I.) The costs of bringing or defending a civil claim or defending a criminal charge:
It is a fact that the costs that a party has to pay, when it wants to use the court system (for instance to bring or defend a civil claim) will influence an individual’s decision on whether to go to court at all or to pursue/defend a claim in court. Different systems of legal aid try to reduce this obstacle to justice. A special problem may occur if the costs of experts cannot be met from legal aid funds.

**Question 1:** (a) Is there legal aid in your country?

Yes. There is legal aid for anyone who claim to be in poverty and therefore not able to bear legal costs without risking his/her own financial situation or of his family. Legal aid is provided in such cases, comprising all costs and fees of the legal process.

(b) Is this available for individuals in all courts, both civil and criminal?

Yes.

**Question 2:** Which costs are covered by legal aid?

(a) the costs of using the court?

Yes.

(b) the costs of the lawyer?

Yes. Public Attorneys are provided through a system organized and maintained at the State’s expenses. The public attorneys are available to the parts certified as not being able to bear the legal cost and fees of the process.

(c) the costs of experts (either appointed by the court or engaged by the parties directly)?

In some circumstances, specifically when they belong to the Court’s personnel. Otherwise the costs are not covered by legal aid. This is one of the problems of the legal system in Brazil, since experts are may not be requested to wave their fees.

**Questions 3:** What are the limitations of legal aid:

(a) are there financial limits to legal aid in (i) civil; and (ii) criminal cases.

No.

(b) are there limits on (i) the type or (ii) choice of lawyers or experts that can be used if legal aid is claimed by an individual?
Yes. As described before, the Public Attorneys are provided through a system organized and maintained at the State’s expenses. Such Attorneys belong to a body of legal personnel financially sustained by the State, forming a specific career in the Government.

Questions 4: Who grants legal aid for civil and/or criminal cases? Is it granted by a body which is under the control of the judiciary or by an extra judicial organ? If the latter, describe this organ.

The Judiciary studies the situation presented by the part in the process and decides whether the person can be considered as not being able to bear the legal cost and fees of the process, in which case he or she will receive the requested legal aid. The part’s interests will then be represented, in civil or criminal cases, by a Public Attorney, appointed from a body of legal personnel financially sustained by the State, forming a specific career in the Government. The access to this career is necessarily done through public exams.

II.) Information about the judicial system:
Only those who know about the possibility of using the courts to make or defend a claim, and the possible procedures that they are going to face there, will be able or willing to go to court. Therefore information and knowledge about how the courts and the judiciary function are essential:

Question 5: Are students in (i) schools and (ii) universities and colleges, taught about the court-system, the jurisdictions of the various courts, the judiciary, the rights of citizens to use the court systems and how the system functions?

This information is only taught in Law Schools and even so, in many cases it is done in an unsatisfactory and incomplete way.

Question 6: What means are there for informing potential litigants or other users of the court system about (i) the court system and how it is organised; (ii) the judiciary; (iii) the procedure in courts (civil and criminal); (iv) how to get assistance to make or defend a case in court; (v) how much court procedures may cost?

The means of information regarding this subject are very limited, basically restricted to books. The Associations of Judges have managed to place some information to the public, mostly related to the organization of the Judiciary and on how to receive legal aid to be able to participate in a legal process.

(Examples of means to disseminate this information may be: internet; advice bureaux; books/pamphlets published by the court service/government)

III.) Access for minority groups (eg. ethnic or language groups):
Special efforts may be necessary to ensure that members of minorities have the same rights of access to justice as do the majority group in a country.

**Question 7:** (a) Are there special arrangements to ensure that ethnic/language minorities are aware of their rights of access to justice.
(b) What special arrangements (if any) are made to ensure that those minorities are able to obtain equal access to justice?

*There are no special arrangements to ensure that minorities are able to obtain equal access to justice. Nevertheless, it would be erroneous to say that minorities lack access to the Judiciary system simply because they are part of ethnic or other kind of minorities. The problem in Brazil lies in the inclusion (in the judiciary system, public health, education system and others) of a considerable part of the population which lives around the borderline to poverty and ignorance and therefore has not yet reached a level of true citizenship. The Associations of Judges have worked to promote actions to simplify the judiciary language, in a true effort to make the results of the processes more understandable for the population. There are Courts (like the Supreme Court) that have their sessions entirely broadcasted by television in real time.*

c) Are there facilities to enable ethnic/language minorities to have cases conducted in their language/the proceedings translated for them to follow?

