the socio-educational system’s youth detention centers, whereas among the student population in general, students with undetermined paternity account for 9.5%. This allows us to visualize a relative super-representation of boys with undetermined paternity among the group of teenagers in conflict with the law when compared to the rest of the population, without this providing a determining factor.

**Table 1**  
**The odds ratios of having only determined maternity**

	Odds ratios
Greater Region ( <i>South</i> )	
North	2,070***
Northeast	1,452***
Southeast	1,115***
Center-West	1,198***
Educational System ( <i>Private</i> )	
Public Educational System	1,890***
Color ( <i>white</i> )	
Non-white	1,458***
Undeclared	1,454***
Sex ( <i>Female</i> )	
Male	0,992
Age	1,009***

Notes: Odds ratios derived from logistic regression coefficients. Omitted categories in parentheses. \*\*\*p< .001

In order to reverse this scenario, the National Justice Council launched the *Pai Presente* [“Present Fathers”] project in 2010, in the aim of reducing the number of people with undetermined paternity in Brazil, especially among children of school age, with a strong emphasis on the notion of “responsible paternity”. This terminology was also adopted in the action plan for the *International Population and Development Conference* in Cairo in 1994. Along with the descriptive analysis of the data available on the theme, this article discusses this reality in light of the perceptions on family, children’s rights and gender relations which ground a project such as “Present Fathers”.

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