*No.*

IV.) **Delays in the justice system:**

“Justice delayed is justice denied”. The problem of delays in dealing with both civil and criminal cases is encountered in many countries. Delays in cases can amount to a serious denial of the right to access to justice for individuals.

**Question 8:** (a) In your country are there serious delays in dealing with civil or criminal cases because of “structural” reasons – e.g. a lack of judges/courts/experts/lawyers who are prepared to deal with legal aid cases.
(b) If there are please explain what they are.

*There are considerable delays in the judgment of processes in Brazil, in the civil as well as in the criminal area, by the lack of judges, because of the excess of litigiosity in a judiciary system in which there is an enormous number of cases related to problems that according to the Constitution the State should solve but in fact has not been able to provide adequate solutions. The delays are also caused by the very complex due process, excessively rich in rituals and details. In some cases, it may be financially wise to delay the fulfillment of contract clauses and conditions, forcing the counterpart to access the judiciary system to seek justice. In such cases, even losing the legal dispute, the defendant will be able to pay the same amount, plus interest rates considerably lower than those necessary to fulfill the contract should the debt had been financed through a bank or any other financial institution. This is one other cause for the excessive number of processes currently in place in the judiciary system.*
The Government lately has invested more resources in the organization and structuring of the Judiciary as well as in some changes in the due process, in a clear effort to simplify and shorten the procedures, without sacrificing the right of defense. Nevertheless, such efforts have not been enough.

V.) Procedure in courts:
Formality in procedures may prevent individuals having access to justice.

Question 9: Are there any examples in your country. Please describe the problems. (e.g. mandatory representation by a lawyer, but heavy cost/ few lawyers available; necessity to appear at court but excessive distances to court buildings etc.).

The problems are represented by the poverty, sometimes true misery, in which lives part of the population. For this part of the population, even tough legal aid is available (at least formally) through Public Attorneys at the expense of the State and without legal fees, a considerable number of citizens is not aware of basic rights. This lack of basic information represents a barrier to the access of justice. The barrier is thickened by the distance of some of the communities from the cities where there are judges and courts, even tough there have been some experiences with mobile judiciary units, mainly in the northern part of the country (that is the area with lower demographic density and where the distances and the access to the cities represent the most difficulties). In such areas, the Judiciary provides complete units in boats, for example, serving communities along the many rivers, including the Amazon.

It is actually sad to state that many people feel intimidated to present themselves in front of a well dressed Judge in one of the courts because of their poverty or ignorance, because of the great material distance between people. This is truly a serious obstacle in the access to justice.

VI.) Enforcement:
Effective access to justice also includes the need to ensure that judgements are enforced effectively.

Question 10: (a) Who ensures that a judgment is properly registered and enforced against a party?
(b) Do problems with effective enforcement exist?
(c) If so, please describe them? What might help to improve the situation?

The most serious problems are in the civil area. In Brazil the law does not permit the imprisoning due to debts. Therefore, if a party is sentenced to pay a certain debt, the warrant will be taken from the patrimony of the party that lost the process. If the sentenced party does not hold assets eligible to be turned into payment (non essential to subsistence) there is no other way to provide warranty. This is the exact case for a large part of the population and in consequence, the effectiveness of the due process is not satisfactory.

If the sentenced party happens to be the State, the creditor usually has to wait for a long time to receive what is due, through means of payment known as “precatorios judiciais” (orders of payment against the State) which follow specific priorities and must be in the Government’s budget for the coming years. The executives in office always try to postpone the debt in a way that their successors are finally responsible for the actual payment. The delays in the
payment of the “precatorios” are very long. In summary, the system designed to permit the payment of State’s debts is not effective and is also unfair, holding great delays. It is also very difficult to change such procedures, since this is necessarily dependent on changes in the law, which in turn depends on politicians who normally tend not to be interested in such changes. This resistance from the politicians comes obviously from the fact that they have been in office in the Executive or because their political parties currently hold offices and do not have any special interest in solving their own “precatorios” very soon.

VII.) Other Obstacles:

**Question 11:** Are there other obstacles to access to justice? If so, please, describe them.

VIII.) Recommendations:

**Question 12:** In your country are there any existing practices or reports/proposals for the future on the subject of improving access to justice that you would recommend to the judiciaries of other countries.